

SUPREME COURT OF SOUTH CAROLINA

Raby Construction, L.L.P. v. Orr, 358 S.C. 10

594 S.E.2d 478 (2004) · No. No. 25793 · Decided March 22, 2004

SUMMARY

The Supreme Court of South Carolina affirmed the denial of Henry Orr's Rule 60(b) motion seeking relief from a consent judgment and foreclosure order in a mechanic's lien dispute. The court held that the alleged nondisclosure of documents and fabrication of evidence constituted intrinsic rather than extrinsic fraud, and that the evidence could have been discovered through due diligence during the underlying litigation. The court also held that the trial court retained jurisdiction to award additional attorneys' fees because the appeal did not stay the separate foreclosure order.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Waller; Chief Justice Toal; Justice Moore; Justice Burnett; Acting Justice James E. Brogdon, Jr.
JURISDICTION	South Carolina
DECIDED	March 22, 2004
DOCKET	No. 25793
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated direct appeals from the denial of a Rule 60(b)(2) and (3), SCRCP, motion to vacate a judgment and foreclosure order, and from an order awarding additional attorney's fees after the foreclosure sale.
STANDARD OF REVIEW	Whether to grant or deny relief under Rule 60(b), SCRCP, lies within the trial court's sound discretion; review is limited to determining whether the trial court abused its discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of South Carolina
PARTIES	Henry J. Orr, Jr., H & D Capital, LLC d/b/a The South City Grill v. Raby Construction, L.L.P.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court erred in denying Orr's Rule 60(b)(2) and (3) motion based on alleged fraud, misconduct, and newly discovered evidence.
2. Whether the trial court lacked jurisdiction to award additional attorney's fees while Orr's appeal from the denial of the Rule 60(b) motion was pending.

HOLDINGS

1. South Carolina maintains the distinction between intrinsic and extrinsic fraud under Rule 60(b)(3), SCRPC, even when the motion is filed within one year of entry of judgment. Relief under Rule 60(b)(3) is available for extrinsic fraud, but not intrinsic fraud.
2. The trial court properly denied relief under Rule 60(b)(2) and (3) because the evidence and alleged misconduct could have been discovered through due diligence during the underlying litigation.
3. The trial court retained jurisdiction to award additional attorney's fees because Orr's appeal concerned only the denial of the Rule 60(b) motion and did not stay the separate foreclosure order.

KEY QUOTATIONS

“Accordingly, we hold that South Carolina maintains the distinction between extrinsic and intrinsic fraud, even when the allegations are raised through a Rule 60(b)(3) motion filed within one year of the entry of judgment.” (at 20)

“The order of foreclosure which directed the sale of the property is simply not a matter that was stayed by the appeal of the denial of the Rule 60(b) motion; it was a separate order which Orr did not appeal.” (at 23)

FACTUAL BACKGROUND

Orr entered into an oral cost-plus contract with Raby Construction for construction and renovation of a restaurant. Orr signed a statement acknowledging that \$237,000 remained due, but the parties later settled for a \$150,000 payment, with a confession of judgment for \$200,000 if payment was not timely made. After Orr failed to pay, judgment and foreclosure orders were entered. Orr later sought relief under Rule 60(b), relying on a former employee's testimony concerning undisclosed computer records and allegedly fabricated or inaccurate accounting documents.

PROCEDURAL HISTORY

Raby Construction filed a mechanic's lien foreclosure action against Orr arising from construction and renovation work. The parties settled before trial, but Orr failed to make the agreed payment, resulting in a confessed judgment and foreclosure order. The trial court denied Orr's Rule 60(b) motion and motion for reconsideration, later dismissed his petition for appraisal, and awarded Raby additional attorney's fees. Orr appealed, and the Supreme Court of South Carolina consolidated the appeals and affirmed both challenged rulings.

DISPOSITION

affirmed

CASES CITED

- Coleman v. Dunlap, 306 S.C. 491, 413 S.E.2d 15 (1992)
- Mr. G v. Mrs. G, 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995)
- Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951)
- Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003)
- Ojeda-Toro v. Rivera-Mendez, 853 F.2d 25 (1st Cir. 1988)
- Bowman v. Bowman, 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004)
- I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)
- Johnson v. Johnson, 310 S.C. 44, 425 S.E.2d 46 (Ct. App. 1992)
- In re Zapata Gulf Marine Corp., 941 F.2d 293 (5th Cir. 1991)

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