

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Deandra G. Benjamin, Circuit Judge for The Fifth Judicial Circuit

Case No. 2009-CP-40-0189

George M. Lee, III, and Elizabeth Sims.....Plaintiffs
Of whom George M. Lee III.....Appellant

v.

University of South Carolina and the University of South Carolina
Gamecock Club.....Respondents

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

DID RESPONDENTS, THE UNIVERSITY OF SOUTH CAROLINA AND THE GAMECOCK CLUB, BREACH THEIR AGREEMENT FOR A LIFETIME MEMBERSHIP WITH APPELLANT GEORGE LEE, BY REQUIRING HIM TO PAY FOR THE OPPORTUNITY TO PURCHASE SPORTING EVENT TICKETS THAT HE HAD ALREADY BARGAINED AND PAID FOR?

STATEMENT OF THE CASE

Appellant George Lee and Elizabeth Sims brought a nonjury Complaint (R. pp. 7) against The University of South Carolina (USC) and the Gamecock Club alleging breach of contract. Mr. Lee purchased a Life Membership which should have provided him the opportunity to purchase “best available” seats at USC sporting events for his lifetime. Subsequently, USC acting through the Gamecock Club, (R. pp. 90) required Mr. Lee to pay additional fees for the opportunity to purchase his tickets. The case went to trial before the Hon. Deandrea G. Benjamin on May 9, 2012. Elizabeth Sims was dismissed from the case by agreement. By Order dated June 18, 2012 (R. pp. 1) Judge Benjamin found that the Respondents did not breach their contract with the Appellant. The Appellant filed a Notice of Appeal on July 20, 2012.

Facts

George Lee, the Appellant, brought this Breach of Contract action against The University of South Carolina and The University of South Carolina Gamecock Club for alleged violations of his contract for a "Life Membership" in the South Carolina Gamecock Club dated March 9, 1990. Pursuant to the terms of the written contract, prepared by the Respondents, (R. pp. 95-103; 15-23), Mr. Lee purchased and fully funded a \$100,000 insurance policy with the non-revocable beneficiary being The South Carolina Gamecock Club. It is uncontested that Mr. Lee fulfilled his end of that bargain, by purchasing the life insurance policy and fully funding it. (R. pp. 15-31; 100-103)

Pursuant to the terms of the written contract, in exchange for this life insurance policy, among other things, Mr. Lee was given a Life Membership in the South Carolina Gamecock Club, and was to be given the opportunity to purchase tickets in the future, at the Gamecock level, or the membership level he presently held. The contract makes reference to an Exhibit A which was attached to the contract, which refers to "four (4) season football tickets (best available)", that Mr. Lee would be given the opportunity to purchase pursuant to his Life Membership. (R. pp. 103).

Mr. Lee testified that his family had purchased tickets for specific seats for decades prior to the agreement, and that these were the seats that were chosen pursuant to the agreement. (R. pp. 96-99; 23-31). The parties operated pursuant to their agreement

for over a decade without any disagreements. (R. pp. 32-35) Each year Mr. Lee was given the opportunity to purchase his chosen tickets, and although ticket prices increased over the years, Mr. Lee was charged no additional money for the opportunity to purchase the seats he had chosen pursuant to his Life Membership contract. (R. pp. 98; 32-40).

In 1997 the Respondents wrote Mr. Lee, and informed him that the insurance policy had not performed as expected due to market conditions, and gave him three options pursuant to the original agreement, to continue his contract. According to that letter, by picking option B, Mr. Lee would protect his seating location. (R. pp. 112). Mr. Lee choose option B, and again the parties operated for over a decade without any disagreement as to the terms of the Lifetime Membership agreement. (R. pp. 32-40; 105).

In 2009, the Respondents implemented a “Yearly Equitable Seating Program” (YES) which required all persons purchasing season tickets, including Gamecock Club Life Members, to pay a fee for the opportunity to purchase their tickets. (R. pp. 108). Mr. Lee objected to his required fee, and has paid it under protest. (R. pp. 132; 40-50). He brought this action to determine his rights under his agreement with the Respondents.

The sole witness for the Respondents, Jeffery Crane Jr., testified that the fee Mr. Lee was required to pay under the YES program, was to pay for

the “opportunity to purchase” his designated tickets.(R. pp. 87-90). He also testified that Mr. Lee’s Life Membership contract signed in 1990, provided him with the “opportunity to purchase” his designated tickets. (R. pp. 87-90).

ARGUMENT

DID RESPONDENTS, THE UNIVERSITY OF SOUTH CAROLINA AND THE GAMECOCK CLUB, BREACH THEIR AGREEMENT FOR A LIFETIME MEMBERSHIP WITH APPELLANT GEORGE LEE, BY REQUIRING HIM TO PAY FOR THE OPPORTUNITY TO PURCHASE SPORTING EVENT TICKETS THAT HE HAD ALREADY BARGAINED AND PAID FOR?

