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SC Court of Appeals

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2022-CP-23-00394
Appellate Case No. 2023-000082

Audra Starnes,

Respondent,

v.

Craig Stoneburner and
Citivest Corporation

Appellants.

**INITIAL REPLY BRIEF
OF APPELLANTS**

May 30, 2023

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REPLY ARGUMENT

I. INTRODUCTION

As noted in the statement of the case and factual background in Appellants' Initial Brief, this case is a landlord-tenant dispute. On September 7, 2021, Audra Starnes ("Respondent") sued Craig Stoneburner and his corporation, Citivest Corporation ("Appellants" or "Stoneburner"), alleging termination of the parties' lease (the "Lease") for failure to deliver possession of the rental property (the "Property") under of S.C. Code Ann. § 27-40-620, and alleging failure to return the security deposit and prepaid rent under § 27-40-410. Appellants filed a pro se answer and counterclaims. Respondent Audra Starnes filed a motion for summary judgment on her claims and Appellants' counterclaims on August 5, 2022. Before the hearing on summary judgment scheduled for August 26, 2022, Appellants retained legal counsel, who moved for a continuance, which the Trial Court granted. Appellants moved for another continuance of the hearing rescheduled for October 20, 2022. The court denied this request but allowed Appellants' counsel ten (10) days to submit material in opposition to the motion for summary judgment. Appellants then filed a detailed, four-page affidavit by Stoneburner in opposition to summary judgment. Despite the affidavit, the Trial Court granted summary judgment by Form 4 order, stating as follows:

This matter came before the Court on October 20, 2022 by way of Plaintiff's Motion for Summary Judgment. Defense counsel requested an extension to respond to Plaintiff's Motion, so the Court allowed a 10-day timeframe for the Defendants' Motion in Opposition and then a 5-day timeframe for the Plaintiff to address any new issues raised in Defendants' response to Plaintiff's Motion for Summary Judgment. After careful consideration of all relevant filings and the arguments of counsel, Plaintiff's Motion for Summary Judgment is hereby granted.

Appellants' counsel timely filed a motion pursuant to Rules 52(b) and 59(e) SCRPC to alter or amend the order or reconsider the basis upon which the judgment was granted.

Appellants specifically requested the court to “state the factual basis upon which the Court determined that there was an absence of a genuine issue of material fact when considering the matters before the Court in the light most favorable to the nonmoving party, the Defendants herein.” Appellants also incorporated by reference the allegations in Stoneburner’s affidavit, arguing “that the matters set out in the paragraphs above are genuine material facts which the Defendants are entitled to prove in their case.” Finally, Appellants noted that if the Trial Court’s decision rested upon the Greenville County Inspector’s written notice, the decision was premature without further discovery of the inspector and others familiar with the Property as set out in Respondent’s affidavit. The court denied this motion in another Form 4 order, holding:

After careful consideration of the filings submitted by Defendants and the Plaintiff, the Court respectfully denies Defendants’ Motion for the reasons set forth in the Court’s previous Order Granting Plaintiff’s Motion for Summary Judgment and the reasons set forth in Plaintiff’s Reply, filed on December 13, 2022.

Respondent now argues that Appellants’ issues are not preserved for review.

II. THE COURT OF APPEALS MAY REVIEW THE ISSUES AND ARGUMENTS RAISED BY APPELLANTS FOR REVERSAL OF SUMMARY JUDGMENT.

A. *The issues were raised and ruled upon by the Trial Court.*

Appellants raised four issues on appeal, which were presented in five arguments in Appellants’ Initial Brief. Each of these issues and arguments (except attorney’s fees, discussed *infra*) were before the Trial Court and ruled upon when the Court granted summary judgment or the denied Appellants’ motion to alter or amend.

