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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Action No. 2020-CP-43-00734
Appellate Case No. 2021-001150

Ronald L. Jones.....Appellant.

v.

Gary A. Jones, Sr., Becky J.
Jones, Ima Lee Jones and
Shelley Allsbrooks.....Respondents.

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE LOWER COURT ERR IN GRANTING DEFENDANTS/RESPONDENTS' MOTION TO STRIKE UNDER SCRCP RULE 12 (f), BECAUSE THE MATERIAL THAT WAS STRUCK DID NOT FALL WITHIN THE STANDARDS ENUMERATED IN SCRCP RULE 12(f), NAMELY THAT THE MATERIAL BE "REDUNDANT, IMMATERIAL, IMPERTINENT OR SCANDALOUS"?

STATEMENT OF THE CASE

This matter began with the filing of the Complaint of Plaintiff/Appellant in the Sumter County Court of Common Pleas, (R. ___, Complaint). Plaintiff/Appellant's Causes of Action are for Civil Conspiracy, Oral Gift, and Promissory Estoppel, (R. ___, Complaint, (Second Amended). Plaintiff/Appellant's Complaint was first amended on June 10, 2020, (R. ___, Complaint (First Amended)). Defendants/Respondents filed their Amended Answer on June 24, 2020, (R. ___ Answer). Plaintiff/Appellant's counsel took the deposition of witness Shelley Allsbrooks on March 16, 2021, (R. ___, Deposition p. 1). Thereafter, Shelley Allsbrooks was added as a Defendant, with consent of counsel for the Defendants/Respondents, which consent was only as to adding Shelley Allsbrooks as a Defendant in this matter, (R. ___). The adding of Shelley Allsbrooks was by way of Plaintiff/Appellant's Complaint (Second Amended – By Consent), filed April 22, 2021, (R. ___, Complaint (Second Amended)). Defendants/Respondents filed their Answer to Plaintiff's Second Amended Complaint on May 6, 2021, (R. ___, Answer). Thereafter, Defendants/Respondents' counsel filed a Motion to Strike pursuant to Rule 12(f), of the South Carolina Rules of Civil Procedure, (“SCRCPP”), on May 6, 2021, (R. ___, Motion). After oral argument on August 31, 2021, Defendants/Respondents' counsel's Motion was granted by the Circuit Court Judge's Order, on September 22, 2021, (R. ___, Order). Plaintiff/Appellant's counsel filed a timely Motion to Reconsider, Rehear, Alter of Amend Judgment on September 23, 2021, (R. ___, Motion). Defendants/Respondents did not Return to Plaintiff/Appellant's Motion. The Lower Court, without hearing oral argument, denied Plaintiff/Appellant's Motion by way of Order dated, October 8, 2021, (R. ___, Order). Plaintiff/Appellant's Notice of Appeal of both of the Circuit Court Judge's Orders followed on October 8, 2021, (R. ___, Notice of App.). Plaintiff/Appellant's Appeal of both Circuit Court Orders follows.

STATEMENT OF THE FACTS

The property has a postal address of, “3295 E Brewington Rd, Sumter South Carolina 29153”, (hereinafter as, the “Property”), (R. ___). The portion of the Property that is the subject of this action is shown on a Plat prepared by Anderson Land Surveying, showing 6.72 acres and dated February 27, 2020, (R. __, Plat). The Property in dispute, is located in rural Sumter County, South Carolina. Plaintiff/Appellant, Ronald L. Jones has occupied a portion of the Property and utilized that portion of the Property, as his residence for a period in excess of ten years, (R. ___). Defendant/Respondent, Shelley Allsbrooks testified in Deposition, that Plaintiff/Appellant, Ronald L. Jones has occupied a portion of the Property for a little over ten years (R. __, Depo. Tr. P. 14, line 16 – pg. 15 line 10).

The parent (larger) tract from which the Property that is the subject of this action was carved out, is subject to a life estate held by Defendant/Respondent, Ima Lee Jones, the Plaintiff/Appellant’s mother. At the time of the creation of the life estate, the remainder interest was held by Warren E. Jones and Deborah Jones, the brother and sister-in-law of the Plaintiff/Appellant.

