

RECEIVED

Aug 07 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2021-CP-10-004154

Nicole Qunita Murray, Appellant,

v.

Linda P. Smith, Respondent.

BRIEF OF APPELLANT

Jeffrey W. Kuykendall – Attorney at Law
S.C. Bar No. 102538
127 King St., Ste. 208
Charleston, SC 29401
Phone: (843) 790-5182
Facsimile: (866) 733-1909
Jeff@jwklegal.com
Attorney for Appellant

TABLE OF CONTENTS

| | |
|--|----|
| Table of Authorities | 2 |
| Statement of Issues on Appeal | 3 |
| Statement of the Case | 4 |
| Standard of Review..... | 4 |
| Statement of Facts..... | 5 |
| Arguments | |
| I. THE EJECTMENT ACTION SHOULD HAVE BEEN STAYED OR CONSOLIDATED FOR HEARING WITH THE BREACH OF CONTRACT ACTION..... | 7 |
| II. THE COURT ERRED IN CONCLUDING THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT REGARDING THE TERMINATION OF LEASE BY THE NOVEMBER 10, 2020 LETTER..... | 8 |
| Conclusion..... | 10 |

TABLE OF AUTHORITIES

RULES

Rule 42, South Carolina Rules of Civil Procedure.....7

STATUTES

S.C. Code Ann. § 27-40-310.....8, 9

CASES

Baughman v. American Telephone and Telegraph Company, 306 S.C. 1010, 410 S.E.2d 537 (1991).....5, 8

Bovain v. Canal Ins., 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009).....4

Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007).....5

Hadfield v. Gilchrist, 343 S.C. 88 538 S.E. 2d 268 (Ct. App. 2000).....5

Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (1990).....5, 8

Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913).....5

STATEMENT OF ISSUES ON APPEAL

1. Should Magistrate have granted Defendant/Appellant's Motion to Stay When Defendant Had Filed a Parallel Proceeding Against Plaintiff/Respondent in the Court of Common Pleas Regarding the Same or Similar Facts or Circumstances Underlying the Ejectment Action?

2. Did Magistrate Err in Concluding that the November 10, 2020 Letter from Landlord to Tenant Had the Legal Effect of Terminating Both the Purported January 30, 2020 Lease Renewal and Any Month-to-Month Tenancy that May Have Existed Between the Parties?

STATEMENT OF THE CASE

Appellant Nicole Murray (“Appellant”) transferred the real property located at 4537 Cheviot Dr., North Charleston, SC 29418 (“Property”) to her aunt, Respondent Linda P. Smith (“Respondent”) on or about January 21, 2005. Prior to the sale, Plaintiff and Defendant executed a Letter of Agreement, which memorialized certain terms associated with the transfer. Appellant continued to live in the property following the transfer and made payments to the Respondent, until Appellant learned that Respondent had refinanced the mortgage on the Property to reduce the monthly payments, but continued to collect the previous monthly mortgage payment amounts from Appellant. Respondent then attempted to terminate the lease between the parties and brought an action for ejectment based on non-payment of rent. Appellant requested a trial by jury and Respondent brought a motion for summary judgment; Appellant filed a parallel case for breach of the Letter of Agreement in the Court of Common Pleas. The Magistrate denied Appellant’s Motion to Stay the ejectment action pending the resolution of the Common Pleas action and granted summary judgment for Respondent, finding there was no genuine issue of material fact that Respondent had properly terminate the landlord-tenant relationship between the parties. Appellant appealed to the Court of Common Pleas, which affirmed the Magistrate without further analysis. Appellant asserts that the Magistrate and Circuit Court erred in denying the Motion to Stay and in granting summary judgment.

STANDARD OF REVIEW

The Court of Appeals reviews the granting of summary judgment under the same standard applied by the circuit court under Rule 56(c), SCRPC. *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Summary judgment is only proper when, after reviewing the motion, the supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and

the moving party is entitled to judgment as a matter of law. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. American Telephone and Telegraph Company*, 306 S.C. 1010, 410 S.E.2d 537 (1991). Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where 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 not be granted. *Hamilton v. Miller*, 301 S.C. 45, 389 S.E.2d 652 (1990).