The first issue, discussed in Arguments A and B of the Appellants’ Initial Brief, is that there were genuine issues of material fact and that further inquiry into the facts was desirable to clarify the application of the law. This is always an issue on a summary judgment because it is the standard required by Rule 56 SCRPC. Here, Appellants’ Initial Brief lists some specific facts

which are in dispute in the record reviewed by the Trial Court. Respondent contends that they are not preserved for review; however, each of these disputed facts are apparent from the record presented to and reviewed and relied upon by the Trial Court in granting summary judgment.

The Respondent contends that the arguments by Appellants that the Respondent was equivocating about terminating the Lease were not preserved for review. However, Respondent admits that Stoneburner specifically noted in paragraph 16 of his affidavit in opposition to summary judgment that “[Respondent] sent me a text on March 27, 2021, stating she still had a Lease on the property, and I could not relet it. Based on this, I made attempts to contact Robert Cornwell in an effort to salvage the existing lease.” (Stoneburner’s Aff. (emphasis added)). Thus, it was fair game for Appellants to argue this as a genuine issue of fact. The Appellants further note that Respondent filed the texts with Stoneburner in the record in support of her summary judgment motion.

Likewise, the condition of the Property is preserved for review and creates a genuine issue of material fact. Respondent claims the Property was uninhabitable. Stoneburner directly denies this in his affidavit. “I am informed and believe, based upon the work done by Mr. Corp, and my subsequent review of Code Enforcement’s report which I received on May 21st long after the; work had been done, that the property was not at any time uninhabitable, affecting the health and safety of the Plaintiff.” Also, in the Rule 59 motion, Appellants specifically argue that if the Trial Court’s decision rested upon the Greenville County Inspector’s written notice, the decision was premature without further discovery of the inspector and others familiar with the Property as set out in Respondent’s affidavit. This issue was presented to the Trial Court.

Third, Appellant argues that compliance with S.C. Code Ann. § 27-40-410 is not preserved for review¹. This is one of the two claims that was before the court on Respondent's motion for summary judgment, so it was certainly before the court for review. Furthermore, Stoneburner specifically alleges in his affidavit in opposition to summary judgment that:

On April 15, 2021, the Plaintiff sent me a copy of her attorney's correspondence to me of April 9, 2021. I had not received this letter because it was sent to two different addresses, both of which were incorrect. Based on this picture (the letter), which clearly maintained that she wanted the return of her deposit and 1st month's rent, I sent the Plaintiff a Security Deposit Transmittal Letter on April 30, 2021, to her last known address which was returned to me.

This issue was before the court and the court ruled in Respondent's favor by granting summary judgment. *See also* detailed discussion in Argument III A, *infra*.

Fourth, Respondent argues that Appellants' arguments that they did not deliver the Property willfully or in bad faith are not preserved for review. This is not accurate as this was raised in Appellants' answer and in Stoneburner's affidavit. *See* detailed discussion in Argument III, B, *infra*. Furthermore, the Appellants believe this argument cuts both ways. If the court did not rule upon wilful and bad faith conduct for Appellant, the court did not find that for Respondent either and the Respondent did not file a Rule 59 motion requesting such a finding.

Finally, the Respondent argues that Appellants did not preserve the argument about the application of S.C. Code Ann. § 27-40-440(c)². This issue was specifically raised in Appellants' Answer, (Answer, 4), and in Stoneburner's affidavit in opposition to summary judgment. "The prospective Tenants seemed extremely enthusiastic about the rental and fully understood my explanation that I was leasing the property to them under the circumstances outlined in § 27-40-

¹ This is the statute concerning returning the security deposit upon termination of a lease.

² This section provides, "(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraph (5) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord."

440(c) of the S.C. Residential Landlord Tenant Act. The Craig's List add made this clear as well (listed as a "Handyman Special") as did the Lease itself. (Stoneburner's Aff., 5). This paragraph 5 was specifically incorporated by reference in Appellants' Rule 59 motion which was denied by the Trial Court. (See Appellants' Rule 59 Motion, ¶ 2). Thus, this issue was raised before the Trial Court and preserved for review.

