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Office of the Attorney General

State of South Carolina
Opinion No. 80-1
January 14, 1980

***1 SUBJECT: Magistrates; Jurisdictional Amount**

(1) South Carolina magistrates have jurisdiction under CODE § 39–5–140 to hear private actions arising under the South Carolina Unfair Trade Practices Act.

(2) In an action brought under CODE § 39–5–140 wherein treble damages are sought by the plaintiff, the amount in controversy which would determine the jurisdiction of magistrate's court to hear the case is the trebled amount being sought.

(3) Attorneys' fees, as specifically authorized by CODE § 39–5–140 are costs and are excluded from the jurisdictional amount in magistrate courts.

TO: Administrator
Department of Consumer Affairs

QUESTIONS:

(1) Does a South Carolina magistrate have jurisdiction to hear private actions for damages under § 39–5–140 of the South Carolina Unfair Trade Practices Act?

(2) In a treble damage action under CODE § 39–5–140, is the jurisdiction of the magistrate's court determined by the plaintiff's actual damages or the trebled amount that may be awarded?

(3) Are attorneys' fees as authorized by CODE § 39–5–140 included in the jurisdictional amount limitations established for magistrate courts?

AUTHORITIES CITED:

Article V § 23, CONSTITUTION OF, SOUTH CAROLINA

§ 23–3–10(1)(2)(a), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended

§§ 39–5–10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976

1979 Act No. 164 § 5

Clemmenson v. Nicholson, 188 S.C. 124, 198 S.E 180 (1938)

Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934)

Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)

S.C. Dept. of Mental Health v. Hanna, 270 S.C. 214, 241 S.E.2d 563 (1978)

Strenge v. Clark, 89 Wash.2d 23, 569 P.2d 60 (1977)

Corley v. Evans, 69 S.C. 520, 48 S.E. 459 (1904)

Rake v. City Lumber Co., 283 F.Supp. 378 (DC Ore. 1967)

Cast-A-Stone Products v. Aetna (Casualty & Surety Co., 379 F.Supp. 929 (DC SC 1974)

Fitchett v. Henley, 32 Nev. 168, 104 P. 1060 (1909)

J. F. Schneider & Sons, Inc. v. Justice, 293 Ky. 216, 168 S.W.2d 591 (1973)

Bridges v. Joanna Cotton Mills, 214 S.C. 319, 52 S.E.2d 406 (1949)

Stroy v. Nicpee, 105 S.C. 265, 89 S.E. 666 (1916)

Roosevelt v. Hanold, 65 Mich. 414, 32 N.W. 443 (1887)

Brother Int. Corp. v. Southeastern Sales Co., 234 S.C. 573, 109 S.E.2d 444 (1959)

Driggers v. Cannon, 107 S.C. 322, 92 S.E. 1049 (1917)

20 AM.JUR.2d Courts § 160

167 A.L.R. 1243

51 C.J.S. Justices of the Peace § 35(4), § 20

DISCUSSION:

Question 1.

The civil jurisdiction of magistrates is fixed by the South Carolina Constitution (Art. V § 23) and statutes enacted pursuant thereto. Clemmenson v. Nicholson, 188 S.C. 124, 198 S.E. 180 (1938). The Code of Laws of Laws of South Carolina (1976) § 22–3–10, as amended, [1] sets the maximum jurisdictional amount in magistrate courts at one thousand dollars. The pertinent subsections within CODE § 23–3–10 are as follows:

***2** (1) In actions arising on contracts for the recovery of money only, if the sum claimed does not exceed one thousand dollars.

(2) In actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed one thousand dollars.

(9) In actions for damages for fraud in the sale, purchase or exchange of personal property, if the damages claimed do not exceed one thousand dollars.

The scope of these subsections determine the jurisdiction of magistrates to hear actions arising under the South Carolina Unfair Trade Practices Act (UTPA).

The UTPA, often called the 'little FTC Act,' (CODE § 39–5–10 et seq.) allows, inter alia, private treble damage actions based on ascertainable injury flowing from deceptive or unfair acts or practices in trade or commerce (CODE § 39–5–140). CODE § 39–5–140 is unspecific in regard to which court may or may not constitute a plaintiff's forum in private UTPA actions. The Attorney General, on the other hand, is limited in the bringing of public actions exclusively to the court of common pleas. The clear expression of this exclusivity ranges from CODE § 39–5–50 through § 39–5–130. However, the language of § 39–5–140 substitutes 'courts' in place of 'court of common pleas.' Clearly, a differentiation is made between the appropriate forum for public and private actions.

