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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
CHARLESTON COUNTY

R. Markley Dennis, Jr., Presiding Judge

Circuit Case No.: 2021-CP-10-03684

Appellate Case No.: 2022-000622

RUSSELL CRAWFORD,)
)
Appellant,)
)
vs.)
)
RAYMOND BABICH,)
)
Respondent .)

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

1. MAY THE OWNER OF A TRAILER LOCATED WITHIN A MOBILE HOME PARK BE EJECTED FROM A PARCEL OWNED BY THE TRAILER PARK OWNER FOLLOWING EXPRIATION OF A MONTH TO MONTH TENACY AND UPON ISSUANCE OF WRITTEN 30-DAY NOTICE TO QUIT?
2. ARE THERE ANY OTHER GROUNDS APPEARING IN THE RECORD TO SUPPORT THE AFFIRMANCE OF THE CIRCUIT COURT'S DECISION AND RULING UNDER SCACR 220(c)?

STATEMENT OF THE CASE

This is an appeal from an April 26, 2022 Order of Circuit Court Judge R. Markley Dennis, Jr., presiding judge in the Charleston County Court of Common Pleas, which denied Appellant Russell Crawford's ("Crawford" or "Appellant") Appeal of an August 10, 2021 Writ of Ejectment issued by Charleston County Magistrate Amy Mikell following a July 19, 2021 Order granting of a Motion for Summary Judgment filed by Respondent Raymond Babich ("Babich" or Respondent) for such ejectment relief.

The Parties' Lease

Appellant Crawford is an individual who owns a trailer situated on a parcel of land known as "Lot 3" that is within a manufactured home park located at 4683 West Montague Avenue in North Charleston, South Carolina owned and operated by Respondent Babich. [Crawford Motion for Summary Judgment, par. 1]. Crawford and the prior owner of the manufacturer home park, West Star Mobile Home Park, entered into a "Rental Agreement," dated March 1, 1998 to "[E]stablish a month to month tenancy, commencing on March 1, 1998 (the "Lease"). [Rental Agreement between Crawford and West Star Mobile Home Park]. This Lease expressly provided that "It is mutually agreed that either party may terminate this tenancy by giving the other party thirty (30) written notice thereof

...”. [March 1, 1998 Lease].

Application for Appellant’s Ejectment

From emails between the parties submitted by the Appellant, it appears that the Appellant had a history of making complaints leading to disputes with his neighbors over what the Appellant considered excessive noise levels. [Nov. 6 and 19, 2019 Crawford/Babich Emails]. On March 17, 2020, Babich emailed Crawford notice that “This is notice your tenancy, including both you and your mobile home trailer, is being ended as of May 1, 2020.” [17 March 2020 Email Babich to Crawford].

On July 15, 2020, Babich filed an Application for Ejectment with the Charleston County Magistrate Court. *Id.* In response, Crawford appeared by counsel and filed a Motion for Summary Judgment to dismiss Babich’s Application for Ejectment. The basis for summary judgment was that Crawford’s month to month tenancy, which was governed under the Manufactured Home Park Tenancy Act, S.C. Code Ann. §§ 27-47-10, *et seq.* (the “MHPTA”), could not be terminated as a matter of law because the expiration of a lease term is not grounds to terminate a tenancy otherwise subject to the MHPTA. Deft’s Motion for Summary Judgment, Pars. 6-8.

The Magistrate Court Orders

Following allowances for the parties’ briefing and oral argument, Magistrate Amy Mikell denied Crawford’s Motion for Summary Judgment by Order dated July 12, 2021. *Id.* The basis for the Magistrate’s ruling was denying Crawford’s Motion for Summary Judgment was that, while the “end of [a] lease term” is not expressly stated as grounds under Section 27-47-530 MHPTA to terminate a tenancy subject to the MHPTA, the

provision and effect of subsection (A)(8) of MHPTA Section 27-47-530, providing for termination for “other reason sufficient under common law.” *Id.* The Magistrate further noted MHPTA section 27-47-110 which provided that the MHPTA was subject to the Chapter 40 the Residential Landlord and Tenant Act (S.C. Code §§ 27-40-20 *et seq.* (the “RLTA”) “if such application was not inconsistent with or contrary to the provisions of the MHPTA. *Id.* Therefore, the Magistrate reasoned that Crawford could be ejected for termination of the lease term upon receipt of prior 30 day written notice, as provided for under RLTA Section 27-40-770(b) (“A landlord or tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination dated specified in the notice.”). *Id.*

At this point, on July 6, 2021, Babich filed a Motion for Summary Judgment, arguing that as there was no factual dispute over the validity of the Lease and that proper 30-day advance written notice of the lease termination having been given, he was entitled to a Writ of Ejectment on his Application for the same and that Crawford was not entitled to a jury trial, as he had requested. [Babich July 6, 2021 Motion for Summary Judgment]. In opposing the Babich Motion for Summary Judgment, Crawford renewed his arguments submitted in favor of Crawford’s Motion for Summary Judgment, which the Magistrate accepted. [July 19, 2021 Order, fn. 4].