As for the issue about attorney's fees, *see* Argument II, E, *infra*.

Having set forth that these issues were "raised" before the court, there is still the issue as to the issues being ruled upon by the court. This issue is addressed in the following arguments.

B. The Court of Appeals may review these issues under the standard of review for summary judgment.

When reviewing a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Under that standard:

Summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law.

Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

Additionally, "[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston County Parks & Recreation Comm.*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004) (internal citations omitted). If the parties "vehemently dispute the inferences and conclusions to be drawn from the undisputed facts," that

establishes that summary judgment is not appropriate. *Montgomery v. CSX Transp., Inc.*, 656 S.E.2d 20, 29 (2008).

Thus, this court is at liberty to review the issues and arguments raised by Appellant under its standard of review. Indeed, since summary judgment is a drastic remedy which should be cautiously invoked, the court has a duty to ensure that a litigant will not be improperly deprived of a trial on disputed factual issues.

C. Since the Trial Court executed a Form 4 order granting summary judgment, it relied upon the record and submissions for its ruling.

The Trial Court issued a Form 4 order when granting summary judgment and another Form 4 order when denying Appellant’s Rule 52(b) and Rule 59(e) Motion. Although, in the latter order, the Court did incorporate Respondent’s Reply to the motion by reference.

Previously, this court remanded cases like this one to the trial court. *B & B Liquors, Inc. v. O’Neil*, 361 S.C. 267, 271, 603 S.E.2d 629, 631–32 (Ct.App.2004) (vacating a form order granting summary judgment and remanding the case to the trial judge for entry of a written order identifying the facts and legal analysis upon which it relied in granting summary judgment); *Bowen v. Lee Process Systems Co.*, 342 S.C. 232, 536 S.E.2d 86 (Ct.App.2000). However, in *Woodson v. DLI Properties, LLC*, the South Carolina Supreme Court, in a certiorari review of the Court of Appeals decision, held:

We agree it is better practice—and in most cases common practice—as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment. However, Rule 52, SCRCP, provides that “[f]indings of facts and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56....” Thus, such findings and conclusions are not required for appellate review.

Woodson v. DLI Properties, LLC, 753 S.E.2d 428, 433 (S.C. 2014). If such findings and conclusions are not required for appellate review, then Appellant should not be penalized for non-specific rulings by the Trial Court in the name of issue preservation.

Indeed, the Supreme Court further noted, tracking the rule,

[A] decision on a motion for summary judgment is based on depositions, interrogatories, affidavits, and other evidentiary material provided by the parties. *See* Rule 56(c), SCRCF; *see also Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCF).

Woodson v. DLI Properties, LLC, 753 S.E.2d 428, 433 (S.C. 2014).

The court also cited to *Porter v. Labor Depot*, 372 S.C. 560, 568 (S.C. Ct. App. 2007) (“not all situations require a detailed order, and the trial court’s form order may be sufficient if the appellate court can ascertain the basis for the trial court’s ruling from the record on appeal.”).

This also tracks with the standard of review being the same standard as the trial court. If the court is going to review the record and submissions under the same standard, it is less important for the trial court to make findings and conclusions even though that is better practice.

Finally, this approach is consistent with case law. In *Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256 (S.C. Ct. App. 2020) Respondent Windham (like this case) argued Beneficial did not preserve any issue on appeal. The court noted, “Windham alleges because Beneficial ‘did not object to [his] affidavit and failed to file any memorandum of law in opposition’ to his motion, Beneficial failed to preserve any issue regarding the summary judgment award on appeal. We disagree.” 431 S.C. 256 at 266 (S.C. Ct. App. 2020). The court reasoned:

However, the circuit court considered the pleadings in its review of the evidence, including Beneficial’s pleadings, which attached the Agreement and Mortgage. Furthermore, the circuit court granted Windham summary judgment on the grounds Windham argued at the hearing. Therefore, the issue of whether summary judgment was proper based solely on the evidence put forth by Windham was raised to and ruled upon by the circuit court. Accordingly, we hold Beneficial’s issue alleging error in the award is preserved for review on appeal.

