

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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DEC 14 2021

S.C. SUPREME COURT

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' MEMORANDUM IN SUPPORT OF SANCTIONS AND
DISMISSAL**

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Memorandum in Support of Sanctions and Dismissal.

I. Introduction

In a per curium decision, the Court of Appeals found that the Respondent and her counsel filed frivolous counterclaims. The circuit court below granted summary judgment on all the Respondent's counterclaims and defenses, finding there were no facts or legal support for any of the matters raised. Now the Respondents and her counsel seek to perpetuate this abuse of the legal process. For the reasons set forth below, the Supreme Court should once and for all dismiss this litigation and enter an award of sanctions commensurate with its own view of Respondent's actions and those of her counsel.

II. Factual Background and Procedural History

This case comes to the South Carolina Supreme Court on Respondent's Petition for Writ of Certiorari from a 3 to 0 decision from the Court of Appeals and after lengthy litigation below where the Appellants' successfully obtained summary judgment on all of the Respondent's counterclaims for fraud, negligent misrepresentation, rescission, unconscionability and unfair trade practices.¹

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

¹ For a more comprehensive statement of facts, Appellants refer the Court to the circuit court's Order granting Summary Judgment. (R. pp. 3-4)

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.² 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 or flood zone, 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 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, SCRPC from Temple and her counsel. He also sought a monetary fine.

² The matters alleged in the Third-Party Complaint are not at issue in this appeal.

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), SCRCF. 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 Appellants' 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. The Court of Appeals in this case found that:

[The] assertion of defenses and counterclaims for fraud, negligent misrepresentation, and violation of the South Carolina Unfair Trade Practices Act (SCUTPA) were frivolous. Strickland v. Temple, No. 2015-002048, 2021 WL 3909719, at *1 (S.C. Ct. App. Sept. 1, 2021), reh'g denied (Oct. 20, 2021)

III. Argument

Rule 269, SCACR provides in relevant part that:

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

This litigation has been going on for over 10 years and it is time to bring it to a conclusion. While litigation by its nature brings civil conflict and there are frequently reasons for appellate court review to address novel questions of law and to consider issues where a lower court may have erred, this is not such a case. There is nothing novel about the fact that parties and their counsel must have good grounds to assert claims, whether they be plaintiffs or defendants in a civil action. In this matter in what should have been an open and shut case where the Respondent clearly admitted there was no equity in the property and she had defaulted on the purchase agreement, she and her counsel have engaged in a vexatious course of costly litigation. As the Court of Appeals found in this case, which perhaps cannot be better summarized:

In support of [her] claims, Temple alleged Appellants failed to disclose that (1) a dam was on the property, (2) the association that was supposed to maintain the dam was defunct, and (3) a significant portion of the property was in a flood zone or protected wetlands. Although Appellants stated the property was not in the flood zone in the Residential Property Condition Disclosure, they provided Temple with documents disclosing the true condition of the property. The Contract mentioned the pond and the dam on the property. The plat of the property referred to in the Contract also showed the pond, the dam, and the 100-year flood line. Temple acknowledged she had read the Contract, received a copy of the plat, and provided the plat to her attorneys. In addition, Temple viewed the property herself. Therefore, any reasonable attorney should have known that Temple's claims for fraud, negligent misrepresentation, and violation of the SCUTPA lacked merit because she had the means to discern the truth of the matter. *See Quail Hill*, 387 S.C. at 240, 692 S.E.2d at 508 (“[T]here can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.” (quoting *McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008))); *see also Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. at 598, 713 S.E.2d at 628 (stating Rule 11 “may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety”).

Strickland v. Temple, No. 2015-002048, 2021 WL 3909719, at *2 (S.C. Ct. App. Sept. 1, 2021), reh'g denied (Oct. 20, 2021)

The same rule holds with regard to the Court of Appeals' finding that the parties' Agreement clearly provided for an award of attorney fees in the event the contract was terminated or forfeited. Therefore, continued litigation on this issue is equally frivolous.

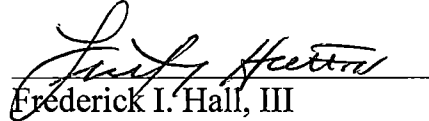
As the parties clearly provided for Appellants' recovery of attorney's fees and costs in a forfeiture proceeding, we find the master erred in failing to award them to Appellants. *See Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 ("Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract's force and effect."); *id.* ("It is not the function of the court to rewrite contracts for parties.").

Strickland v. Temple, No. 2015-002048, 2021 WL 3909719, at *3 (S.C. Ct. App. Sept. 1, 2021), reh'g denied (Oct. 20, 2021)

IV. Conclusion

Because there is no legal or factual support for the continued litigation of the issues raised in this case and the Respondent's claims in her Petition for Writ of Certiorari are without merit, this Court should enter a dismissal along with sanctions, costs and attorney fees as it may decide are appropriate. Should the Court grant Appellants' Motion, Appellants request leave to submit an affidavit detailing the time, effort, expense and fees incurred in these proceedings.

Respectfully Submitted,



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Attorney for Appellants

December 10, 2021