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Dec 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No.: 2022-000622
Circuit Case No.: 2022-CP-10-03684

RUSSELL CRAWFORD,

Respondent,

v.

RAYMOND BABICH,

Appellant.

**NOTICE OF MOTION TO COMPEL APPELLANT TO FILE A
SUPPLEMENTAL/AMENDED RECORD ON APPEAL**

PLEASE TAKE NOTICE that the Respondent, Raymond Babich, by his undersigned attorney of record, hereby moves this Court, pursuant to Appellate Court Rules 224, 209, 210 and 212, for an Order directing that the Appellate, Russell Crawford, file an accurate and complete actual copy of the July 12, 2022 Order of Magistrate Amy J. Mikell, which is the Order at issue on this appeal. The grounds for this Motion are that the document in the Record on Appeal for this Order is not a complete copy of the actual Order by Magistrate Judge Mikell but appears to be the product of cutting and pasting. The actual footnotes of the July 12, 2022 Order of Magistrate Mikell are not contained in

the document that Appellants has included in the Record on Appeal. The Respondent requests an Order directing the Appellant to resubmit an amended Record on Appeal that includes all original documents, including, but not limited to, the July 19, 2022 Order of Magistrate Mikell, attached hereto for reference as Exhibit "1."

Dated: December 23, 2022

Respectfully submitted,

A handwritten signature in black ink that reads "William B. Jung". The signature is written in a cursive style and is positioned above a horizontal line.

William B. Jung, Esq. (68788)
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Attorney for the Respondent

EXHIBIT TO "1" TO MOTION TO COMPEL APPELLANT TO SERVE
SUPPLMENTAL RECORD ON APPEAL

fact that the MHPTA does not enumerate end of lease term as a grounds for eviction in section 27-47-530. Defendant argues that the legislature's failure to include end of lease term as a specific ground for eviction indicates that the legislature did not intend a landlord to be able to terminate a tenancy based on end of lease term. However, section 27-47-530(A)(8) allows for an eviction based on any "other reason sufficient under common law." Moreover, section 27-47-110 states: "The provisions of the Residential Landlord Tenant Act in Chapter 40 of Title 27 shall apply to tenancies in manufactured home parks if such application is not inconsistent with or contrary to the provisions of this chapter." Section 27-40-770(b) of the Residential Landlord Tenant Act ("RLTA") provides that a "landlord or [a] tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice." As section 27-47-110 applies the RLTA to tenancies in manufactured home parks to the extent that the RLTA is not inconsistent with or contrary to the MHPTA, the court finds as a matter of law that section 27-40-770(b) applies to this tenancy⁴ and that even when viewing these facts in the light most favorable to Defendant, there is no genuine issue of material fact that Plaintiff issued to Defendant, through the March 17, 2020 email, a written 30-day notice terminating the tenancy.

A second basis of Defendant's opposition to this motion rests on section 27-47-220 of the MHPTA, which states: "Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performances or enforcement." Defendant argues that certain emails from Plaintiff to Defendant during the course of the tenancy (which relate to numerous issues, including but not limited to potential rent increases) evidence bad faith on the part of Plaintiff in his motives for seeking an eviction based on end of tenancy.⁵ However, the MHPTA does not specify what remedy, if any, applies in instances where landlord acts in bad faith in seeking an eviction.⁶ This court finds, as a matter of law, that an 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.

For these reasons and as further set forth in the hearing on this motion, it is, therefore, ordered and adjudged that Plaintiff's Motion for Summary Judgment is **granted**. Plaintiff may seek the Writ of Ejectment on or after July 24, 2021⁷.

Dated: July 19, 2021


MAGISTRATE

⁴ In opposition to Plaintiff's Motion for Summary Judgment, Defendant renewed his arguments presented at the July 6, 2021 hearing in their entirety, which the court accepted.

⁵ See Defendant's Response to Plaintiff's Motion for Summary Judgment, ¶9.

⁶ Whether or not Plaintiff acted in bad 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 any alleged breach of section 27-47-220. This court makes no findings of fact as to whether Plaintiff acted in bad faith.

⁷ The court issued its ruling on Plaintiff's Motion for Summary Judgment at the conclusion of the hearing on July 14, 2021 and now issues this written order memorializing such ruling.

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PROOF OF SERVICE

I, William B. Jung, Esq., certify under penalty of perjury that on December 23, 2022, I served a copy of the Respondent's Motion to Compel Appellant to File a Supplemental Record on Appeal by emailing and mailing a true and complete copy thereof the Appellant:

Raymond T. Crawford
4683 W. Montague Ave., Lot 3
North Charleston, S.C. 29418
russellcrawfordsc@gmx.com.

Dated: December 23, 2022



William B. Jung, Esq. (#0068788)
Attorney for the Respondent

ADMITTED
SOUTH CAROLINA
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The Hon. Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, S.C. 29211

Re: Russell Crawford v. Raymond Babich
Appellate Case No.: 2022-000622

Dear Madame Clerk:

I represent Respondent Raymond Babich on the above appeal.

I am writing to file Respondent's Motion to Compel Appellant's Filing of a Supplemental Record on Appeal which contains accurate copies of the Order which is the subject of this Appeal. A Proof of Service is attached, and I have included my check for the \$50.00 Motion filing fee.

Kindly please file the same. Thank you for your courtesy.

Sincerely yours,



William B. Jung

WBJ:wbj
Encl.
cc. Russell Crawford