Beneficial Fin. I, Inc. v. Windham, 431 S.C. 256, 266-67 (S.C. Ct. App. 2020).

The Court also referenced the holding in *Spence v. Wingate*, 381 S.C. 487 (S.C. 2009), where the court noted when the court’s ruling is contrary to appellant’s argument and adopts

Respondent's argument, it is not necessary for appellant to file a Rule 59 motion or request a specific ruling. In that case the court found that there was no duty in attorney malpractice cases, which necessarily refuted appellant's argument that there was a duty from a prior attorney-client relationship.

In this case, by granting Respondent summary judgment on the claims for failure to deliver the Property in a habitable condition and failure to timely return prepaid rent and security deposit, the Trial Court necessarily refuted and therefore ruled upon Appellants' arguments on appeal that there is a least a scintilla of evidence to create genuine issues of material fact as to the timing of the termination of Lease, Appellants' compliance with the statute by mailing, the condition of the Property and Respondent's covenant to repair and maintain the Property, and Appellants' good faith.

This court should hold that Appellants' arguments are preserved for review on appeal.

D. Appellants asked the Trial Court for a more detailed ruling and the Trial Court denied Appellants' request.

Even assuming for the sake of argument, Appellants were required to file a Rule 59 motion to specifically raise these arguments, Appellants did so. As noted in the Introduction, Appellants specifically requested the Trial Court to issue a more detailed order addressing the alleged absence of factual issues. The Court declined to do so by Form 4 order. Once raised by Appellants, it need not be raised again, even if the Court does not specifically rule upon the request. *See Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) (*citing* James F. Flanagan, *South Carolina Civil Procedure* 475 (2d ed. 1996) for the proposition that “[o]nce the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on

the issue so raised.”). *See also Pressley v. Lancaster County*, 343 S.C. 696, 706 n.4 (S.C. Ct. App. 2001) (applying this principle to a summary denial by the trial court).

E. The Court should address the attorney’s fees issue in the interest of judicial economy.

Appellants concede that the issue of attorney’s fees was not directly addressed by the Trial Court, however, it is clear from the record that Respondent is seeking and believes she is entitled to attorney’s fees even though she was not and cannot be charged for any fees.

As argued in Appellants’ Initial Brief, South Carolina has consistently held that when a client does not actually have to pay for legal services, they are not entitled to recover them from the opposing party. In their Frequently Asked Questions from their web page³, South Carolina Legal Services notes,

Eligibility for our services is based upon income and assets. Although we may be able to consider certain extenuating circumstances, routine monthly expenses such as rent, utilities and groceries are not considered. *We are not permitted to charge a fee for our services.*

While the amount of attorney fees, if any, is properly a matter for the Trial Court (if awarded) this court should address Respondent’s entitlement to fees when they are not charged in the interests of judicial economy. *See Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (addressing an issue in the interest of judicial economy).

In concluding this section of the Reply brief, this court should heed the words of former Chief Justice Toal,

However, I do not believe it is our place to scour the records before us for the purpose of avoiding issues or, even worse, to play a “gotcha” game with attorneys by showcasing their alleged mistakes, at the expense of their clients. This practice

³ South Carolina Legal Services, *Frequently Asked Questions (FAQs)*, <https://sclegal.org/faqs/> (last visited March 24, 2023) (Emphasis added).

ignores the fact that behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests. In light of my view, I believe that where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.

Dissent in Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 333 (S.C. 2012).

III. THE TRIAL COURT IMPROPERLY GRANTED RESPONDENT’S MOTION FOR SUMMARY JUDGMENT WHERE GENUINE ISSUES OF MATERIAL FACT WERE SHOWN TO EXIST.

A. Appellants put forth evidence that raises a genuine issue of material fact as to when Respondent terminated the Lease.

