

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Rosmore and Amy Vilardi,)
)
 Plaintiffs,)
)
 vs.)
)
 Anderson County Sheriff’s Office, David J.)
 Taylor and Roger D. Taylor as co-Personal)
 Representatives of the Estate of Violet J.)
 Taylor, and Pam S. Isbell, as Personal)
 Representative for the Estate of Terry Michael)
 Scott and as Personal Representative for the)
 Estate of Barbara Scott,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 Case No.: 2016-CP-04-01200

**DEFENDANT ISBELL’S
 MEMORANDUM IN OPPOSITION TO
 PLAINTIFFS’ MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

Defendant Pam S. Isbell (“Isbell”), in her capacity as Personal Representative for the Estate of Terry Michael Scott and as Personal Representative for the Estate of Barbara Scott (“Scott Estates”), submits this Memorandum in Opposition to Plaintiff’s (sic) Motion for Partial Summary Judgment (“Plaintiffs’ Motion”).¹

SUMMARY JUDGMENT STANDARD

A motion for summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. The purpose of summary judgment is to obviate delay

¹ As an initial matter, Isbell would respectfully assert that Plaintiffs’ Motion was not submitted in a timely fashion and should be denied. Pursuant to the terms of the First Amended Consent Scheduling Order, filed on October 3, 2017, all motions, except those relating to the admissibility of evidence at trial and those to compel discovery, were to be filed no later than January 15, 2018. Plaintiffs’ Motion was not filed until February 12, 2018.

where there is no genuine issue as to any material fact. *See Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977). “Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Café Assoc., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *See Sumner v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997).

RELEVANT FACTS

The claims, counterclaims and cross-claims asserted in this litigation are all related to U.S. currency and other property seized by Defendant Anderson County Sheriff’s Office (“ACSO”) in relation to the investigation of a quadruple homicide. The quadruple homicide occurred at 2217 Refuge Road, Pendleton, South Carolina, on or about November 2, 2015. At all relevant times, there were two homes located at 2217 Refuge Road, Pendleton, South Carolina. One was a double-wide home occupied by Terry Michael Scott along with his wife (Cathy Taylor Scott), his mother (Barbara Scott) and his mother-in-law (Violet J. Taylor). The quadruple homicide occurred in the double-wide home located at 2217 Refuge Road, Pendleton, South Carolina. The victims of the quadruple homicide were Terry Michael Scott, Cathy Taylor Scott, Barbara Scott and Violet J. Taylor. At or around the time of the homicide, the single-wide home was occupied by Plaintiffs Rosmore and Amy Vilardi (“Plaintiffs”). Several search warrants were issued for various items of evidence related to the homicides. The search warrants attached to the Complaint involved the two (2) mobile homes except for the search warrant for a storage unit located at 4303 Edgewater Way, Anderson, South Carolina. The search warrants and returns relevant to this civil action are attached to the Complaint. The items of evidence seized are detailed

in the return to each search warrant.

Originally, Plaintiffs brought a claim and delivery action against ACSO related to the U.S. currency and tangible personal property seized and held by ACSO as part of a criminal investigation. Subsequently, David J. Taylor and Roger D. Taylor, as co-Personal Representatives of the Estate Violet J. Taylor (“Taylors”) and Isbell, were granted leave to intervene in this action and have asserted claims related to the U.S. currency and other property currently held by ACSO.

LEGAL ANALYSIS/ARGUMENTS²

As is set forth in the Answer, Counterclaims and Cross-Claims of Defendant Pam S. Isbell, Isbell asserts that a significant portion of the U.S. currency and other property seized by and being held by ACSO pursuant to lawful search warrants belonged to and was the lawful property of the four homicide victims, including Barbara Scott and Terry Michael Scott. Isbell further asserts that Plaintiffs cannot establish that the money and other property seized and now being held by ACSO belonged to Plaintiffs or were in their lawful possession at the time the search warrants were executed.

Plaintiffs improperly attempt to shift the burden to Defendants in this matter. In short, Plaintiffs commenced this claim and delivery action and have the burden of proving title or right of possession to the currency and other property seized. *See People v. Warren*, 51 S.C. 560, 29 S.E.2d 659 (1898) and *Manship v. Newsome*, 188 S.C. 6, 10, 198 S.E. 428, 430 (1938) (“Proof of title, or right of possession, is a prerequisite to a plaintiff prevailing in action in Claim and Delivery.”).

Similarly, Plaintiffs’ reliance on *Jackson v. Frier*, 146 S.C. 322, 144 S.E.2d 66 (1928) is misplaced. *Jackson* does not stand for the proposition that “possession of an item is prima facie

² At this point, Isbell would defer to ACSO as to the potential evidentiary value of the currency and other property seized from the single-wide home.

evidence of ownership.” In *Jackson*, the Supreme Court was asked to review the part of the circuit judge’s charge related to the burden of proof. The matter before the circuit court was a claim and delivery related to an automobile. The defendant was in possession of the automobile at the time the claim and delivery action was commenced. The defendant asserted that “he and the plaintiff entered into a contract for the sale and purchase of a certain tract of land, and that the automobile was delivered by the plaintiff to the defendant as part payment of the purchase price of the land; that without legal excuse the plaintiff refused to comply with said contract, which the defendant stood ready and willing to do, and was not entitled to a return of the automobile which he had delivered under these circumstances.” *Id.* at ___, 144 S.E.2d at 66 – 67. The Supreme Court held that the circuit judge’s charge improperly shifted the burden to the defendant to establish the terms of the alleged trade between him and the plaintiff and to show that he was entitled to hold the automobile under that trade.

During the discovery process the parties were deposed and identified their respective positions with regards to the currency and other property identified in the Returns generated by ACSO following the executions of the various search warrants. Attached hereto are excerpts from the Deposition of Pam S. Isbell (Exhibit A) and Deposition of Rosmore Vilardi (Exhibit B) that establish that there is an unresolved issue of fact as to who is the rightful owner of the U.S. currency and certain firearms seized from the single-wide. In addition, the Pistol Purchase and Application Record dated October 1, 1997 (Exhibit C) is further evidence that at least one of the firearms seized (a North American Arms .22 mag.) belongs to the Estate of Barbara Scott.

The documents produced by Plaintiffs in discovery and attached to Plaintiff’s (sic) Memorandum in Support of Partial Summary Judgment simply does not support Plaintiffs’ assertion that the currency seized from the safe in the single-wide was earned and/or received by

Plaintiffs in any legal means. Plaintiffs have not provided documents that would total the amount of the cash found in the single-wide. Likewise, Plaintiffs have not presented to this Court any banking or transactional records indicating the military benefits were converted to cash before they were allegedly place in the safe.

CONCLUSION

Based on the foregoing and such additional information as may be presented at the hearing, Isbell respectfully asserts that Plaintiffs' Motion should be denied.

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March 29, 2018