1975 S.C. Op. Atty. Gen. 151 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4075, 1975 WL 22372

Office of the Attorney General

State of South Carolina
Opinion No. 4075
August 8, 1975

***1** Magistrates, under § 43–51 of the 1962 Code of Laws of South Carolina, as amended, have jurisdiction in matters between landlord and tenant where the amount in controversy exceeds $200.00.

TO: Mr. Neal Forney
Director
Judicial Education, South Carolina
South Carolina Court Administration

QUESTION PRESENTED:

Do Magistrates, under § 43–51 of the 1962 Code of Laws of South Carolina, as amended, have jurisdiction in matters between landlord and tenant where the amount in controversy exceeds $200.00?

STATUTES, CASES, ETC., INVOLVED:

The Statutes which govern the transactions between landlord and tenant are set forth in Title 41, 1962 Code of Laws of South Carolina, as amended (Cum. Supp.).

The civil jurisdiction of Magistrates is set forth in § 43–51, Code of Laws of South Carolina, 1962, as amended (Cum. Supp.).

DISCUSSION OF ISSUES:

The civil jurisdiction of judges of the Magistrate Courts of this State is enumerated in § 43–51 of the Code of Laws of South Carolina, as amended. Item one (1) under that Section sets a $200.00 limit to civil jurisdiction of magistrates in actions 'arising on contracts for the recovery of money only. . .'

Item ten (10) of the same Section states that magistrates shall have jurisdiction 'in all matters involving landlord and tenant and the possession of land as provided in Title 41.

Title 41 which is mentioned above concerns matters which relate to transactions between landlord and tenant. A reading of Item 10 of § 43–51 leaves no doubt that in actions between landlord and tenant there is no jurisdictional limit in the magistrate courts of this State. This fact is further substantiated by the language of § 41–5, Code of Laws of South Carolina, as amended which states:
The judges of the circuit courts and county courts in this State shall have concurrent jurisdiction with and may exercise all of the duties and powers conferred upon magistrates by any provisions of this Title other than §§ 41–70 and 41–71.

It seems that the judges of the Circuit or County Courts of this State are vested with concurrent and not greater jurisdiction to magistrates under Section 41.

CONCLUSION:

Section 43–51(10) of the 1962 Code of Laws of South Carolina, as amended, provides no jurisdictional limit in the Magistrate's Courts of this State in actions which arise under Title 41. Therefore, Magistrates have jurisdiction in matters between landlord and tenant where the amount in controversy exceeds $200.00.

Hutson S. Davis
Assistant Attorney General

MEMORANDUM

Before trustees enter into a settlement with certain reversioners of a given trust, they should avail themselves of the benefits of § 10–2005 of the S. C. Code to establish that such a settlement is prudent. A judgment that said settlement would be proper might prevent alleged reversioners not party to the settlement from later pressing claims upon the trust.

ATTACHMENT

***2** August 8, 1975

TO: Treva Ashworth

FROM: John Daniel

REFERENCES:

§ 10–2005 of S.C. Code; § 10–2007 of S.C. Code; Bacot v. Heyward, 5 S.C. 441; Gaskins v. Calif. Ins. Co., 195 S.C. 376, 11 S.E.2d 436; Jenkins v. Jones, 208 S.C. 421, 38 S.E.2d 255; Pool v. Dial, 10 S.C. 440; Savage v. Cannon, 204 S.C. 473, 30 S.E.2d 70; Bogert, Trusts and Trustees, 2d ed.; Restatement 2d of Trusts; Restatement 2d of Judgments; 35 ALR 2d, 15A CJS.

DISCUSSION:

Given a certain probability of litigation in a particular matter it may become desirable to avoid the uncertainties of judgment. Thus a settlement may be entered into, the object of which is to compose differences and avoid litigation, and to pretermit the questions of law in dispute. 15A CJS 171. While a settlement may be the result of a compromise of a question which is in dispute, it may also be arrived at where there is no dispute or controversy between the parties. 15A CJS supra.

It is generally conceded that a trustee may settle claims against a trust, and that this power is subject to the use of reasonable prudence by the trustee in effectuating the settlement. Bogert, Trusts and Trustees, 2d ed. § 581; Restatement 2d of Trusts, § 192; 35 ALR 2d 968. The power of a trustee to compromise or settle claims on the part of the trust has been recognized in S.C., Bacot v. Heyward, 5 S.C. 441; Pool v. Dial, 10 S.C. 440. Although the Bacot and Pool cases involve claims by the trust against strangers to the trust, it is submitted that there is no reason why such claims should be distinguished from the claims against property held by the trust. This seems to be borne out by the cited article in 35 ALR 2d 967. As a general rule, however, it will often prove wise for the prudent trustee to obtain the approval of the proper court before entering into such a settlement, for if the settlement goes sour, he runs the risk of having his judgment questioned in proceedings to recoup losses of from the trustee personally. 35 ALR 2d at 969.

The cardinal duty of the trustee is obviously to protect the integrity of the trust. The caveat that all settlements by the trustee must be such as a reasonably prudent man would enter into for himself would implicitly preclude settlements in

those instances where no controversy exists. A settlement in such an instance would amount to a gift of the trust property. A settlement would, therefore, amount to an admission that a colorable controversy exists, and weaken the position of the trustees in further proceedings with other parties upon the same matter. Although a reversion would not be directly implied, an admission on the part of the trustees that certain reversioners had at least a colorable claim to any reversion of the trust property would add fuel to the fire of those who might later claim a reversion.

In order for a settlement to adequately dispose of the issue with regard to the reversion of the property at issue, there must be a means of preventing those parties not participating in the settlement from later pressing claims against the trust. It is possible that this may be done as a result of the default judgment which has already been obtained against certain parties, however, the effectiveness of the default as a bar to future actions for a portion of the alleged reversion depends upon the finality of the default judgment itself. The power of the courts to vacate default judgments is often exercised in what the court deems to be the furtherance of justice so that cases may be disposed of on their merits. Savage v. Cannon, 204 S.C. 473; 30 S.E.2d 70 (1944); Gaskins v. Calif. Ins. Co., 195 S.E. 376, 11 S.E.2d 436. The denial versy of the proceeding. A decree approving a settlement on the part of the trustees would, in view of the principles heretofore expressed, established that: (1) A settlement would not imply to reversion which would destroy the trust, or (2) If a reversion could be implied that by reason of the default judgment other parties would not be able to make good claims which would destroy the trust. Therefore, it would seem that prudence suggests the incorporation of the provisions of § 10–2005 into course of action.

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