The Trial Court’s grant of summary judgment finding Appellants liable under S.C. Code Ann. § 27-40-410 was improper because there are genuine issues of material fact as to whether the Lease terminated prior to April 20, 2021. In her Brief, Respondent argues that she sent “written notice” to terminate the rental agreement by text message to Stoneburner as early as March 20, 2021, (Initial Resp. Br. 19), as well as on March 22 and 24, (Initial Resp. Br. 22), but the record plainly shows that following those text messages Respondent at times communicated and acted as if the Lease was still in effect. (March 20, 27, 31 texts and Aff. of Stoneburner ¶ 16). Respondent’s first clear written notice of her intent to terminate the Lease that was not later contradicted by her own statements and actions was provided to Stoneburner on April 15, when Respondent texted Appellant a picture of the demand letter prepared by her attorney. (March 15 texts and Pl.’s Memo Supp. Mot. Sum. J. Ex. 3).

Assuming there is legal cause to break a lease under the S.C. Resident Landlord Tenant Act, a tenant must provide written notice of intent to cancel the lease to the landlord. See S.C. Code Ann. § 27-40-620(a)(1); S.C. Code Ann. § 27-40-610(a). A person has notice under the Act if “(1) the person has actual knowledge of it; (2) the person has received notification of it; or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.” S.C. Code Ann. § 27-40-240(A). Respondent incorrectly concludes that

Appellants had “actual knowledge” that Respondent was terminating the Lease from her March 20 text messages, and if not then, from her March 22 and 24 text messages. (Initial Resp. Br. 20, 22). Under different facts and circumstances, some of Respondent’s text messages on March 20, 22, or 24 might alone be enough to provide “actual knowledge” to a landlord of the tenant’s intent to terminate the Lease, but here any text messages appearing to express Respondent’s intent to terminate the Lease are contradicted by Respondent’s later statements and actions. (March 20, 27, and 31 texts).

For instance, Respondent argues that the text message she sent Stoneburner on March 20 at 3:31 PM, provided clear written notice of Respondent’s intent to terminate the Lease when Respondent stated, “The house isn’t livable and you aren’t willing to pay to have any repairs done. We need our money back for it.” (March 20 texts). If this text message is isolated from the rest of the factual record, Respondent’s argument that “[a] tenant telling her landlord that she wants her deposit and pre-paid rent back because the place she rented is not livable cannot be mistaken for anything but notice that she is backing out of the lease,” (Initial Resp. Br. 20), seems correct. However, the record reveals Respondent continued to text Stoneburner that afternoon, and eventually agreed to meet with a handyman that Stoneburner contacted to make repairs to the Property. (March 20 texts) (Stoneburner texted, “Just coordinate with Tyler [the handyman] please,” and Respondent replied, “Send him my number... Have him contact me.”). In Respondent’s last text message to Stoneburner on March 20, she agrees to text the handyman for a meeting the next morning. (March 20 texts) (Stoneburner texted “Well text [the handyman] for meeting tomorrow,” and Respondent replied, “Ok. Will do.”).

Based on the entirety of their conversations on March 20, Appellants could reasonably believe that Respondent had decided she no longer wanted to terminate the Lease at that time. A

tenant that has made the decision to terminate her lease has no reason to coordinate with a handyman to make repairs to the property instead of the landlord. It would be unreasonable that Respondent agreed to coordinate with the handyman if she no longer intended to lease the Property. In context, the 3:31 PM text cited by Respondent as written notice of Respondent's intention to terminate the Lease is contradicted by later texts Respondent sent on the same day, which show Respondent did not intend to cancel the Lease. At a minimum, the March 20 text messages are evidence in the record that raise a genuine issue of material fact as to whether Respondent provided written notice to terminate the Lease. "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston County Parks & Recreation Comm.*, 362 S.C. 1,5, 605 S.E.2d 744, 746 (Ct. App. 2004) (internal citations omitted). If the parties "vehemently dispute the inferences and conclusions to be drawn from the undisputed facts," that establishes that the summary judgment is not appropriate. *Montgomery v. CSX Transp., Inc.*, 656 S.E.2d 20, 29 (2008).

