THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

Case No. 2011-CP-32-1781

Appellate Case No. 2021-001365

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellants,

v.

Marjorie E. Temple.....Respondent.

APPELLANTS' RETURN TO RESPONDENT'S PETITION FOR WRIT OF CERTIORARI

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Appellants' Return to Respondent's Petition for Writ of Certiorari

Statement of the Case

This is an appeal from an order of the Master- in- Equity for Lexington County denying the Appellant's Motion for Rule 11 Sanctions and Request for Attorney Fees after the court terminated the Respondent's interest in an installment land sale contract (Bond for Title). The master found that the Respondent, Marjorie Temple, had no equitable interest in the property based upon her concession and agreement that no equity existed.

The Appellants, Charles Strickland, et al, filed this action on May 11, 2011, in the Circuit Court of Lexington County seeking foreclosure of a Bond for Title or installment land sale contract (hereafter the Agreement) **or, in the alternative, termination of the Agreement and any equitable interest** Temple may have had in the property. Strickland also requested attorney fees and costs in the pleadings.

Temple served an Answer, Counterclaim and Third- Party Complaint on July 26, 2011, alleging defenses and causes of action for unconscionability, rescission, negligent misrepresentation, fraud and unfair trade practices.[1]Temple alleged in the counterclaims and defenses that Strickland had failed to disclose the existence of a dam and pond on the property, as well as the fact that a portion of the property was in a wetlands, despite the fact that all of these matters were disclosed in writing in the Agreement, which Temple acknowledged she read. In addition, she walked and viewed the property prior to

[1] The matters alleged in the Third-Party Complaint are not at issue in this appeal.

purchasing it.

The circuit court issued an order granting summary judgment on May 20, 2013, as to all of Temple's counterclaims and defenses, and referred the underlying breach of contract action to the master in equity for purpose of determining whether Temple had any equitable interest in the property and for final judgment. The Court signed an Order of Reference on May 23, 2013. Strickland filed a Motion for Rule 11 Sanctions and Attorney Fees on April 17, 2014, on the basis that Temple's counterclaims were filed in bad faith; that there were no good grounds to bring the claims; and that the circuit court found there was no basis in fact or law to support the allegations.

Strickland requested attorney fees and costs in the amount of $19,236.82 under the Agreement and Rule 11, SCRCP from Temple and her counsel. He also sought a monetary fine.

The master heard Strickland's Motion for Rule 11 Sanctions and Request for Attorney Fees on December 11, 2014 and issued an order denying the requested relief on June 4, 2015, from which Strickland appeals. The Court's Order was entered on June 15, 2015, and thereafter Strickland filed a timely Motion to Alter Judgment of the Court's Denying of Attorney's Fees and Rule 11 Sanctions pursuant to Rule 59 (e), SCRCP. The master issued an Order Denying the Rule 59 (e) motion on September 1, 2015, written notice of which was received on September 16, 2015.

Strickland filed Notice of Appeal on September 28, 2015. The Court of Appeals issued its opinion in this case on September 1, 2021 (after this case was remanded by this Court to hear the matter on the Appellant's Petition for Writ of Cert. because of timeliness issues as to

the filing of the appeal) and reversed findings of the master's denial of Rule 11 Sanctions and the failure to award attorney fees. Respondent filed this Petition for Writ of Certiorari on November 19, 2021, alleging error by the Court of Appeals in reversing the master.

Argument

1. **The Court of Appeals in Accordance with Its Own View of the Evidence in This Equitable Matter Properly Reversed the Master's Failure to Award Sanctions and Attorney Fees for Respondent's and Her Counsels' Filing of Patently Frivolous Counterclaims of Fraud and Unfair Trade Practices. Respondent's Counterclaims of Fraud Based on Non-Disclosure Were Filed Without Merit, As is Apparent from the Installment Contract. This Petition Should be Dismissed as Frivolous.**