By comparing the Legislature's final product as enacted in 1971 with the model act which served as a basis for it [2] (and nearly all 'little FTC Acts' nationwide), it is apparent that the deviation in CODE § 39–5–140 was deliberate. It should be assumed that CODE § 39–5–140 was correctly drafted and was designed to operate in harmony with pre-existing statutory and common law. In order to determine legislative intent, CODE § 39–5–140 should be contrasted with § 8 of the model act (Private and Class Actions) which states that a consumer may bring an action 'in the trial court of general jurisdiction of the county or district in which the seller or lessor resides.' The 'trial court of general jurisdiction' referred to in the model act is set forth in the UTPA as 'court of common pleas' whenever it applies to public actions brought by the Attorney General. In regard to private actions authorized by CODE § 39–5–140, however, the UTPA speaks only of 'courts.' No distinction is made by the model act between the appropriate forum for private and public actions. [3]

What this selective exception must be construed to indicate is that the insertion of 'courts' gives reference not only to the court of common pleas but to other courts such as magistrate courts as well. Furthermore, this conclusion can be logically harmonized when CODE §§ 39–5–50 through 130 are examined in terms of remedies. Unlike CODE § 39–5–140, the balance of the UTPA remedial provisions addresses injunctive and other equitable relief procedures which are not subject to the jurisdiction of magistrates in South Carolina. Driggers v. Cannon, 107 S.C. 322, 92 S.E. 1049 (1917).

***3** The conclusion that the term 'courts' in CODE § 39–5–140 includes magistrate courts is not inconsistent in any manner with CODE § 23–3–10(1)(2)(9). These subsections grant jurisdiction to the magistrates in various commercial transactions which could give rise to an action under the UTPA. It is apparent from these subsections that magistrate courts have indeed been granted jurisdiction in the areas of trade and commerce. A basic tenet of statutory construction dictates that statutes relating to the same subject matter must be construed together, as one system, and as explanatory of one another. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). The subject matter of CODE § 23–3–10(1)(2)(9) is essentially the same as that of § 39–5–140 in that both deal with causes of action of private litigants which may arise in trade or commerce. Our Supreme Court has stated:

> In seeking legislative intent, it is proper to consider cognate legislation . . . subsequent legislation may be of service as indicating the construction given to former legislation. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956).

The UTPA provides in CODE § 39–5–140(b) that

> upon commencement of any action brought under subsection (a) of this section, the clerk of court shall mail a copy of the complaint or other initial pleading to the Attorney General . . .

This subsection was adopted verbatim from the model act. As initial pleadings in magistrate courts are not filed with the clerk of court, it appears that the legislature failed to reconcile provisions of the model act with the procedures of magistrate courts in this State. The inconsistency may not have been one of significance at the time of adoption of the UTPA. Then, county courts were still operational throughout South Carolina and they performed much of the workload now given to the magistrates. Pleadings of

the county courts were filed with the clerks of court. As the county court system has been phased out by implementation of our judicial reform legislation, the jurisdictional amounts granted to the magistrate courts by statutory amendment have dramatically increased. It is not illogical to assume that this increased jurisdiction is a legislative indication that magistrate courts are the replacement forums to fill at least part of this void. [4] Importantly, subsection (b) prescribes a purely ministerial function which could, in effect, be as easily performed by a magistrate's clerical assistant as by a duly elected clerk of court. [5] See 51 C.J.S. Justices of the Peace § 20. The inconsistency between the provisions of CODE § 39–5–140 which relates to duties bestowed upon the clerks of court and the fact that pleadings of magistrate courts are not filed with the clerks of court is insubstantial and is not a sufficient basis for denying jurisdiction to the magistrate courts in private UTPA actions. The South Carolina Supreme Court has consistently stated that remedial statutes are to be construed liberally, in light of their intended purpose, and in light of the evils which they endeavor to remedy. S. C. Department of Mental Health v. Hanna, 270 S.C. 214, 241 S.E.2d 563 (1978). In construing an act comparable to the UTPA, the Supreme Court of Washington found justices of the peace to have concurrent jurisdiction with the superior courts in actions brought by consumers despite the language of their act which expressly directed such actions be brought in the superior court. The Court concluded that a finding of concurrent jurisdiction was in harmony with the spirit and purpose of their Consumer Protection Act. Strenge v. Clark, 89 Wash.2d 23, 569 P.2d 60 (1977).