Stoneburner's Affidavit shows that he did not believe Respondent had decided to terminate the Lease from her notice on March 20. Stoneburner attested that "after March 20, 2021, I determined that I needed to get a backup tenant so I put the property back on Craig's List to try to find someone to rent the property *in case I needed to mitigate my damages.*" (Aff. Of Stoneburner ¶ 14) (emphasis added). That Appellants relisted the Property on Craig's List after March 20 is not evidence that Appellants believed Respondent had terminated the Lease, as it is ordinary practice for a landlord to advertise a rental property in anticipation of a lease ending.

Respondent also argues that even if Respondent did not provide written notice on March 20, the text messages she sent on March 22 and 24, which had similar language to Respondent's text message sent at 3:31 PM on March 20, provided clear written notice of her intent to terminate the Lease. (Initial Resp. Br. 22). However, once again, when considered in the context of the entire factual record, Respondent's other statements and actions contradicted any purported written notice that the Lease was to be terminated.

In the days following Appellant's March 22 and 24 texts, Respondent made no effort to return a key to the Property to Appellants, which is expected of a tenant turning possession of a property over to her landlord. Stoneburner's texts and Affidavit show that he asked Respondent to leave him a key or make arrangements with a handyman hired by Stoneburner to access the Property, but Respondent ignored Stoneburner's efforts to make arrangements with her for a key. (Aff. Of Stoneburner ¶ 15, 16).

On March 27, within five days of both March 22 and 24, Respondent texted Stoneburner that the Property could not be relet and that Respondent still had a Lease, clearly contradicting any prior attempt to provide clear written notice to terminate the Lease. (Aff. Of Stoneburner ¶ 16 and March 27 texts). On March 27, Respondent texted, "You do know we still have a lease with you and you are trying to find somebody to rent out the home." (March 27 texts). Respondent argues this "one statement" that Respondent made on March 27 does not support Appellant's interpretation that there is a genuine issue of material fact as to whether Respondent provided Appellant with clear notice of her intent to terminate the Lease. (Initial Resp. Br. 26-27). Respondent cites *Grimsley v. S.C. Law Enforcement Div.*, where the South Carolina Supreme Court ruled that a single sentence cannot be pulled out of the evidentiary record and interpreted without context to create a genuine issue of material fact. 415 S.C. 33, 42, 780 S.E.2d

897, 901 (2015). However, there are multiple other statements in the record, which Respondent made after her July 27 text which support the conclusion that Respondent believed she “still [had] a lease” with Appellants.

For instance, the next time Respondent texted Stoneburner, on March 31, she expressed frustration that she could no longer get inside the Property because Stoneburner had changed the locks. Respondent texted, “So you had somebody change the locks to the house and we paid for those locks but you couldn’t even tell one of us about it? And we have a lease in our name but can’t get inside the house.” (March 31 texts). Respondent also texted asking for a copy of the new key, writing, “I will need a copy of the key to the house that I paid to live in but can’t live in.” (March 31 texts). Also, she wrote, “I am on the lease, you have a ‘deal’ with me. I’m on the lease as a tenant. You have no choice but to deal with me.,” and, “It’s illegal for you to have the locks changed on the house that we paid for!” (March 31 texts). Not only does Respondent repeatedly text on March 31 that she has an active Lease with Appellants, but no reasonable fact finder could believe that a tenant would demand access to a rental property the tenant had never moved into if the tenant had decided to terminate the Lease.

Additionally, Respondent texted Stoneburner on March 22 and 31 that she was meeting with Greenville County Codes Enforcement. (March 22 and 31 texts). A tenant who supposedly sent written notice to terminate her lease would have no reason to continue to coordinate with Codes Enforcement to inspect the rental property she has no personal interest in. Further, Respondent told Stoneburner on March 31 that she had planned to meet a repairman at the Property the following day. (March 31 texts). Once again, if Respondent believed she had terminated the Lease, she would not have an interest in seeing that the Property was repaired.