The Respondent (an educated woman) and her attorneys- educated and seasoned members of the bar- were put on notice from the filing of the Complaint in this case that the matters which she claims were not disclosed- the existence of a dam, pond on the property, and flood plain, were disclosed in the Installment Contract in writing and attached to the Complaint. (Installment Contract at p. 12; R. p. 49). ("Subject to the rights of others in and to the bed of waters of the pond crossing the premises and the dam as shown on survey prepared by D.B. Sproles and Associates, Inc. ... Dated March 30, 1990"). The Respondent, Temple, was also provided a copy of the survey at or prior to the time of closing which demonstrated that a portion of the property near the pond (but not near the house) was in a flood zone or is protected wetlands. (Order Granting Summary Judgment at p. 4; R. p. 6, 242, 243, 244) Rule 11, SCRCP is clear that

> The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.
>
> Rule 11, SCRCP

Despite these disclosures, and her own inspection of the property prior to closing, Respondent and her counsel alleged and asserted baseless counter claims and have continued to litigate these issues for over 10 years now. Her counsel's claim that there was only a short time within which to raise defenses is also without merit, as Rule 15, SCRCP favors liberal amendment of the pleadings. Thus, pleadings, including answers, are often amended during or after conducting discovery.

Respondent's reliance on Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 795 S.E. 2d 40 (Ct. App. 2016) for the premise that Strickland's waiting for almost a year before filing a Rule 11 motion is unreasonable is not supported by either the facts or the law. This case was still being actively litigated and had been referred to the master -in- equity when Strickland filed his Rule 11 motion in this case. As the Court of Appeals noted, " after the circuit court granted summary judgment, the case was referred to the master, who then had jurisdiction over the remaining matters, which included the Rule 11 motion." Strickland v. Temple, Unpublished Opinion No. 2021-UP-311 (Ct. App. Sept. 1,2021). Respondent fails to cite or address this Court's holding in Pee Dee Health Care, P.A. v. Estate of Thompson, 424 S.C. 520, 818 S.E.2d 758 (2018) which reversed the Court of Appeals ruling in that case that almost 3 years was an unreasonable time within which to file a Rule 11 Motion, finding a Rule 11 Motion filed almost 3 years after the entry of summary judgment had been entered was within reason under the facts of that case and reasoning in part that under the plain meaning rule there is no specific time limit under Rule 11 within which to file a Rule 11 motion. Id. 818 S.E.2d at p. 764. Here, the case had not been finally decided. From a strategic standpoint,

it made sense to Strickland's counsel to file the Rule 11 Motion just prior to the court's termination of the installment contract and determination of any equitable interest so the court could resolve these matters before the case ended and decide the case in context.

And as this Court noted in *Thompson,*

> Unlike other parts of the country, the atmosphere of litigation here is relatively collegial, and it is vitally important to our profession that we maintain that atmosphere to the extent possible. We are concerned that a rule requiring a party to file a Rule 11 motion for sanctions during the course of active litigation—or else it be found untimely regardless of these valid considerations—would endanger our collegial atmosphere, unnecessarily delay the resolution of claims, and thus be inconsistent with the purposes of Rule 11. Under the circumstances of this case, we find these to be reasonable and valid considerations by the estate's counsel.

Pee Dee Health Care, P.A. v. Est. of Thompson, 424 S.C. 520, 535, 818 S.E.2d 758, 766 (2018) Moreover, among the purposes of Rule 11 is "punishing present litigation abuse, streamlining court dockets and facilitating court management." Id. (citing White v. General Motors Corp., 908 F. 2d 675, 683 (10th Cir. 1990). Counsel also points out that he wrote defense counsel twice about the lack of merit in the defendant's counterclaims and requested that they withdraw the claims. (R. pp. 343,345).

Standard of Review

As to whether the Court of Appeals should have addressed the abuse of discretion standard, it is obvious that they did and that this was argued. That this was not specifically addressed in their opinion is harmless as it was clearly implied. Moreover, since this was a matter sounding in equity, the Court of Appeals was entitled to take its own view of the evidence and did.

