THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Appellate Case No. 2021-001058

Jerry Powers, Appellant,

v.

Rizan Properties, LLC, Anthony Pearson and Tesha Dash,
Defendants, of which Rizan Properties, LLC is the Respondent

PETITION FOR RECONSIDERATION ON BEHALF OF RIZAN PROPERTIES, LLC

December 22, 2022

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC

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III. **As a matter of law Powers' breach of the lease is the law of the case.**

ARGUMENTS

I. As a matter of law Powers breached the lease and the option by not paying rent, vacating the premises and causing/allowing damages to the house.

This court agreed with the Master in Equity that the option and lease at issue must be read together because the two documents were executed contemporaneously by the same parties and concern the same subject matter. Notwithstanding, this court held that the option remained enforceable regardless Mr. Powers' decision to vacate the property as well as his various breaches of the lease. The rationale for such decision based upon the order filed December 7, 2022 was *McPherson v. JE Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E. 2d 501, 509 (1945) (stating the meaning of a clear and unequivocable contract as determined from the contents of the writing itself and no meaning can be given to the contract other than what has stated within the four corners of the instrument). The court went on to state that neither document indicated Powers exercise of his option to purchase the property was contingent on his compliance with the lease. Respectfully, that determination was wrong based upon the facts of this case.

S.C. Code Ann. §27-40-510 provides for a tenant's obligations under the Landlord Tenant Act. Among those obligations are those found at subsection (6) which states, in pertinent part, that a tenant shall "not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who was allowed access to the premises by the tenant. Subsection (8) provides that a tenant shall "comply with the lease and rules and regulations which are enforceable pursuant to §27-40-520." In this case, it is clear from the record that Mr. Powers, the tenant, negligently damaged the premises as well as knowingly permitted a person to do so who was on the premises with the tenant's permission and who was allowed access to the premises by the tenant. In this case, the very statute cited for the proposition that the damages were, as a matter of law, the landlord's responsibility, in fact establish

that as a matter of law they were the tenant's responsibility.

With regard to negligence, this very court has stated that the RLTA is a source of a duty that a jury may use to determine whether a tenant was comparatively negligent in an action instituted by the tenant against the landlord. See *Nedrow v. Pruitt*, 336 S.C. 668, 521 S.E. 755 (S.C. App. 1999). Based on the foregoing, and as found by the Master, §27-40-510 sets forth that tenant repairs, as were done in this situation, are not to be done in a negligent manner. The repairs done by Powers were done in a negligent manner. (3/3/22 R. p. Line 6)

While this court seems in its order to imply ulterior motives by the landlord in its agreement with the tenant as to the responsibilities of each, there is absolutely no evidence in the record supporting such implication. This court stated "based on this strong anti-waiver policy adopted by the Legislature we hold Article VII was unenforceable against Powers and the Master erred as a matter of law in relying on this provision in finding Powers liable for damages to the home." While this court may be free when reviewing a Master's decision in an action at law to decide questions of law with no particular deference to the Master, the court must still apply a deferential standard when reviewing the Master's factual findings. In this case, this court has disregarded the inherent position the trial court occupies as being in the best position to judge the credibility of witnesses. *Lewis v. Lewis,* 392 S.C. 381, 709 S.E. 2d 560 (S.C. 2011) In his order filed February 11, 2021 the Master specifically found "in light of the **uncontroverted facts presented to the court**, plaintiff breached the agreement as well as waived and abandoned any and all rights he made have had under the option." (6/14/2021 R. p. Lines 6-7) (emphasis added)

While this court correctly stated that Rizan noted in its brief the Act allows "[a] landlord, from time to time, to adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises"; it also stated such rules and regulations are not enforceable if they are not

"sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must do or must not do to comply" or they are "for the purpose of evading the obligations of the landlord". However, this court makes the leap, without any factual support, that the lease was not entered into in good faith and was for purposes of evading the obligations of the landlord.