When the whole record is considered, as Respondent correctly points out South Carolina requires, it is clear that Respondent's statements and actions repeatedly contradicted any statements which Respondent argues should be interpreted as written notice of her intent to terminate the Lease prior to texting Stoneburner the demand letter on April 15. At the very least, the actions and statements of Respondent prior to April 15, 2021, are ambiguous as to whether Respondent sent clear notice of intent to terminate the Lease at an earlier date, and the Trial Court made an error ruling for summary judgment.

Under § 27-40-620, which Respondent argues is controlling here, “[i]f the landlord fails to deliver possession of the dwelling unit to the tenant as provided in § 27-40-430 ... the tenant may: (1) terminate the rental agreement upon at least five days’ written notice to the landlord and upon termination the landlord shall return all prepaid rent and security.” S.C. Code Ann. § 27-40-620. Respondent's statements prior to April 15, 2021, were not legally sufficient to terminate the Lease under S.C. Code Ann. § 27-40-620. Respondent's first clear written notice of her intent to terminate the Lease was provided to Appellants on April 15 when Respondent texted Stoneburner a picture of the demand letter prepared by her attorney. (April 15 texts). The demand letter clearly stated Respondent's intention to break the Lease according to her interpretation of various provisions of the S.C. Resident Landlord Tenant Act. Then, under § 27-40-440, the Lease terminated no earlier than five days after Stoneburner's receipt of the letter, on April 20, 2021.

In South Carolina, “the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues.” *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 133-34, 659

S.E.2d 496, 498 (2008) (internal citations omitted). The trial court erred in granting summary judgment when reasonable inferences and conclusions about the evidence establishes a termination date much later than Respondent concludes under S.C. Code Ann. § 27-40-620(a)(1).

B. Appellants put forth evidence that raises a genuine issue of material fact as to whether Appellants' conduct was "wilful and in bad faith."

The Trial Court also erred in granting summary judgment because evidence and all reasonable inferences raise a genuine issue of material fact as to whether Appellants' conduct was "wilful and in bad faith" under S.C. Code Ann. § 27-40-620(b). Section 620(b) states, "If a person's failure to deliver possession is wilful and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or twice the actual damages sustained, whichever is greater, and reasonable attorney's fees." Under section 620(b), Respondent argues Appellants are liable for treble damages and attorney's fees. (Pl.'s Mem. Supp. Mot. Sum. J. 29 and Pl.'s Mot. Establish J. Amount). However, Respondent did not prove as a matter of law that Appellants acted willfully or in bad faith in violation of 620(b).

According to Respondent, facts referenced in Appellants' Initial Brief, including "that Stoneburner advertised the Property as needing work, that he allowed Respondent to inspect and take pictures, that he offered to help find people to make repairs, and that he was unaware of some issues," do not "relate to the issue of willfulness." (Initial Resp. Br. 37). However, these facts support the conclusion that Appellants did not "attempt to intentionally avoid obligations under the agreement or the provisions of [the S.C. Residential Landlord Tenant Act]" S.C. Code Ann. § 27-40-210(16).

For instance, Stoneburner could not have acted to intentionally avoid his obligations under the Lease agreement or the Act if he were unaware of the repairs that Respondent alleges Appellants needed to complete to fulfill those obligations. Stoneburner had not visited the