In granting summary judgment to Babich by Order dated July 19, 2021, the Magistrate noted that there was no factual dispute over the propriety of the March 17, 2020 email notice of month-to-month tenancy termination. *Id.* The Magistrate applied the same rationale in denying Crawford’s contention that he could not, as a matter of law, be

ejected from his month-to-month tenancy subject to the MHPTA on the grounds that the lease term was at an end. Finding that the dual bases that tenancies under the MHPTA may be terminated for “other reason sufficient under common law” (Section 27-47-530(A)(8) and that the MHPTA was subject to the RLTA as long as the RLTA was not contradicted by the MHPTA, Babich had complied with the MHPTA and RLTA and was hence entitled to a Writ of Ejectment.

In granting leave to seek a Writ of Ejectment, the Magistrate also considered that Crawford’s second argument that under MHPTA Section 27-47-220, a manufactured home park owner was obligated to act in good faith and that certain emails between the parties allegedly showed Babich’s bad faith over the course of Crawford’s tenancy. *Id.* The Magistrate ruled that it was not making any finding as to whether Babich had shown bad faith in seeking an ejectment. July 19, 2021 Order, fn. 6. The Magistrate further ruled, as MHPTA Section 27-47-220 is silent on what remedy is appropriate in instances of park owner bad faith, that an absolute bar on ejectments was not an appropriate remedy even for violations of MHPTA Section 27-47-220’s requirement that a park owner act in good faith. *Id.*

The Circuit Court Appeal

After the Magistrate signed a Writ of Ejectment on August 10, 2021, Crawford filed an Appeal to the Court of Common Pleas on August 11, 2021 and a Bond to Stay Execution of the Writ of Ejectment. *Id.* The Return of Magistrate Mikell was filed on September 16, 2021, and a hearing on Crawford’s Appeal was heard by Circuit Judge Dennis on April 19, 2022. [April 26, 2022 Order of Judge Dennis].

By Order dated April 26, 2022 requested from the attorney then representing Crawford, Circuit Judge Dennis denied Crawford's appeal without comment on the rationale for said ruling¹. Judge Dennis further stayed execution of the Writ of Ejectment for 90 day on Respondent's consent. *Id.* On May 6, 2022, Crawford timely filed a Notice of Appeal of Judge Dennis' April 26, 2022. *Id.* On June 2, 2022, this Court granted the Motion of Appellant's counsel to withdraw and granted a supersedes of the Writ of Ejectment subject to Appellant's obligation to continue rent payments to the Respondent. Appellant filed his Initial Brief on July 5, 2022, and by Order dated September 13, 2022, Respondent's time to file Respondent's Initial Brief was extended to October 10, 2022. *Id.*

DISPUTE OF APPELLANT'S STATEMENT OF FACTS

Respondent does not admit and disputes the Appellant's following contentions:

1. That Appellant cannot move his mobile home without a governmental permit;
2. That Appellant cannot obtain a permit to move his manufactured home if a governmental permit to move said property is required;
3. That prohibitive costs prevent Appellant from moving his manufactured home; and
4. All allegations related to the summoning of jurors.

¹ The Designation of Matters to be Included in the Record on Appeal submitted by Appellant does not list the transcript from the appeal hearing before Judge Dennis. Respondent has designated said Transcript to be included in the Record on Appeal.

Respondent respectfully submits that no findings were made by the courts below on these alleged factual contentions and, consequently, issues related to these matters are not properly before this Court for consideration on appeal.

STANDARD OF REVIEW

Respondent does not dispute the Appellant's position that S.C. Code Section 18-1-170 applies to this Appeal.

ARGUMENT

I. THE COURTS BELOW PROPERLY DETERMINED THAT APPELLANT'S MONTH-TO-MONTH TENANCY COULD BE TERMINATED BY THE RESPONDENT FOLLOWING SERVICE OF PROPER ADVANCE WRITTEN 30-DAYS NOTICE OF A DATE OF TERMINATION

The logical conclusion of Appellant's argument in this appeal is that under the MHPTA, a lessee of space in a manufactured home park can never be evicted on the grounds that the term of his or her lease has expired. Respondent does not dispute that the MHPTA generally applies to the issues raised on this appeal as Appellant owns a manufactured home situated a manufactured home park owned and operated by the Respondent. However, there is no basis for the proposition that MHPTA Section 27-47-530 prohibits evictions where a lease term has expired. As noted by the Magistrate Court, MHPTA Section 27-47-530 does not list the expiration date of a lease term as an express reason to terminate a lease. However, it does contain an express reason that an ejection may be had for any reason "sufficient under the common law" of South Carolina to eject a tenant otherwise subject to the MHPTA. Indeed, in exacting the MHPTA, the Legislature expressly provided that persons under the jurisdiction of the MHPTA were subject to provisions of the South Carolina Residential Landlord and Tenant

Act² (the “RLTA”) so long as the RLTA did not contradict the MHPTA. S.C. Code Ann. § 110.