This was an action at law, tried without a jury. Therefore the Appellate Court’s jurisdiction is limited to correct errors of law. Factual findings will not be disturbed unless unsupported by any evidence. *South Carolina Farm Bureau Mutual Ins. Co. v. S.E.C.U.R.E Underwriting Risk Retention Group* 554 S.E 2d8, 347 S.C. 333(Ct.App.2001)

However, when evidence is undisputed and susceptible to only one inference, the Appellate Court is free to review whether the trial Court properly applied the law to those facts, and is not required to defer to the trial Court’s legal conclusions. *Scott v. Brunson* 569 S.E. 2d 385, 351 S.C. 313 (Ct. App.2002); *Antley v. Noble Ins. Co.* 567 S.E 2d 845, 351 S.C 313 (Ct. App. 2002)

In this case, involving a written contract, the facts are susceptible to only one inference, and the trial Judge failed to properly apply the law to those facts.

A contract is an obligation which arises from an actual agreement of the parties, manifested by words written or oral, or by conduct. A contract exists when there is a meeting of the minds between two or more persons, upon sufficient consideration, to do or not do a particular act. *See Player v. Chandler*, 299 S.C 101, 382 S.E.2d 891(1989).

In construing a contract, the Court is to use common sense and good faith. Where one construction makes the provision unusual or extraordinary, and another construction which is equally consistent with the language employed would make it reasonable, fair, and just, the latter construction must prevail. The rights of the parties must be measured by the contract which the parties themselves made, regardless of its wisdom, reasonableness, or failure of the parties to guard their rights carefully. A contract should be construed so as to give, if possible, full force and effect to every part of it. *Parker v. Byrd*, 309 S.C 189, 420 S.E.2d 850(1992).

If the language of a contract is plain and unambiguous, and capable of only one reasonable interpretation, no construction is required, and the contract's language determines the instrument's force and effect. However, should the court determine the language to be ambiguous, evidence may be submitted to show intent of the parties. *Holden v. Alice Mfg., Inc.*, 317 S.C, 215 S.E.2d 628 (Ct. App.1994).

The paramount rule in interpreting the contract, is to ascertain the intention of the parties, and then to put these intentions into effect. *Lewis v. Premium Investments Corp.* 315 S.C 167, 568 S.E.2d 361(2002). The rights of the parties to a contract must be measured by the contract which the parties themselves made.

The Court is not in the business of making a contract for a party *Id.*

Any ambiguities in the contract must be construed against the party who prepared the contract. A provision of the contract which does not clearly express the intention of the parties, should be construed against the one for whose benefit it was inserted. Ambiguous language in a contract should be construed liberally and strongly in favor of the party who did not write or prepare the contract, and is not responsible for the ambiguities *Id.*

It is clear, that upon signing the contract, prepared by the Respondents for the Life Membership, the Appellant and the Respondents had a meeting of the minds, that the purchase of the Life Membership entitled the Appellant to have the opportunity to purchase chosen football seats, which had been in his family for years.(R. pp. 95; 15-38; 87-90) Although the written contract is ambiguous as to this issue, the terms of the contract, along with the conduct of the parties, including an affirmation by the Respondents in a letter dated March 27, 1997 that the Appellant's continuation with his Lifetime Membership would 'protect [his] seat assignments, football, basketball...', as well as a testimony of both the Appellant and the witness for the Respondents who testified that the Life Membership purchase gave the Appellant "the opportunity to purchase" certain tickets, demonstrates this meeting of the minds as to this issue.(R. pp. 96-99; 104-108; 112-113;15-38)

The Respondents YES program as it pertains to the Appellant, breached the terms of the Appellant's contract for a Life Membership.

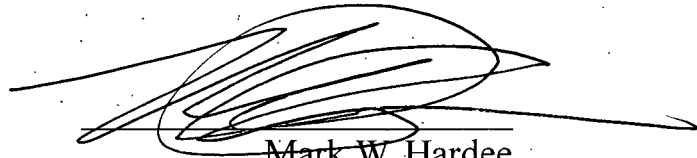
The YES program requires the Appellant to pay additional sums to acquire “the opportunity to purchase” certain tickets, the same opportunity the Appellant purchased by his Lifetime Membership agreement with the Respondents back in 1990. (R. pp. 96-99; 104-108; 132; 87-90; 112-113)

The Appellant is entitled to the opportunity to purchase his chosen seats to University of South Carolina sporting events, pursuant to his Life Membership to the South Carolina Gamecock Club. He should not be required to pay any additional fees under the YES program for that opportunity. All payments made by the Appellant pursuant to the YES program should be refunded to the Appellant.

CONCLUSION

Based on the Arguments above, the order of the Hon. Deandrea G. Benjamin dated June 18, 2012 should be reversed.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a cursive name.

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May 2, 2013

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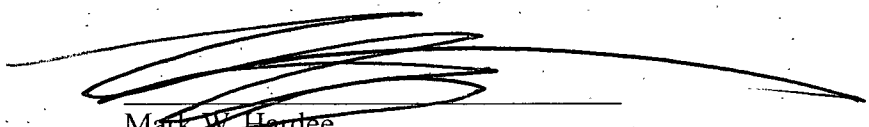
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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May 1, 2013