During his lifetime, Plaintiff/Appellant’s brother (now deceased) Warren E. Jones, committed to his brother, Plaintiff/Appellant, that decedent, Warren E. Jones would convey the portion of the Property previously and currently occupied by Plaintiff/Appellant, to Plaintiff/Appellant, in exchange for Plaintiff/Appellant occupying, safeguarding, and maintaining the entirety of the Property, (R. ___). At no time did either Defendant/Respondent, Ima Lee Jones or Defendant/Respondent, Becky J. Jones, (wife of Defendant/Respondent, Gary A. Jones, Sr.), express any opposition to this arrangement or indicate to Plaintiff/Appellant that

Plaintiff/Appellant should cease performing the obligations that Plaintiff/Appellant had undertaken, at the behest of and with the consent of his brother, Warren E. Jones (R. ____). After the death of Warren E. Jones in 2013, Deborah Jones (widow of Warren E. Jones), conveyed her remainder interest to Defendant/Respondent, Gary A. Jones, Sr. and Defendant/Respondent Becky J. Jones, the Plaintiff/Appellant's brother and sister-in-law, (R. ____). Thereafter, Defendant/Respondent, Gary A. Jones, Sr. repeatedly ratified the promise made to Plaintiff/Appellant by decedent, Warren E. Jones, without objection from Defendant/Respondent, Becky J. Jones, (R. ____).

Finally, the Plaintiff/Appellant does not claim any interest in the parent tract, except as is expressly included in the Plat describing the portion of the Property in dispute, (R. ____ Plat, dated February 27, 2020).

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING DEFENDANTS/RESPONDENTS' MOTION TO STRIKE UNDER SCRCP RULE 12 (f), BECAUSE THE MATERIAL THAT WAS STRUCK DID NOT FALL WITHIN THE STANDARDS ENUMERATED IN SCRCP RULE 12(f), NAMELY THAT THE MATERIAL BE "REDUNDANT, IMMATERIAL, IMPERTINENT OR SCANDALOUS"

RULE 12(f), SCRCP

“...the court may order stricken from any pleading any insufficient defense or any **redundant, immaterial, impertinent or scandalous** matter.” (emphasis supplied).

LOWER COURT ORDERS

The Lower Court issued its “Order Striking Certain Allegations of Plaintiff’s Complaint” on September 22, 2021, (R. ___, Order). The Lower Court’s Order referenced the required standards of Rule 12(f), SCRCP, **but** the Lower Court’s Order based its decision on the following two findings unrelated to Rule 12(f), SCRCP:

- “I further find that pleadings should contain ultimate facts rather than evidentiary facts.”; and
- “I further find that the first paragraph numbered 13 as well as paragraphs 30 and 31 of the Plaintiff’s Second Amended Complaint do not attempt to allege the existence of a cause of action or ultimate facts but appear to allege evidentiary facts which are not necessary and should therefore be stricken.”

The Lower Court made no finding concerning Rule 12(f), SCRCP, and the Lower Court made no finding as to the standards of Rule 12(f), SCRCP, (R. ___, Order). Namely, the Lower Court did not find that the three paragraphs that the Lower Court Ordered to be struck from Plaintiff/Appellant’s Complaint, were redundant, immaterial, impertinent or scandalous as required by Rule 12(f), SCRCP.

Instead of reviewing the Motion, pursuant to the standards of Rule 12(f), SCRCP, the Lower Court simply adopted the argument of Defendants/Respondents' counsel, which argument was not directly related to Rule 12(f), SCRCP.

The subsequent Order of the Lower Court denying Plaintiff's "Motion to Alter or Amend", dated October 8, 2021, (R. __, Order), shows that Plaintiff's Motion to Alter or Amend was (i) decided without briefs (ii) decided without oral argument (iii) decided without a return by Defendants and (iv) the Lower Court's Order denying the Motion to Alter or Amend does not reference Rule 12(f), SCRCP, (R. __, Order).

BACKGROUND

During Deposition, one of the Defendants, prior to being added as a Defendant, Shelley Allsbrooks, made three important factual admissions¹ that fully support important allegations in Plaintiff's Complaint (Second Amended), (R. __, Complaint). Defendants' counsel, after the Deposition was concluded, and after the Complaint was amended to add Defendant Allsbrooks as a Defendant, apparently realized that the three important factual admissions¹ made by Defendant, Allsbrooks, supported important allegations in Plaintiff's Complaint (Second Amended), (R. __). Defendants' counsel then improperly used Rule 12(f), SCRCP in a Motion

¹ At Deposition, Defendant/Respondent, Allsbrooks, made three important factual admissions, which admissions directly supported the allegations of Plaintiff/Appellant's case. Those admissions were:

- Plaintiff had lived on the Property for a little over ten years (R. __, Deposition Transcript pg. 14 line 16 – pg. 15 line 10);
- Defendant Shelley Allsbrooks conspired, *inter alia*, with her father against the economic interests of Plaintiff, (R. __ Deposition Transcript pg. 15 line 17 – page 17 line 15); and
- Defendant Shelley Allsbrooks was the decision maker in the conspiracy with her father. (R. __ Deposition Transcript pg. 12 lines 1-11).

to Strike (R. ____, Motion) asking that the three important factual admissions¹ made by Defendant, Allsbrooks, in her deposition be struck from Plaintiff's Complaint (Second Amended), (R. ____). The three important factual admissions¹ were not redundant, immaterial, impertinent or scandalous, as required under Rule 12(f) SCRPC, (R. ____, Depo. Tr.). However, Defendants/Respondents' counsel filed a Rule 12(f), SCRPC Motion and referenced a 1973 "code pleading" case to convince the Trial Judge to grant Defendants' Motion, striking all three important factual admissions in Plaintiff's Complaint (Second Amended), (R. ____, Complaint). Defendants/Respondents' Lower Court Argument.