Accordingly, in situations where proper advance written notice of a lease or tenancy termination has been provided by the landlord to the tenant in a manufactured home park, the Legislature has codified that a month to month tenancy may be lawfully terminated on 30-days advance written notice to the tenant. Herein, S.C. Code Ann. § 27-35-110 provides: “A tenancy from month to month may be ended by either party giving the other written notice of thirty days to the effect that such tenancy shall be then terminated. No such tenancy shall ripen into a tenancy from year to year.” *Id.* Here, Appellant has conceded that he received proper 30-day advance written notice on March 17, 2020 that Appellant’s tenancy was ending on May 1, 2020. [Appellant’s Brief, p. 3]. Thereby, Appellant’s month-to-month tenancy ended as of May 1, 2020. After Appellant failed to voluntarily quit the premises by May 1, 2020, Respondent filed an Application for Ejectment on July 15, 2020 within his right to do so. Accordingly, all of the statutory requirements for a valid ejectment were met, and there was no error in the Magistrate Court and Circuit Court rulings that Respondent was properly entitled to a Writ of

² The MHPTA was enacted well after the enactment of the RLTA, and it may be presumed that the Legislature was well aware of and approved of the provisions under the RLTA that provided a tenant can be ejected upon proper 30-day written advance notice following expiration of lease term. If the Legislature intended that lessees of parcels in manufactured home parks be granted the right to occupy those parcels indefinitely so long as they did not violate other provisions in MHPTA Section 27-47-530, then it would be expected that such additional rights would be found in MHPTA Section 27-47-530. No such inclusion was made to MHPTA Section 27-47-530.

Ejectment against the Appellant.

II. THE APPELLANT'S ALLEGATIONS THAT RESPONDENT HAS ACTED IN BAD FAITH ARE NOT REVIEWABLE ISSUES OR APPLICABLE ON THIS APPEAL

Appellant's Brief cites that the MHPTA imposes a duty upon the owner/landlord of manufactured home park to act in "good faith." S.C. Code Ann. § 220. Appellant further alleges that emails between the parties concerning multiple subjects over many years is evidence of Respondent's alleged bad faith. [Appellant's Brief at p. 9]

However, in the Magistrate Order granting Respondent's Motion for Summary Judgment, which is the only Order that the Circuit Judge reviewed and hence the only Order that is the subject of this Appeal, the Magistrate expressly stated that "Whether or not the Plaintiff (Babich) acted in good faith, thereby violating his duty under section 27-47-220 is a matter of fact. However, it is a matter of law as to what remedy applies to the any alleged breach of section 27-47-220. This Court makes no findings whether Plaintiff acted in bad faith." [July 19, 2021 Order of Judge Mikell, p. 2] Judge Mikell further noted that "[A]n absolute bar to eviction is not the appropriate remedy for any actions taken by Plaintiff that are alleged to be in bad faith and in violation of section 27-47-220." *Id.*

The issue of the alleged bad faith of the Respondent in seeking to enforce his right to seek an ejectment after Appellant's lease term expired is not relevant to this Appeal. The Magistrate's Order granting Writ of Ejectment was decided under a Rule 56 Motion for Summary Judgment, which is appropriate only when there are no material facts in dispute. Hence, the issue of whether Respondent did or did not act in good faith is not an issue before this Court on appeal.

Moreover, as a matter of law, the duty of good faith set forth in S.C. Code Ann. § 27-47-220 is directed at the manufactured home park landlord's obligations set forth in Article III of the MHPTA, S.C. Code Ann. §§ 27-47-410 to 27-47-470. These landlord obligations expressly apply to the following duties of park landlord: providing means of serving notice upon the landlord (§ 420); providing proper notice of lease rate increases (§ 420); maintaining aesthetic standards (§ 430); reasonably approving new lessees (§ 440); providing equal access to common area facilities (§ 450); maintaining safety over areas of landlord's control (§ 460) and maintaining cleanliness (§ 470). *Id.* Nothing therein supports the contention that an extra duty of good faith exists before a landlord can terminate a lease which, by its own terms has expired, as is the case at bar. The fact that a landlord has given the required 30 day advance written notice to enforce his existing rights under the parties' lease agreement constitutes the good faith contemplated by the Legislature which is applicable to all landlords in South Carolina.

Accordingly, it is respectfully submitted that the issue of the Respondent's alleged bad faith is nether properly before this Court on appeal nor relevant to the ejectment of a tenant whose lease term has expired, and Appellant's arguments thereabout must be denied.

Conclusion

For the foregoing reasons, it is respectfully submitted that the decision of the Circuit Court should be affirmed.

Dated: Mount Pleasant, S.C.
October 10, 2022

Respectfully submitted,

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PROOF OF SERVICE

I, William B. Jung, Esq., certify under penalty of perjury that on October 10, 2022, I served a copy of the Respondent's Initial Brief upon the Appellant by mailing and emailing a true and complete copy thereto to Appellant Russell T. Crawford:

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October 10, 2022



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