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. 2021-000218

Jerry Powers, Appellant,

v.

Rizan Properties, LLC, Anthony Pearson and Iesha 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 Mr. Powers, the tenant, owes unpaid rent and late fees to Rizan.

As noted by the master in his order "the nonpayment of rent was uncontested by plaintiff, (3/3/22 R. p. 4) the Master found that Rizan was entitled to $4,151.00 based upon delinquent rental amounts and late fees. The master also allowed an additional $2,200.00 for four months rent after Mr. Powers vacated the house for a total of $6,351.00. This court did not address this undisputed evidence that the lease was breached resulting in damages for late fees and unpaid rent. Nor could it. [1]

II. As a matter of law Powers' breaches of the lease are breaches of the option.

When analyzing an option, courts strictly construe, in favor of the optionor, the terms, conditions, and time limits of an option. Richard A. Lord, Williston on Contracts § 5:18 (4th ed.1990). See, e.g. *Cotter v. James L. Tapp Co.,* 267 S.C. 647, 230 S.E.2d 715 (1976); *Edwards v. Rouse,* 290 S.C. 449, 351 S.E.2d 174 (Ct.App.1986).

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Hughes v. Edwards,* 265 S.C. 529, 220 S.E.2d 231 (1975).

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together. *Klutts Resort Realty, Inc. v. Down'round Development Corp.,* 268 S.C. 80, 232 S.E.2d 20 (1977).

As noted above, it is abundantly clear that the meeting of the minds between the parties was that Mr. Powers and Ms. Pearson in exchange for the timely payment of $550.00 per month and

[1] See Item III of Statement of the Issues on Rehearing.

compliance with the other lease terms would result, absent a default, in the two of them ultimately owning the house. Likewise, both Mr. Powers and Ms. Pearson, intending to ultimately own, gladly accepted the responsibilities placed upon them by the lease as well as statutorily. While occupying this house Mr. Powers allowed tens of thousands of dollars of damage to be done to it.

To follow this court's logic it would appear, then, that Mr. Powers would be able to utterly trash a house he was leasing, invite unqualified individuals to the house to attempt to work on it, resulting in even more damage, and then be able to completely avoid any responsibility for his conduct by claiming he could not read and somehow suggesting he was forced to sign a lease that he did not understand and was unfair to him.

Principals of equity seem to have been disregarded when, in fact, the request for specific performance by Powers compels an equitable analysis.

The court should grant specific performance only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *King v. Oxford,* 282 S.C. 307, 318 S.E. 125(S.C. App. 1984) He who seeks equity must do equity. To be susceptible of specific performance, a contract must not be infected by fraud, accident or mistake. *Masonic Temple v. Ebert*, 199 S.C. 5, 18 S.E. 2d 584 (1942). Based on Mr. Powers' own testimony and perhaps more importantly, his actions over the entire lease term, there must be a mistake in the contract if he now contends and seems to have convinced this court that he does not have the obligations and benefits he agreed to with Rizan.

As found by the trial court, the 2013 lease and the 2013 option were drafted by an attorney, discussed by the parties, were simultaneously executed, arose out of the same transaction, and related to the same purpose, that being the real property located at 39 Second Avenue. (6/14/21 R. p. Line 6)

Powers' counsel specifically argued that the 2013 transaction was not a mere lease but was a purchase of the property and that was a fundamental goal and bargain that the parties struck with one another. (6/14/21 R. p. 86)

Significantly, the trial court had before it testimony of the actual attorney who sat down and met with Rizan, Jerry Powers and Jackie Pearson to review both the option and the lease. As noted by Mr. Heckman's affidavit, (6/14/21 R. p. 291-292) attached to it collectively were the lease and option at issue. As noted by Mr. Heckman, in connection with the execution of the documents he would explain to the parties that the documents being executed related to the same property and were to be construed together. He went on to note that during discussions with the participants, he would have explained that the intent of the documents and the purpose of preparing them and executing them together was that as long as the lease payments were made in full, the option to purchase the dwelling remained valid and could be exercised. However, Mr. Heckman also confirmed that he would have explained that in the event there was a default in payments under the lease, the seller's remedy would be eviction and the option to purchase would lapse. Mr. Heckman confirmed that no one at the table questioned his explanation of the intent behind the documents nor expressed any confusion in their understanding that the documents were to be construed together and a default in the lease would result in a default of the option. (6/14/21 R. p. 291-292)

Again, attorney Heckman's recitation of discussions about the lease and the option at closing are entirely consistent with the actions undertaken by Ms. Pearson and Mr. Powers.

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)

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)

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
P.O. Box 11629
Columbia, South Carolina 29211

Re: *Jerry Powers v. Rizan Properties, LLC (2)*
Appellate Case No.: 2021-000218

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 2021-001058.

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