In an appeal from an appeal of a Magistrate's decision, the Court of Appeals reviews *de novo* whether the facts show the circuit court's affirmance was controlled or affected by errors of law. *Hadfield v. Gilchrist*, 343 S.C. 88, 92-93, 538 S.E. 2d 268, 270 (Ct. App. 2000). Where testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, the Court of Appeals will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. *Stanford v. Cudd*, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913). *See also, Bowers v. Thomas*, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007).

The Court of Appeals reviews the denial of a Motion to Stay for abuse of the trial court's discretion. *See, e.g.,*

STATEMENT OF FACTS

Appellant transferred the real property located at 4357 Cheviot Dr., North Charleston, SC 29418 ("Property") to Respondent on or about January 21, 2005. Prior to that sale, Appellant and Respondent executed a Letter of Agreement, which provided in pertinent part: "In December 2004 we came to A mutual agreement that [Respondent] would do [Appellant] a favor by switching

[Appellant's] house over in [Respondent's] name until [Appellant] got ready to put it back into [Appellant's] name, and [Respondent] would sign it back over to me with no problems... We both agree to keep the new mortgage with the same mortgage company Concorde Acceptance where [Appellant] have it at now."

Following the transfer of ownership, Appellant continued to reside in the Property and has so resided at all times through this day. Appellant made payments to Respondent in the amounts that Appellant understood to be Respondent's mortgage payment obligations on the loan secured by a mortgage on the Property until some time in 2020.

In 2019, Respondent presented Appellant with a Rental Agreement, which Appellant understood to memorialize the terms of the lease agreement that the parties had been performing under for the previous fourteen (14) years. The following year, Respondent presented Appellant with a renewal of the lease, on the same terms. Subsequently, Appellant learned that in or about 2016, Respondent had refinanced the mortgage on the Premises and dramatically lowered Respondent's monthly mortgage payments. Respondent never informed Appellant of the reduction in the monthly mortgage payments and Respondent continued to collect the amount of the old monthly mortgage payment from Appellant until Appellant learned of the refinance.

On or about November 10, 2020, Respondent sent Appellant a certified letter which stated in the final sentence: "PS your lease agreement ends 31 January 2021 and it will not be renewed." On January 6, 2021, Respondent filed an application for ejectment against Appellant, alleging that Appellant had failed to pay rent when due or demanded. Appellant timely requested a jury trial and at a pre-trial hearing on the matter submitted a Declaration Under Penalty of Perjury for The Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of Covid-19. Respondent later amended the Application for Ejectment to include "end of

term of tenancy” as a further basis for Ejectment, then moved for summary judgment, which was granted.

ARGUMENT

I. The Ejectment Action Should Have Been Stayed and/or Consolidated for Hearing with the Breach of Contract Action

Both the Magistrate and the Court of Common Pleas should have stayed the ejectment action or consolidated the matter for hearing with the breach of contract action simultaneously pending between the two parties. The two actions contain common questions of fact and law, specifically the authentication and interpretation of the Letter of Agreement, the ownership of the Property, the equitable ownership of the Property, the lease terms between the parties, and the payment history regarding the Property. Appellant moved the Magistrate Court to stay the case pending the resolution of the breach of contract action and the Court of Common Pleas to stay the case and/or consolidate it for hearing with the breach of contract action. The failure of both courts to do so was an abuse of discretion.