There is no factual support for such judicial implication. Mr. Powers testified he initially leased from Rizan in 2011 (3/3/222 R. p. 144, Line 12) and in 2013 the initial leasing arrangement changed. (3/3/22 R. p.144, Line 20) Rizan and Jerry Powers and Jackie Pearson (Mr. Powers' girlfriend and co-lessee) went to an attorney's office and signed documents and after eight years at $550.00, a month they would own the house. (3/3/22 R. p. 146, Lines 5-7)

As found by the Master, Article VII of the Lease Agreement signed by Mr. Powers and Ms. Pearson states that "maintenance of the structure of the home" is the responsibility of the lessees. (6/14/21 R. p. 6, Line 2)

After Rizan confirmed with the lessees that the roof damage was their responsibility, neither Mr. Powers nor Ms. Pearson ever complained or objected to this interpretation of Article VII. Rather Mr. Powers undertook to make the repairs that proved to be improper and ineffective. (6/14/21 R. p. 6, Lines 3-5)

This court simply disregarded the factual situation that Mr. Powers and Ms. Pearson were leasing to own and that factual situation completely changes the analysis made by this court. The obligations to repair the dwelling, including the roof, were Mr. Powers, the tenant. "We was buying it. So I had to fix it. I got you. That's where I was, you know, doing what I was doing." (3/3/22 R. p. 152, Lines 5-7)

Mr. Powers' responsibilities under the lease were completely consistent with his situation at

the time. He testified at length as to the repairs he made along with "a fellow up the street" including replacing damaged wood, new joists, new roof deck and tin on top. (3/3/22 R. p. 185, Lines 10-19)

II. As a matter of law the tenant's negligence allowed damages to the dwelling which is a breach of the lease and supports the damages awarded to Rizan.

S.C. Code Ann. §27-40-520 specifically allows a landlord to adopt rules and regulations, however described, concerning the tenants use an occupancy of the premises. The rules and regulations however described with regard to this dwelling were that among other responsibilities, Mr. Powers would be responsible for maintenance and repairs of certain things and further provided at Article XXII that he would indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises. It is perfectly allowable pursuant to S.C. Code §27-40-520 for a landlord to adopt and enforce rules and regulations regarding the tenant's use and occupancy as long as they are applied in a fair manner, are not for purposes of evading the obligations of the landlord, etc. Further, pursuant to S.C. Code Ann. §27-40-510, it was Mr. Powers' obligation to not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission. In this case, Mr. Powers testified that he and "some white guy who lived up the street" who "knew a little stuff" conducted repairs on the house. (3/3/22 R. p. 241, Lines 14-17) Those repairs were performed negligently and caused damages to the house. (3/3/22 R. p. Line 6)

III. As a matter of law Powers' breach of the lease is the law of the case.

In its Order dated January 27, 2021 the trial court found that Mr. Powers breached his lease. In his motion to alter or amend pursuant to Rule 59(e) filed with the trial court on February 4, 2021, Powers asked the trial court to reconsider its holding that "plaintiff had no further rights regarding the property located at 39 Second Avenue, Greenville, South Carolina". Powers went on to request the trial court reconsider its order and alter its conclusion that "without one, the other cannot stand." What neither the motion to reconsider nor the appeal did was take issue with the affirmative finding of breaches of the lease. Because Powers did not appeal this ruling, it is the law of the case. See *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (recognizing an unappealed finding of the master, right or wrong, is the law of the case and should not be considered by this court).*Arcadian Shores Homeowners Ass'n v. Cromer*, 644 S.E.2d 778, 373 S.C. 292 (S.C. App. 2007) "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957)." As such, this court was without authority to rule explicitly or by implication that Powers' did not breach the lease or that such breaches did not cause all damages to Rizan proved at trial.

CONCLUSION

Based on all of the foregoing, Respondent respectfully submits this court erred in its analysis of the issues before it and failed to address other issues before it and should, in light of the realities that existed between the parties as found by the trial court, uphold and affirm the decision of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 22, 2022, I served the Respondent's Petition for Reconsideration on Behalf of Rizan Properties, LLC by emailing the documents to markfessler@sclegal.org, which is the email address that is the lawyer's primary email address listed in the Attorney Information System (AIS).

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December 22, 2022

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The South Carolina Court of Appeals
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Re: *Jerry Powers v. Rizan Properties, LLC*
Appellate Case No.: 2021-001058

Dear Ms. Kitchings:

Enclosed for filing please find the original petition for rehearing in the above matter along with our proof of service. Please note that due to the interrelationship of the two cases and consequently the interrelationship of the respective records on appeal, the enclosed petition includes references to the record on appeal in this case, as well as the companion case found at appellate case number 2021-000218.

I am also enclosing our firm's check in the amount of $50.00 for the filing fee along with a hard copy of this letter via U.S. Mail.

I would be most appreciative if you could clock our filings and email a clocked copy for my files. By copy of this letter, and as evidenced by the attached Certificate of Service, we have served a copy of our Petition on Mark P. Fessler, as attorney for Appellant.

With best regards, I remain

Sincerely,

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC

Knox L. Haynsworth, III

KLH/ll

Enclosure

cc: Mark P. Fessler, Esquire via email