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SC Court of Appeals

THE STATE OF SOUTH CAROINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Judge Steven H. John

Trial Court Case 2017-CP-26-00685
Appellate Court Case 2021-000756

Henry Brewington, Individually and d/b/a Levelz Bar & Grill, Respondent

vs.

City of Myrtle Beach, Appellant

RESPONDENTS' BRIEF

RESPECTFULLY SUBMITTED

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STATEMENT OF ISSUES ON APPEAL

I. THE LOWER COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ……………..………………. ………. 7

II. THE LOWER COURT DID NOT ERR IN DELIVERING THE CHARGE TO THE JURY …………………………………..…………………………………...

STATEMENT OF THE CASE

Respondents sued Appellant for two counts of tortious interference with a contact. A trial was held on June 21-23, 2021. At the conclusion of the trial, the jury found for Respondent with regard to one of the contracts and awarded $500,000.00 to Respondents on that cause of action. Appellant This appeal was timely filed and served.

STATEMENT OF THE FACTS

Respondent is a South Carolina businessman who, along with his wife, were closed down by Appellant for being a nuisance. Appellants sued Appellant for two counts of tortious interference with a contact based on the campaign of constant harassment, threats and retaliation engaged in by Appellant. The only criminal activity at Appellant's club prior to Appellant initiating nuisance proceedings was limited to 5 charges for simple possession of marijuana (all possessed by patrons in and outside of the Club), possession of a sparkler in a drink (illegal possession of fireworks) and a single citation for serving alcohol after hours. Appellant, through its own City Attorney, threatened Appellant and his wife and told them he was gong to shut them down. These threats were made within a week of Appellant and his wife complaining about unfair and discriminatory treatment by Appellant. **R. p. 178, l.24 through p.183, l.15.**

Immediately after the threat and retaliation by the City Attorney, Appellant entered a contract with Natalie Litsey to sell the business. Yet, Appellant intentionally interfered with that contract. At trial, Appellant, his wife, and Natalie Litsey all testified that the City purposefully and intentionally interfered with the contract and induced Natalie to terminate the contract. Natalie Litsey stated, unambiguously, that she terminated the contract with the Brewingtons because of what Appellant told her, not because of anything done by Appellant. **R.148**.

ARGUMENTS

Standard of Review

The standard of review as regards the refusal to grant a directed verdict is well established. In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. The trial court can only be reversed by this Court when there is no evidence to support the ruling below. *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997) (internal quotation marks omitted).

In reviewing an alleged error in jury instructions, we are mindful that an appellate court will not reverse the circuit court's decision absent an abuse of discretion. *See Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) (applying an abuse of discretion standard of review to an alleged error in jury instructions). In reviewing jury charges for error, the appellate court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial. *Welch v. Epstein*, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct. App. 2000). If the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error. *Keaton ex rel. Foster v. Greenville Hosp. Sys.,* 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999).

THE LOWER COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT

Appellant spends the majority of its brief rearguing its case that it was only following the nuisance law in taking action against Respondent. At no point does Appellant address the evidence

that supported Respondent's cause of action. As Appellant correctly recognizes, the only issue is whether there was evidence to show improper methods or motives on behalf of the City.

A. *Retaliation* – Appellant and his wife noticed that other clubs were not being harassed in the same way. They called Appellant and reported discriminatory treatment by the police. The nuisance report was written the next day and Appellant was asked to come down for a meeting on February 2 to discuss the complaint. **R.p.176, l.1-25.**

B. "*Boss Hog" and his threats* – Tom Ellenberg was the City Attorney for Appellant. Appellant's wife testified that he was like "Boss Hog" and threatened Appellant and his wife during a meeting that was scheduled to discuss mistreatment by Appellant and his business. "He said if you don't leave, pack up your stuff and leave and voluntarily give your license, you're gonna lose everything." **R. p.181, l. 1-5**.

C. *Direct interference with Natalie Litsey* – After the meeting with Ellenburg, Appellant immediately entered into a contact with Natalie Litsey to sell their business. Ms. Litsey testified about conversations with Appellant in which Appellant advised her "not to invest" in Respondent's business (**R.p.127, l. 16-20; R.p.128, l.5-11**), that "it would not look good" and she "would have a hard time getting customers with the City of Myrtle Beach"(**R.p.136, l.15-18**) and that she would not be able to open her business(**R.p.136, l.19-23**).

D. *Appellant falsely advising Respondent* – Appellant's witness, Lisa Robertson, was the compliant officer who initiated the nuisance letter that was given to Appellant on February 2. In that letter, there were 9 incidents that were referenced in accusing Respondent of being a nuisance. One of those calls was a call initiated by Appellant's wife and pertained to a fight in Respondent's parking lot. At the time Appellant's wife

made the phone call, she was told, by Ms. Robertson, that the call "would not be held against her." **R.p.284, l.15 – p.285-, l.25**. However, in the nuisance letter drafted by Ms. Robertson, one of the 9 transgressions was the exact call that Ms. Robertson stated, in writing, would not be used against Appellant or his wife. At trial, Ms. Robertson really, really didn't want to answer questions about this issue, but it is an interesting read. **R.p.284, l.15 – R.p. 291, l.9**. In the end, she finally agreed that the phone call initiated by Appellant's wife should not have been used in the nuisance letter. Thus, Appellant lied to Respondent and the Solicitor about the proper grounds of nuisance.

E. *Judge John's denial* – At trial, Judge John specifically mentioned the testimony of Natalie Litsey to deny the motion for directed verdict. At trial, Judge John verbally recited the evidence provided by Natalie Litsey (cited above) and indicated that there was more evidence that supported the denial of the motion. **R.p.236, l.22 -R.p.237, l.9**.

Under the standard of review, this Court must find that none of the above-cited evidence could possibly lead to an inference that Appellant engaged in improper methods or possessed an improper intent while interfering with Respondent's contract. That is simply not possible and the lower court should be affirmed.

THE LOWER COURT DID NOT ERR IN DELIVERING THE CHARGE TO THE JURY

Appellant's argument regarding the jury charge is without merit. The entire claim of error is based on the omission of language that does not apply to Appellant in the first place. As Appellant correctly points out, the treatise from which the quote is provided defines the term: "social interests" as the "appraisal of private interests of the persons involved." Appellant is not a private citizen and cannot possess any private interests as it is the government. Appellant was

protected by the previous portion of the charge which is far broader that the portion to which Appellant objects. "the interests sought to be advanced by the defendant." Thus, there is no prejudice even if the language was improperly omitted.

Finally, while the jury charge requested by Appellant was from a widely accepted treatise, it is not the law in South Carolina, at least in terms of *stare decisis*. I was unable to find any opinion of this Court or the South Carolina Supreme Court in which the words "social interests" or "freedom of cation" was included with regard to a claim of tortious interference with contract. Thus, Appellant was not entitled to the charge in the first place, and can suffer no harm from the omission of a few words in the jury charge. Therefore, the lower court must be affirmed.

CONCLUSION

The lower court made numerous errors of law and fact that are completely unsupported by the record. This amounts to an abuse of discretion requiring reversal of the Order and remanding for further proceedings. Therefore, Appellant respectfully requests that this Court reverse the Order dismissing this case and remand for trial to take place at the earliest possible convenience.

January 28, 2022

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CERTIFICATION OF COUNSEL

Counsel for appellant hereby certifies that Respondents' Final Brief complies with Rule 211(b), SCACR.

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