***4** In conclusion, there appears to be no jurisdictional bar to the litigation of private unfair trade practices actions arising under CODE § 39–5–140 in magistrate courts. This conclusion is based upon the obvious harmony between the jurisdiction of magistrates as set forth in CODE § 22–3–10(1)(2)(9) and the remedies granted private litigants in CODE § 39–5–140. Further, CODE § 39–5–160 provides that the powers and remedies provided by the UTPA are cumulative and supplementary to all powers and remedies otherwise provided by law.

Question 2.

The jurisdictional amount in controversy is determined by the amount claimed by the plaintiff. Corley v. Evans, 69 S.C. 520, 48 S.E. 459 (1904). Whether or not statutory penalties in the form of treble damages constitute the amount in controversy which is determinative of the jurisdictional limitations of inferior courts is a question unanswered by the courts of South Carolina. However, in other jurisdictions
this question has been answered affirmatively. The statutory penalty must be added to the amount of damages claimed in order to determine whether the total sum is within the jurisdiction of the court. 20 AM.JUR.2d Courts § 160.

The preponderance of existing decisions is supportive of this conclusion. In construing state statutory multiple damage provisions, at least four jurisdictions are of the opinion that such penalties must be considered as part of the plaintiff's original claim for the purposes of determining jurisdiction. [6] Only one state has asserted a contrary view. [7] The Nevada decision sets forth the conclusions reached in most jurisdictions:
nor is it reasonable to assign to the (constitutional) convention the intent to give justice's courts jurisdiction to an amount double. Fitchett v. Henley at 1061.

When federal ‘double damage’ statutes permit concurrent state court jurisdiction, the results have been in accord with this interpretation. Multiple damages become an integral part of the aggregate sum to be recovered and are considered in determining the jurisdictional amount claimed. J. F. Schneider & Sons, Inc. v. Justice, 293 Ky. 216, 168 S.W.2d 591 (1973). Although Schneider is distinguishable on the ground that the issue was decided on the basis of minimum requisite jurisdiction, the analysis employed is clearly adaptable to the inverse situation presented here. No precedent exists in South Carolina to support an opposite conclusion. [8]

CODE § 39–5–140 mandates the award of treble damages in a successful private action when a ‘willful and knowing’ violation of the UTPA is shown:
(a) . . . the court shall award three times the damages sustained (emphasis added).

The plaintiff who seeks to recover under this provision, must, by express wording, seek multiple damages in his pleadings. 25 C.J.S. Statutory or Multiple Damages § 134. Since the jurisdictional amount is controlled by the plaintiff's claim, a party seeking recovery under the treble damage provision of CODE § 39–5–140 would, therefore, have to allege less than three hundred thirty-four dollars in actual damages sustained. In this respect:

***5** It is no objection to the jurisdiction of a magistrate that a plaintiff has reduced his claim or demand to bring it within the jurisdiction of the court. Bridges v. Joanna Cotton Mill, 214 S.C. 219, 52 S.E.2d 406 (1949).

A voluntary reduction of the plaintiff's claim exposes him to a res judicata effect on any unasserted portion of the damages. Stroy v. Nicpee, 105 S.C. 265, 81 S.E. 666 (1916). At any rate, the amount prayed for, whether actual damages or the trebled amount, is the figure which must be used to determine if a particular claim exceeds the jurisdictional amount prescribed for magistrate courts.

Question 3.

The UTPA provides in CODE § 39–5–140 that upon the finding by the court of a violation of the UTPA, the court shall award to the person bringing the action attorneys' fees and costs. As a magistrates court is a court of limited jurisdiction, the question must be addressed as to what effect, if any, the award of attorneys' fees and costs has upon the jurisdictional amount established by law for magistrate courts.

Costs are merely incidental to the judgment and do not affect the jurisdiction of a justice of the peace. 51 C.J.S. Justices of the Peace § 35(4). This view has been almost universally followed. See 77 A.L.R. 1013, 167 A.L.R. 1248 for supportive citations.

