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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Master in Equity

Charles B. Simmons., Circuit Court Judge

Common Pleas Case No. 2020-CP-23-02623

Appellate Case No. 2021-000532

SHERRY A. LEE,

Respondent,

v.

LIGHT RX GREENVILLE,

Appellant.

FINAL BRIEF OF APPELLANT

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1. Did the Master in Equity improperly impose a criminal, rather than civil, sanction because of Light Rx-Greenville's failure to appear as ordered by the Master in Equity's March 4, 2021, Order.

STATEMENT OF THE CASE

I. Premier Laser Spa of Greenville, LLC Files for Chapter 11 Bankruptcy.

Premier Laser Spa of Greenville, LLC ("Premier Laser Spa" d/b/a Light Rx) was formed as a South Carolina limited liability company on June 3, 2013, through the filing of its articles of organization with the South Carolina Secretary of State. On February 22, 2019, Premier Laser Spa filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Eastern District of Michigan under case number 19-42532.

II. Respondent Receives Laser Hair Removal Services from Light Rx-Greenville.

On or about March 19, 2019, while operating through Chapter 11 bankruptcy proceedings, Respondent received certain laser hair removal services from Premier Laser Spa d/b/a Light Rx.

III. The United States Bankruptcy Court Orders the Sale of Substantially all Light Rx assets.

RVB Investment Group, LLC ("RVB Investment"), the parent company of RVB Greenville, LLC ("RVB Greenville"), was selected as the Chapter 11 stalking horse purchaser pursuant to a certain Amended and Restated Asset Purchase Agreement dated March 28, 2019. On May 23, 2019, more than two months after the above-referenced laser hair removal services were provided to Respondent, the United States Bankruptcy Court for the Eastern District of Michigan issued an order authorizing the sale of substantially all of Premier Laser Spa's assets to RVB Investment, including but not limited to the trade name "Light Rx." (R. p. 14).

Section N of the referenced May 23, 2019 Order reads, in pertinent part, ““Claims” shall include any and all liabilities or obligations of Debtors [Premier Laser Spa] whatsoever arising under or out of, in connection with, or in any way relating to:...(c) the Debtor’s business operations or the cessation thereof...” [*id.*].

Paragraph 10 of the referenced May 23, 2019 Order indicated that “all acquired assets and additional assets shall be transferred to the Buyer [RVB Investment], and upon such Closing, such transfer shall:...; and (c) be free and clear of all Claims...” [*id.*]. Paragraph 11 of the referenced May 23, 2019 Order goes on to read that “...all persons...are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against the Buyer...” [*id.*].

IV. Respondent Files a Formal Complaint with the Gantt Summary Court.

On or about September 5, 2019, Sherry A. Lee (“Respondent”) filed with the Greenville County, South Carolina Gantt Summary Court a formal complaint against “Light Rx-Greenville” alleging, *inter alia*, injuries caused by a laser hair removal procedure taking place on *March 19, 2019*. (R. p. 65) ¹. More specifically, Respondent alleged in her complaint that in preparation for the laser hair removal, a Light Rx-Greenville technician proceeded to dry shave her legs causing scratches and bleeding. [*id.*]. As a result of the same, Respondent sought damages in the amount of seven thousand dollars and NO/100 (\$7,000.00) *See generally* (R. p. 65). A copy of this complaint was served on an employee of Appellant on or about October 4, 2019. [*id.*].

Light Rx-Greenville, a non-existing legal entity, never filed an answer.

¹ Case Caption: Sherry A. Lee v. Light Rx Greenville, CA No.: 2019-CV-23-11002880 in the Greenville County Magistrate Court.

V. Respondent Moves for and is Granted Default Judgment.

On December 27, 2019, the Gantt Summary Court entered an order of default judgment against “Light Rx-Greenville” and docketed said judgment in the amount of seven thousand and No/00 (\$7,000.00) on May 19, 2020. [Default Judgment Order].