Additionally, Defendants/Respondents' counsel, in his Motion before the Lower Court, misstated the standards of Rule 12 (f), SCRPC, by stating in Defendants' Motion that material should be struck as immaterial, **irrelevant and evidentiary**, (R. ____, Motion), Neither "irrelevant" nor "evidentiary" are Rule 12(f), SCRPC standards and thus are not relevant to Defendants/Respondents' Motion to Strike. Also, Defendants' counsel, in oral argument before the Lower Court, did not provide a single citation to the Court dealing with a Rule 12(f), SCRPC Motion to Strike.

Instead, Defendants/Respondents' counsel improperly argued to the Lower Court at the Hearing, that Stroud v. Riddle, 194 SE 2d 236 (1973), was controlling, (R. ____ Hearing Tr. p. 4 LL. 16-22); (R. ____ Hearing Tr. p. 7 LL. 4-11). The Defendants/Respondents' counsel's reliance on Stroud was inapposite, because Stroud was a South Carolina case from 1973, when "code pleading"² was in effect in South Carolina. Defendants/Respondents' counsel made the bizarre argument in 2021, that

² South Carolina has required "fact" pleading, consistent with Rule 8(a), SCRPC, since July 1, 1985.

Plaintiff's "fact pleading" as required under Rule 8(a), SCRPC, of the three important factual admissions made by Defendant Allsbrooks in her deposition, was improper, (R. ___ Hearing Tr. P. 4 LL. 16-22); (R. ___ Hearing Tr. P. 7 LL. 4-11).

Defendants/Respondents' counsel also argued to the Lower Court at the Hearing, that, "If you look at the Plaintiff's Second Amended Complaint you will see that it is replete with evidentiary allegations in there (*sic*)." (R. ___ Hearing Tr. p. 5 LL. 7-9). That means that Defendants/Respondents' counsel actually argued to the Lower Court that because Plaintiff's Second Amended Complaint is, "...replete with evidentiary allegations...", Plaintiff's Second Amended Complaint was improper.

In addition to Stroud, Defendants/Respondents cited, Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) and Brown v. Inv. Mgmt. & Research, Inc. 475 SE 2d 754 (1996), (R. ___, Defendants' Memorandum in Support). Defendants/Respondents improperly relied upon and argued to the Lower Court the applicability of the above cited cases which have the following defects. Watts, (Not a Rule 12 (f), SCRPC case - was argued that the Complaint failed to allege a Cause of Action upon which Judgment could be granted) and Brown, (Not a Rule 12(f), SCRPC case – Brown was a Rule 12(b), SCRPC case). Neither of these cases apply to the Motion made by Defendants/Respondents' counsel, under Rule 12(f), SCRPC (R. ___).

The Lower Court misapprehended the South Carolina Cases cited by the Defendants/Respondents on reviewing a ruling on whether a pleading states a Cause of Action which are concerned with the bare minimum that must be pled in order to survive a Motion to Dismiss. In this context ultimate facts are enough to get over the hurdle of,

"What's the least we could do?". However, nothing in these rulings says, or even suggests, that doing more than the bare minimum is improper and must be stricken from a pleading under Rule 12(f), SCRCF.

The Relief Sought in Defendants/Respondents' Motion Should not have been Granted.

As stated, nothing in Plaintiff/Appellant's Complaint (Second Amended), contained anything that should have been struck under Rule 12(f), SCRCF, (R. ____, Complaint). Specifically, the three paragraphs ordered to be removed in the Lower Court's Order, "13", "30" and "31", of Plaintiff's Complaint (Second Amended), did not contain redundant, immaterial, impertinent or scandalous material, (R. ____, Complaint, Second Amended). Also, as stated, Respondents' Motion misstated the standards to grant a Motion to Strike under Rule 12(f), SCRCF, (R. ____), so any request that material be stricken from Plaintiff's Complaint was not properly before the Lower Court, (R. ____. Also, and as set forth hereinabove, the Lower Court's Order granting the relief sought in Respondents' Motion was based on findings unrelated to Rule 12(f), SCRCF, (R. ____), and therefore, was improper.

