

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

C & M Properties, LLC,

Plaintiff,

vs.

Jonathan Mathis and Felicia L. Holloway,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-40-05505

ORDER

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SC Court of Appeals

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Pursuant to Rule 55 of the South Carolina Rules of Civil procedure and upon Motion for Judgment by Default entered in the above-captioned matter on December 27, 2021, a hearing was held on September 29, 2022, before the Honorable Eugene C. Griffith, Jr. Yani G. Mouratev, Esq. appeared on behalf of Plaintiff and Defendants did not appear.

Based upon the Complaint, other pleadings filed with the Court, and the testimony presented at the hearing of this matter, the undersigned makes the following findings of fact and conclusions of law:

FINDINGS OF FACT¹

On September 20, 2019, Plaintiff, as landlord, and Defendants, as tenants, entered into a lease agreement for the Premises located at 117 Dove Ridge Road, Columbia, South Carolina 29223, commencing on September 1, 2019 for a term of twenty-four (24) months (the "Lease"), and for a monthly rental of \$2,000.00 due on the first day of each and every month.

Contemporaneous with the execution of the Lease, the parties executed a Lease/Option Agreement (the "Option Agreement"), which granted the Defendants an option to purchase the

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

Premises for \$269,900.00, plus interest, upon payment of additional consideration and according to the terms thereof.

Upon its execution, the Option Agreement required separate payment of \$3,100.00 plus an additional \$3,000.00 approximately one month after execution and further, payments of \$1,000 per month for twenty-three (23) consecutive months due on the first of each month. To effectively exercise the Option, Defendants are required to send written notice to Plaintiff at least thirty (30) days prior to the expiration of the Option Agreement, as delineated in paragraph 2 of the Option Agreement.

Defendants have failed to make any of the payments under the Option Agreement as conditions precedents to exercising the Option, and have otherwise failed to exercise the Option by sending written notice to Plaintiff. Moreover, the Option Agreement expired by its terms on August 30, 2021.

On or about December 29, 2020, Plaintiff issued a Notice of Eviction to Defendants indicating that Defendants had failed to pay rent and other fees/dues and to vacate the Premises within five (5) days of the delivery of the notice. After failing to vacate the Premises, Plaintiff commenced eviction proceedings in Magistrate Court in March of 2021 but the Magistrate ruled she lacked jurisdiction over the matter arising from concerns the Defendants may hold an equitable interest in the Premises.

On November 5, 2021, Plaintiff filed a Summons and Complaint with this court, alleging Breach of Contract, Declaratory Judgment, and Rule to Vacate causes of action. Under the Summons and Complaint, Plaintiff is requesting (i) judgment for \$50,350.00, plus attorney's fees and costs as a consequence of Defendants' failure to pay rent under the lease agreement entered into between Plaintiff and Defendants, with respect to the premises located at 117 Dove Ridge

Road, Columbia, South Carolina 29223 (the "Premises"); (ii) declaratory judgment that the Option Agreement, as identified in the Complaint, entered into between Plaintiff and Defendant, is of no legal force and effect as it has expired by its own terms without being exercised by the Defendants and, therefore, does not give rise to any equitable interest of Defendants in the premises; and, (iii) issuance of a Writ of Ejectment restoring possession of the Premises to Plaintiff.

Since commencement of the Lease and as of the date hereof, Defendants have failed to remit nineteen (19) monthly payments of rent and late fees, totaling \$50,350.00. Counsel submitted an Affidavit of Attorneys' Fees and Costs in the amount of \$5,843.30, which was confirmed by Affidavit of Plaintiff.

The services performed in this case by counsel were reasonable, efficient and necessary for the proper representation of the Plaintiff, and the fees and expenses charged in this case reflect those customarily charged in this locality for similar actions.

The Defendants have failed to file an Answer, Notice of Appearance, or other responsive pleading within thirty (30) days, exclusive of the date of service since the service of the Summons and Complaint, as required by the South Carolina Rules of Civil Procedure.

On December 8, 2021, the undersigned, as counsel for Plaintiff, filed the Affidavit of Default and Non-Military Service, attesting thereby to Defendants' failure to file an Answer, Notice of Appearance, or other responsive pleading within thirty (30) days, exclusive of the date of service since the service of the Summons and Complaint elapsed. The Affidavit of Default and Non-Military Service is evidenced by the copy on file with the Court.

On December 13, 2021, Chief Deputy Clerk of Court, Virginia F. Belcher, on behalf of Jeanette W. McBride, issued an Entry of Default, as evidenced by the copy on file with the Court.

Accordingly, Defendants are in default and the well-pled facts and allegations in the Complaint entered as evidence in the hearing are deemed admitted.

CONCLUSIONS OF LAW

1. Defendants were properly served with the pleadings, Defendants were given proper notice of the hearing in this matter, and no appearances, filings, motions, or objections have been made by Defendants.

2. This Court has jurisdiction over the parties and the subject matter hereof.

3. Plaintiff is entitled to the relief it is seeking.

4. Plaintiff is entitled to an order against Defendants in an amount equal to the past-due rent, late fees and attorney's fees and costs.

5. Plaintiff is entitled to an order declaring the Option Agreement is of no legal force and effect; that the Option Agreement has expired by its own terms without being exercised by the Defendant, does not give rise to any equitable interest of the Defendants in the Premises, or anyone claiming through or under Defendants, and consequently there is no interest to be foreclosed on; and, there is no interest, equitable or otherwise, in the Premises belonging to Defendants.

6. Defendants are in breach of the Lease Agreement and Plaintiff is entitled to the issuance of a Writ of Ejectment, requiring Defendants and anyone else occupying the Premises through or under Defendants to vacate the Premises.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

7. Plaintiff is awarded judgment against Defendants in the amount of \$50,350.00 for past-due rent and late fees, \$343.80 in costs, and \$5,499.5 in attorney's fees, for a total sum of \$56,193.30.

8. It is declared (i) the Option Agreement has expired by its own terms without being exercised by Defendants; (ii) the Option Agreement has ceased to exist and is of no legal force and effect; and, (iii) the Option Agreement does not give rise to any equitable interest in the Premises to Defendants or anyone claiming through or under Defendants; accordingly, no legal interest exists to be foreclosed on.

9. It is declared that Defendants and anyone claiming through or under Defendants, have no right, title, claim or interest, equitable or otherwise, in the Premises.

10. Defendants and anyone claiming through or under the Defendants, are hereby ordered to voluntarily vacate the Premises in accordance with the Writ of Ejectment contemporaneously issued herewith.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE TO BE ATTACHED ON FOLLOWING PAGE]



Richland Common Pleas

Case Caption: C & M Properties Llc vs Jonathan L Mathis , defendant, et al
Case Number: 2021CP4005505
Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

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