VI. Greenville County Master in Equity Issues Numerous Rule to Show Cause Orders

On October 12, 2021, the Greenville County Master in Equity issued its first Rule to Show Cause Order instructing “Light Rx Greenville” to appear before the Court on November 20, 2020 for a supplemental proceedings hearing. (R. p. 7). A copy of the same was served by the Court on RVB Greenville, LLC (d/b/a Light Rx) employee Heather Stametkin on October 27, 2020. [*id.*]. RVB Greenville was served at 1125 Woodruff Rd. Bldg. N, Ste. 201B, Greenville South Carolina, 29607 which was the address of the previous occupant and bankruptcy debtor, Premier Laser Spa. [*id.*]. The Court’s service of this notice on an RVB Greenville employee required RVB Greenville to make an appearance before the Court through its legal counsel in an attempt to further clarify that RVB Greenville was not the judgment debtor.

On February 1, 2021, after having been forced into the pending dispute, RVB Greenville filed a Motion to Stay the rule to show cause hearing scheduled to take place before the Greenville County Master in Equity. [Motion to Stay]. This motion was the result of a declaratory judgment action that RVB Greenville filed in the Greenville County Court of Common Pleas on January 29, 2021. (R. p.83).² This declaratory judgment action was attached as “Exhibit A” to RVB Greenville motion to stay and sought a declaratory

² Case Caption: RVB Greenville, LLC v. Sherry A. Lee, CA No.: 2021-CV-23-00464 in the Greenville County Court of Common Pleas.

This rule to show cause was not heard until February 5, 2021 at which time counsel for RVB Greenville, LLC appeared in an attempt to insure no adverse action was taken against RVB Greenville, LLC's interest during Respondent's collection efforts against "Light Rx-Greenville." Following this February 5, 2021, hearing, the Court issued a March 4, 2021 order at which time the Honorable Charles B. Simmons noted that no representative of "Light Rx Greenville" appeared. (R. p. 4). The Court then set a new rule to show cause hearing for March 29, 2021 at 10:00 and noted that a failure of an "authorized agent or representative of Defendant is required to appear" and a failure to appear may result in "a finding of contempt of court and sanctions will be issued, including the possibility of incarceration and/or monetary sanctions." [*id.*].

On March 29, 2021 counsel for RVB Greenville appeared at the scheduled contempt hearing in an effort to further ensure that RVB Greenville was not being found in willful contempt of court for "Light Rx Greenville's" failure to produce a representative.

At the outset of the hearing counsel for Respondent noted that "...this has been one of the most peculiar cases I've been involved in. And I've been put in an extremely precarious situation as an attorney. The Order that Your Honor issued (R. p. 4) which required that a representative of the Defendant Light Rx appear today, unfortunately I don't have control over whoever that entity may be. I'm here merely out of an abundance of caution as to RVB Greenville, LLC, who is the company I represent." (R. p.88). Despite counsel's argument, the Court indicated that "...because in your motion to stay that was filed February 1, 2020, you have filed an Answer or a motion to stay on behalf of Light Rx Greenville." "Well, you have made an appearance on behalf of Light Rx-Greenville because it was filed February 1, 2021." (R. p. 88) From that moment forward, the

court conflated “Light-Rx/Light Rx-Greenville” and “RVB Greenville,” thus rendering RVB Greenville the “Appellant” in this matter for all intents and purposes.

On April 19, 2021 the Court found “Light Rx” was “in willful contempt of Court for failure to appear at two separate Court-ordered hearings.” Accordingly, the Court “imposed a sanction of three thousand dollars and no/100 (\$3,000.00) for failure to appear and payable to the Clerk of Court for Greenville County.” (R. p. 1).

ARGUMENT

I. The Master in Equity Issued a Criminal Sanction Against a Non-Party Without Regard for Constitutional Safeguards. Therefore, the Sanction Must be Set Aside.