Property recently when he leased the Property to Respondent. (Aff. of Stoneburner ¶ 4). Prior to his Lease to Respondent, Appellants rented the Property to another tenant for over a year without any major problems, and that prior tenant had told Stoneburner he was moving because of a job opportunity and not any issue with the habitability of the Property. (Aff. of Stoneburner ¶ 4, Def.'s Ans. 2). However, Stoneburner listed the Property for rent on Craig's List as a "Handyman Special," explained to Respondent that he was leasing the Property "under the circumstances outlined in Section 27-40-440(c) of the S.C. Residential Landlord Tenant Act," and Respondent and her husband they could handle agreed to repairs of the Property. (Aff. of Stoneburner ¶ 5). Stoneburner allowed Respondent to visit the Property before agreeing to the Lease to inspect the Property and take pictures of its condition, which she sent to Stoneburner. (Aff. of Stoneburner ¶ 4, March 3 texts). Based on Respondent's inspection and photographs of the Property, Stoneburner did not believe the Property required any repairs affecting the health and safety of the tenants under the S.C. Residential Landlord Tenant Act. (Aff. of Stoneburner ¶ 8). Stoneburner did not know that the property had water, plumbing, and electrical problems until Respondent let him know on March 15, 2021. (March 15 texts). Stoneburner offered on multiple occasions, including March 15 and 20, to hire a handyman to complete repairs discovered after the Lease was executed. (March 15 and 20 texts). Each of these facts supports the conclusion that Appellants did not attempt to intentionally avoid obligations under the Lease agreement or the S.C. Residential Landlord Tenant Act. Stoneburner could not have acted willfully to avoid obligations he was not aware he was allegedly breaking, such as endangering the health and safety of the tenants, when based on his knowledge of the Property, he believed the Property was in habitable condition.

Additionally, and as set forth in Appellant’s Initial Brief, S.C. Code Ann § 27-40-440(c) permits a landlord of a single-family dwelling to contract with the tenant to make repairs. (Initial App. Br. 13). Here, the Lease included a handwritten provision that stated, “For valid consideration Tenants agree to provide Appliances, heat and Air equipt if needed and agree to any repairs, maintenance etc at their cost (unless agreed to otherwise in writing) as needed on the property + to keep it up to Code.” Accordingly, Appellants could not willfully avoid obligations under the Lease or Act to the extent obligations were in fact the responsibility of Respondent.

Also, for the reasons outlined in Appellants’ Initial Brief, Appellant acted in “good faith” Section 620(b), which “means honesty in fact in the conduct of the transaction concerned.” S.C. Code Ann. § 27-40-210(16). (Initial App. Br. 10, 12). Accordingly, any failure by Appellants to turn over the premises to Respondent was not wilful or in bad faith, and Respondent is not entitled to three months’ rent or attorney’s fees under § 27-40-620. And for the foregoing reasons, the Trial Court also erred in granting summary judgment because evidence raises a genuine issue of material fact as to whether Appellants’ conduct was “wilful and in bad faith” under S.C. Code Ann. § 27-40-620(b).

IV. CONCLUSION

For the reasons set forth herein, and in the Appellants’ Initial Brief, this court should hold that Respondent is not entitled to attorney’s fees, reverse summary judgment and remand the case for a trial on the merits.

s/ Walter B. Todd, Jr.
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Dated: May 31, 2023

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May 31 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2022-CP-23-00394
Appellate Case No. 2023-000082

Audra Starnes,

Respondent,

v.

Craig Stoneburner and
Citivest Corporation

Appellants.

PROOF OF SERVICE

The undersigned counsel for the Appellants, Craig Stoneburner and Citivest Corporation, hereby certifies that on May 31, 2023, a copy of the Appellants Reply Brief was served on the Respondent, Audra Starnes, by emailing a copy of the same to the Respondent's counsel's AIS email address as shown on the attached email which is incorporated by reference.

May 31, 2023

s/ Walter B. Todd, Jr.
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Walter B Todd, Jr.

From: Walter B Todd, Jr.
Sent: Wednesday, May 31, 2023 1:42 PM
To: markfessler@sclegal.org
Subject: 2023-000082 Starnes v. Stoneburner
Attachments: Appellant's Initial Reply Brief.pdf; 2023-05-31 Proof of Service.pdf

Mark:

Attached and served upon you by email are Appellants' Initial Reply Brief and Proof of Service.

Thank you,

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