A clear majority rule is less evident in regard to attorneys' fees granted by statute. Whether or not they are to be included in the jurisdictional amount depends, in general, on whether they are judicially construed as falling into the category of costs or of penalties. See Chaison v. Maryland Casualty Co., 106 S.W.2d 376 (Maryland Ct. of Civ.App. 1937); Buchhols v. Metropolitan Life Ins. Co., 176 Mo.App. 464, 158 S.W. 451 (1913).

In all cases, the wording of the statutory provision is the determinative factor. The express wording of § 39–5–140 is revealing in light of the distinction that may be draw between penalty (trebling provision) and cost:

> (a) . . . if the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of § 39–5–20, the court shall award three times the actual damages sustained and may provide such other relief . . . as necessary or proper. Upon finding by the court of a violation of this article the court shall award to the person bringing such action under this section reasonable attorneys fees and costs. (Emphasis added.)

In analyzing subsection (a), it can be seen that the legislature made a distinction between successful actions under CODE § 39–5–140 and successful actions coupled with a finding of a willful or knowing violation. The standards of proof necessary to recover treble damages is clearly different from the standard applied to the recovery of attorneys' fees and costs. This effectively segregates and distinguishes the ‘attorneys' fees and costs' provisions from the trebling clause of the statute.

***6** Of the few decisions closely on point, the Arizona Supreme Court has established a clear and precise rule:

> where attorneys fees are allowed by statute they are costs and are excluded from the jurisdictional amount in magistrates courts . . . they are only includable when expressly provided for in (the) note or instrument (executed between the parties). Rojas v. Kimble, 89 Ariz. 276, 361 P.2d 405 (1961).

While this issue has not been litigated here, there appears to be no basis in South Carolina law for concluding that attorneys' fees and costs must be included in a claim as a part of the amount in controversy.

The determining factor as to whether a specific claim exceeds the jurisdictional amount prescribed for magistrate courts is, therefore, the amount of damages, actual or trebled, being sought, exclusive of any attorneys' fees or costs. This conclusion is supported by those provisions of CODE § 22–3–10 which specifies jurisdictional amounts based on damages claimed without indicating that such amounts shall include costs or attorneys' fees.

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Footnotes

1 See recent legislation [1979 Act No. 164] increasing magistrates' jurisdictional amount eff. 7/1/79.

2 The South Carolina Act has survived intact since its promulgation in 1971. The model act referred to first appeared as the Uniform Trade Practices and Consumer Protection Law in the 1967 volume of Suggested State Legislation, published by the Council of State Governments.
This suggested legislation was based on a combination of § 5 of the FTC Act [15 U.S.C. 45(a)(1)] and consumer legislation adopted by the State of Washington in 1961 and the State of Hawaii in 1965. In 1970, the FTC presented a highly modified version of this model act. It was from this revised model that South Carolina adopted its 1971 legislation. See Appendix 'A'.

3 This is illustrated by comparing the language in §§ 5–16 of the model act with CODE §§ 39–5–50 through 110.

4 This is supported by the 500% increase in the magistrate's jurisdictional ceiling which has been granted by legislative amendment since 1976.

5 Additionally, the impact of the subsection is further lessened when it is observed that the legislature included no punitive provisions for failure to comply procedurally.

6 Nevada—Fitchett v. Henley, 32 Nev. 168, 104 P. 1060 (1909); California—Wells Fargo & Union Trust Co. v. Broad, 3 Cal.App.2d 45, 39 P.2d 241 (1954); Florida—Seaboard Airline Ry. v. Maxey, 64 Fla. 487, 60 So. 353 (1913); Arkansas—Combined Ins. Co. of America v. Dreyfus, 244 Ar, 1011, 428 S.W.2d 239 (1968).

7 Roosevelt v. Hanold, 65 Mich. 414, 32 N.W. 443 (1887).

8 In fact, the 'conservative' view has always prevailed here. The South Carolina Supreme Court has strictly scrutinized alleged encroachments by courts of limited jurisdiction See, Pickens v. Maxwell Bros., 176 S.C. 404, 180 S.E. 348 (1935). Stroy v. Nicpee, 105 S.C. 265, 89 S.E. 666 (1916); Haygood v. Boney, 43 S.C. 63, 20 S.E. 803 (1895); American Oil Co. v. Cox, 182 S.C. 419, 189 S.E. 660 (1937).

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