A. Standard of Review

The determination of contempt ordinarily rests within the sound discretion of the trial judge. *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct.App.1994). Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. *Id.* at 129, 447 S.E.2d at 217. A willful act is an act “done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law.” *Id.* (internal quotations omitted). In civil contempt cases, the sanctions are conditioned on compliance with the court's order. *Miller v. Miller*, 375 S.C. 443, 457, 652 S.E.2d 754, 761 (Ct. App. 2007). The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. *Id.* However, if the primary purpose of the sanctions imposed is to

preserve the court's authority and to punish for disobedience of its orders, the contempt is considered criminal. *Id.* at 128, 447 S.E.2d at 217. Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence. *State v. Passmore*, 363 S.C. 568, 572, 611 S.E.2d 273, 275 (Ct.App.2005) (citing *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct.App.1994)).

B. Appellant was not Found to Have Engaged in Criminal Contempt Beyond a Reasonable Doubt.

Unlike civil contempt which must be shown by clear and convincing evidence, criminal contempt in this state must be shown beyond a reasonable doubt. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. *Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982). Although the contempt power is inherent and essential to the preservation of orderly proceedings, it is not unbounded; the power of contempt is checked by the sacrosanct right to be tried by a jury of one's peers. Article III, Section 2, of the United States Constitution provides: "The trial of all Crimes, except in Cases of Impeachment, shall be by Jury...." The right to a jury trial is amplified by the Sixth Amendment, which reads, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." *State v. Passmore*, 363 S.C. 568, 572, 611 S.E.2d 273, 275 (Ct. App. 2005)

In the present matter the Master in Equity ordered Appellant to pay “to the Clerk of Court for Greenville County,” a sanction in the amount of three thousand dollars and no/100 (\$3,000.00). (R. p. 1). Where, as here, a court order requires payment of an imposed sanction to be made payable to the court the sanction is punitive, and therefore criminal in nature. *Poston v. Poston*, 331 S.C. 106, 112, 502 S.E.2d 86, 89 (1998). Here, the court’s imposed sanction could have been purged of its status as criminal contempt, even with the fine being payable to the court, if Appellant could have avoided the fine simply by performing the affirmative act required by the court’s order. *Id.* No such opportunity was presented by the Master in Equity in the present matter. *See generally* (R. p. 1). As such, Appellant was entitled to a trial by jury, unless the same was waived, *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), and a determination of criminal contempt only through a showing of guilt beyond a reasonable doubt.

Had Appellant been afforded this constitution protection, no reasonable juror could have found Appellant guilty of criminal contempt beyond a reasonable doubt. On March 19, 2019, when the acts giving rise to Respondent’s original suit before the Gantt Summary Court occurred, the named defendant, “Light Rx-Greenville,” was merely the tradename of Premier Laser Spa. (R. p. 14). Premier Laser Spa was a legal entity separate and distinct from RVB Greenville who also conducted business as “Light Rx” following the May 23, 2019 Eastern District of Michigan Bankruptcy court’s order. [*id.*]. The acts, words, and circumstances surrounding the occurrence of the alleged contemptuous conduct would have demonstrated that: (1) the harm complained of by Respondent in her original filing before the Gantt Summary Court occurred before Appellant assumed the assets of the chapter 11 bankruptcy debtor, Premier Laser Spa, rendering Premier Laser Spa the appropriate entity subject to Respondent’s original suit.

See generally (R. p. 65); see also (R. p. 14); and (2) in accordance with the Eastern District of Michigan Bankruptcy court's order, "all acquired assets and additional assets shall be transferred to the Buyer [RVB Investment – parent company of RVB Greenville], and upon such Closing, such transfer shall:...; and (c) be free and clear of all Claims..." [id.].

Therefore, this Court should vacate the sanction award for violation of Appellant's constitutional rights and remand with instructions for the Circuit Court have Respondent name the appropriate defendant.

Conclusion

This Court should vacate the sanction below for violation of Appellant's constitutional rights and remand with an instruction for Respondent to name the appropriate defendant.

Dated this 9th day of December, 2021.

****Signature on following page****

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