Plaintiff's allegations in paragraphs "13", "30" and "31" of Plaintiff's Complaint (Second Amended), (ordered struck by the Lower Court) are (i) factually based, as previously shown (ii) taken directly from the deposition of Defendant/Respondent, Allsbrooks (R. ____) and (iii) added after the initial pleadings had been filed and based on new information gleaned from the deposition of a then witness, now Defendant/Respondent Shelley Allsbrooks, (R. ____, Complaint). Therefore paragraphs "13", "30" and "31" in Plaintiff's Complaint (Second Amended) could not be

redundant, (R. ___, Complaint, (Second Amended). Also, the allegations in paragraphs “13”, “30” and “31” of Plaintiff’s Complaint, (Second Amended), were needed to support the elements of Plaintiff/Appellant’s Cause of Action for Civil Conspiracy, (R. ___, Complaint, (Second Amended). Therefore paragraphs “13”, “30” and “31” of Plaintiff’s Complaint (Second Amended), could not be **immaterial**, but are absolutely necessary to give fair notice to the Lower Court and other parties as required under the SCRPC, (R. ___, Plaintiff’s Complaint (Second Amended). Paragraphs “13”, “30” and “31” of Plaintiff’s Complaint (Second Amended), were factually accurate and taken directly from the deposition of Defendant/Respondent, Allsbrooks and paragraphs “13”, “30” and “31”, of Plaintiff’s Complaint (Second Amended), therefore could not be **impertinent** or **scandalous** (R. ___, Depo. Tr. pg. 14 line 16 – pg. 15 line 10); (R. ___, Depo. Tr. pg. 15 line 17 – page 17 line 15); (R. _ Depo. Tr. pg. 12 lines 1-11).

Plaintiff/Appellant’s counsel made the following appropriate argument in the Hearing before the Lower Court, “MR. WHITT: And we had to show acts [in] furtherance [of the Cause of Action for Civil Conspiracy] so we gave [Lower Court Judge] a case ... about the elements which we’ve complied with and then the acts [in] furtherance [of the Cause of Action for Civil Conspiracy]. We don’t think we’ve gone any further than what we are required to do. Had we left all of that out, Your Honor, [Defendants] would be in to dismiss [Plaintiff’s Complaint] under 12(b)(6)...” (Hearing Tr. p. 9 LL. 9-14, R. ___).

If allowed to be struck, the removal of paragraphs “13”, “30” and “31”, of Plaintiff’s Complaint (Second Amended), significantly weakens Plaintiff/Appellant’s case and paragraphs “30” and “31”, of Plaintiff’s Complaint (Second Amended), if allowed to be struck, significantly weakens Plaintiff/Appellant’s Cause of Action for Civil Conspiracy (R.____, (Complaint, (Second Amended). Accordingly, the removal of these three paragraphs from Plaintiff’s Complaint (Second Amended) directly affects a substantial right of Plaintiff/Appellant and unless reversed, decides that issue with finality.

CONCLUSION

Based on the foregoing (i) applicable case law (ii) applicable statutes and (iii) the facts of this case, the Lower Court misapprehended the oral argument of Respondents' counsel, and the Lower Court misapprehended the South Carolina Cases cited by the Defendants/Respondents, on reviewing a ruling on whether a pleading states a Cause of Action, which are concerned with the bare minimum that must be pled, in order to survive a Motion to Dismiss. In this context ultimate facts are enough to get over the hurdle of, "What's the least we could do?". However, nothing in the South Carolina case law cited by the Defendants/Respondents supports the position of Defendants/Respondents, or even suggests, that doing more than the bare minimum is improper and must be stricken from a pleading under Rule 12(f), SCRPC. The Lower Court was apparently misled by the literal contents of Defendants/Respondents' Rule 12(f), SCRPC Motion to Strike, which incorrectly stated that the standards for a Rule 12(f) Motion to succeed were, "**immaterial**, **irrelevant**, and **evidentiary**." (emphasis supplied), (R. ___ Defendants/Respondents' Motion to Strike). The Lower Court was apparently further misled by Defendants/Respondents reliance in oral argument before the lower court, on Stroud v. Riddle, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973), (R. ___, Hearing Tr.), a 1973 case, when "code pleading" was in effect in South Carolina. Rule 12(f) provides for striking allegations that are "redundant, immaterial, impertinent or scandalous matter", (R. ___). None of the Rule 12(f), SCRPC standards justify striking allegations beyond the bare minimum to which are necessary to meet the standard of stating a cause of action, notifying the Trial Court and the Defendants of which Causes of Action Plaintiff intends to pursue at trial. Accordingly, this case should be reversed and remanded to the Lower Court.

[Signature Page Follows]



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