

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
FAIRFIELD 132 SMITH STREET LLC,)
)
)
Plaintiff,)
)
vs.)
)
Haley Surface, Hannah Glickman,)
Jill Surface, and Diane Glickman,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2019-CP-10-06387

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

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SC Court of Appeals

This matter comes before the Court on Motion for Summary Judgment filed by Plaintiff Fairfield 132 Smith Street, LLC. For the reasons set forth herein, Plaintiff's motion for summary judgment is **GRANTED**.

Plaintiff Fairfield 132 Smith Street, LLC ("Landlord") is the owner of a multi-family apartment complex located at 132 Smith Street, Charleston, South Carolina. Defendant Haley Surface ("Haley Surface") and Defendant Hannah Glickman ("Hannah Glickman") executed a lease agreement (the, "Lease") on January 23, 2019, for the premises described as 132 Smith Street, Apartment 5, Charleston, South Carolina 29403 (the, "Premises"). The Lease was also signed by Defendant Jill Surface ("Jill Surface") and Defendant Diane Glickman ("Diane Glickman"), who acted as co-signers for their respective daughters. At the time of execution, Defendants Haley Surface and Hannah Glickman were already in possession of the Premises.

Under the Lease, all the Defendants, both tenants and co-signers, are jointly and severally liable for all terms and conditions, including annual rent in the amount of Thirty-Nine Thousand Three Hundred and NO/100 (\$39,300.00) Dollars, to be paid monthly in the amount of Three Thousand Two Hundred Seventy-Five and NO/100 (\$3,275.00) Dollars.

Plaintiff alleged on August 1, 2019, Tenants failed to tender rent in the amount of Three Thousand Two Hundred Seventy-Five and NO/100 (\$3,275.00) Dollars. Plaintiff further alleged it was discovered Tenants had abandoned the Premises and failed to secure new tenants. Despite being provided notice of their breaches, Defendants to date have failed to cure their numerous breaches.

LEGAL STANDARDS

Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits show that there is no genuine issue of material fact. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 993, 8 L.Ed.2d 176 (1962).

Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most

favorable to the nonmoving party. If triable issues exist, those issues must be submitted to the jury. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. See *Hedgepath*.

In deciding a Rule 56 motion, the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party. Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits show that there is no genuine issue of material fact. A party opposing a properly supported motion for summary judgment, however, may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. *Bravis v. Dunbar*, 316 S.C. 263, 264, S.E.2d 495, 496 (Ct. App. 1994). Once moving party carries its initial burden, opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

In South Carolina, to recover for a breach of contract the plaintiff must allege and prove (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2de 602, 610 (1962)

(burden on plaintiff to prove contract, its breach and damages caused by such breach). See also *Taylor v. Cummins Atlantic Inc.*, 852 F. Supp. 1279, 1286 (D.S.C. 1994), *affirmed*, 48. F.3d 1217 (4th Cir. 1995), *cert. denied*, 516 U.S. 864, 116 S.Ct. 176, 133 L. Ed. 2d 116 (1995) (plaintiff bears burden of proving existence and terms of contract, defendant's breach of one or more contractual terms, and damages resulting from breach).

HOLDINGS

Based on the foregoing standards and having reviewed the matters of records presented, this Court finds:

1. Plaintiff and Defendants entered into a binding contract in the form of a residential lease agreement on January 23, 2019.
2. Under said residential lease agreement, Defendants jointly and severally liable for annual rent in the amount of Thirty-Nine Thousand Three Hundred and NO/100 (\$39,300.00) Dollars.
3. Under said residential lease agreement, rent was to be paid monthly by Defendants Hannah Glickman and Haley Surface in the amount of Three Thousand Two Hundred Seventy-Five and NO/100 (\$3,275.00) Dollars.
4. Under said residential lease agreement, the performance of Defendants Hannah Glickman and Haley Surface was guaranteed by Defendants Jill Surface and Diane Glickman, who each were co-signers to the lease.
5. Defendants breached the residential lease agreement on August 1, 2019, Tenants failed to tender rent in the amount of Three Thousand Two Hundred Seventy-Five and NO/100 (\$3,275.00) Dollars.

6. Defendants further breached the residential lease agreement when they abandoned the leased Premises and failed to secure new tenants.
7. Despite being provided notice by Plaintiff, Defendants failed to cure their breaches.
8. Defendants' breaches of the residential lease agreement caused Plaintiff to suffer damages totaling Forty-Six Thousand Eighty Five and 87/100 (\$46,085.87) Dollars in the form of lost rents, late fees, cleaning fees, repairs, management fees, utilities, and legal costs.

For the foregoing reasons, this Court hereby grants Plaintiff's Motion for Summary Judgment. This Court further finds Plaintiff is entitled to damages in the amount of Forty-Six Thousand Eighty-Five and 87/100 (\$46,085.87) Dollars.

IT IS SO ORDERED!

The Honorable Bentley Price

Charleston, South Carolina
_____, 2022



Charleston Common Pleas

Case Caption: Fairfield 132 Smith Street Llc VS Haley Surface , defendant, et al

Case Number: 2019CP1006387

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766