The award of attorney fees or sanctions under Rule 11, SCRCP [or refusal to award

them] is a matter sounding in equity and the Court may take its own view of the evidence in deciding whether or not sanctions are appropriate. Holmes v. Haynsworth, Sinkler & Boyd, 408 S.C. 620, 760 S. E.2d 399 (2014) overruled on other grounds by Stokes-Craven v. Robison, No. 27572 (S.C. filed Sept. 9, 2015), citing Father v. S.C. Department of Social Services, 353 S.C. 254, 578 S.E.2d 11 (2003). *See also,* S.C. Code Ann. § 14-3-320 (Supp. 2012). However, the abuse of discretion standard does play a role in the appellate review process of a sanctions award **where the appellate court agrees with the trial court's findings of fact the court will review the decision to award sanctions under an abuse of discretion standard**, as well as the terms. (Id., 760 S.E.2d at 410). Here, the Court of Appeals did not agree with the master and so stated. Moreover, the master really made no findings of fact. Rather, the master listed an array of issues which are often under consideration when defending a case. This does not excuse what defense counsel did here, which is to ignore the fact that their client had in no way been defrauded and entered into the contract with full disclosure of the facts.

Finally, Rule 11 makes no distinction between complaints and answers or any other paper that an attorney signs. There must be good grounds to support the filing of any pleading. Pleading and litigating frivolous claims is not permitted. Respondent's argument to this Court that lawyers are permitted to file a "laundry list" of defenses without regard to their merit has no support in the law.

The Court of Appeals did not err in reversing the master for failing to sanction the defendant and her counsel.

2. **The Installment Contract of Sale or Bond for Title Clearly Provided for Attorney Fees in the Event the Contract Had to be Enforced and the Court of Appeals Properly Decided Attorney Fees Should Have Been Awarded. Appellants Did Not Elect Foreclosure and the Respondent Conceded She had No Equity to Redeem. Thus, the Court of Appeals Properly Reversed the Master for Failing to Award Attorney Fees.**

As noted by the Court of Appeals, the parties clearly provided for Appellants' right to recover attorney and costs in a forfeiture proceeding, and therefore, the master erred in not awarding them. (R. p.43 at p. 6) In this case, Temple conceded she had no equity in the property and yet she continued to litigate her counterclaims for a period of two years while she remained in the property rent free. Indeed, she did not vacate the property until the master terminated the contract, which allowed her a period of three years or more rent free. In the end, the Appellants did not elect to proceed with foreclosure and a deficiency judgment, but sought cancellation of the contract, which Temple did not oppose. The Complaint sought both foreclosure and termination. (R. p. 34) The contract allows for attorney fees in this instance and the Court of Appeals did not err in holding they should have been awarded. It is not for the courts to rewrite the parties' contract.

3. **The Court of Appeals Did Not Err in Issuing an Unpublished Opinion Because There Were No Novel Issues in this Case. Neither the Issues Under Rule 11 Nor the Parties' Contract Which Provided for Attorney Fees Were Novel or Issues of First Impression.**

The Petitioner's last argument, like the defenses in this case of fraud, non-disclosure, and unfair trade practices, as well the Petition for Writ of Certiorari in its entirety, is frivolous. There are numerous cases which address the appropriateness of Rule 11 to punish and deter frivolous litigation, as well as the timeliness of bringing such a motion. As noted earlier the

Pee Dee Health Care case addressed the fact that there is no time limitation on the bringing of a Rule 11 motion save for reasonableness, and this case was still being actively litigated. This Court granted certiorari in the *Pee Dee Health Care* case and agreed the lower court, even after an appeal, had jurisdiction to award Rule 11 sanctions almost three years after the entry of summary judgment. While the Petitioner has asserted there are novel issues in this case, she has not described what is novel about these issues she raised. Rule 11 is not a novel rule of procedure. Nor is an award of attorney fees under a contract which provides for them in the enforcement of a contract.

Finally, the award of attorney fees is an equitable matter which the Court of Appeals saw differently in this case than the master and explained its decision in detail. The award of attorney fees under a contract which clearly provided for them is hardly a novel issue or a case of first impression.

Conclusion

Wherefore, having fully responded to a patently frivolous Petition for Writ of Certiorari, the Appellants pray that the Petition be dismissed with costs and attorney fees awarded to the Appellants under SCACR Rule 269.

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