Rule 42(a), SCRCP provides that “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

Here, Appellant asserted in her Amended Answer and Counterclaims in the ejectment action that the Letter of Agreement memorialized the terms of the parties’ agreement which led to the transfer of ownership of property from Appellant to Respondent. Specifically, Appellant asserted that the Letter of Agreement memorialized the terms of the parties’ lease contract for the parties, in which Respondent agreed to lease the Property to Appellant and Appellant agreed to pay the amount of Respondent’s monthly mortgage payment to Respondent. The interpretation of

the Letter of Agreement and the parties' original lease contract is central to both the ejectment action and the breach of contract action. Accordingly, it was an abuse of discretion for the Magistrate to refuse to stay the ejectment proceeding pending the resolution of the breach of contract action and it was likewise an abuse of discretion for the Court of Common Pleas to deny the motion to stay or consolidate. This matter should therefore be remanded to the Court of Common Pleas with instructions to consolidate the two matters for an efficient and speedy trial.

II. The Court Erred in Concluding There Was No Genuine Issue of Fact Regarding the Termination of the Lease by the November 10, 2020 Letter.

The Court erred in granting summary judgment as to Respondent's grounds for eviction based on end of term of occupancy or tenancy. Genuine issues of fact exist regarding the terms of the lease agreement between the parties, the amounts owed by Appellant and paid to Respondent pursuant to the those terms, and both the intent and ability of the Respondent to terminate the lease through the November 10, 2020 letter.

Summary judgment is only proper when, after reviewing the motion, the supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. American Telephone and Telegraph Company*, 306 S.C. 1010, 410 S.E.2d 537 (1991). Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where 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 not be granted. *Hamilton v. Miller*, 301 S.C. 45, 389 S.E.2d 652 (1990).

In this case, the Magistrate correctly found that, in the light most favorable to the Appellant, Appellant resided in the Property under a month-to-month lease, pursuant to S.C. Code Ann. §27-

40-310(d). The Magistrate also correctly stated that a month-to-month lease may be terminated by a written notice given at least 30 days before the termination date specified in the notice. The Magistrate erred, however, in concluding that there was no issue of fact that the November 10, 2020 certified letter provided that required written notice.

The November 10, 2020 letter from Respondent to Appellant was primarily directed at providing notice of alleged non-payment of rent. The vast majority of the letter is focused on the non-payment of rent, the methods by which rent could be paid, and the consequences of failing to pay rent. Only the final sentence of the letter mentions the potential end of the term of the lease agreement and it does not provide a consequence for the threatened non-renewal of the lease agreement. As Appellant asserted in her pleadings, she did not agree with the amount of rent stated in the letter, the amount of past due rent stated in the letter, nor the term of the lease stated in the letter.

Further, as argued in the Magistrate Court, no determination was made as to the correct status of the rental ledger between Appellant and Respondent at the time of the letter, the eviction filing, or the hearing on the Motion for Summary Judgment. Appellant asserted that the correct payment term of the lease agreement between the parties was the amount of Respondent's monthly mortgage payment; accordingly, Appellant had been overpaying the rent amount for approximately three (3) years when she stopped making regular monthly payments to Respondent. Appellant asserted that her previous overpayment entitled her to a credit on her future rent payments such that her future rent has previously been paid and Respondent did not have a legal ability to terminate the lease at the end of January 2021 without returning rent that had been paid beyond that date. Therefore, a genuine issue of material fact concerning the payment status of the lease agreement between the parties existed which should have precluded summary judgment.

Accordingly, the Magistrate erred in granting summary judgment and the Court of Common Pleas erred in affirming the Magistrate's decision. This matter should therefore be reversed and remanded to the Court of Common Pleas, which instructions to reverse the grant of summary judgment and remand to the Magistrate for a jury trial on the merits.

CONCLUSION

The Circuit Court abused its discretion in denying Appellant's Motion to Stay and/or Consolidate the matter with a parallel proceeding and further erred in affirming the Magistrate's admittedly thorough and considered decision granting summary judgment because there existed a genuine issue of material fact such that a judgment as a matter of law was improper. Accordingly, this matter should be remanded, ultimately to the Magistrate Court, for a jury trial on the merits.

Respectfully submitted,

/s/ Jeffrey W. Kuykendall

Jeffrey W. Kuykendall – Attorney at Law

S.C. Bar No. 102538

127 King St., Ste. 208

Charleston, SC 29401

Phone: (843) 790-5182

Facsimile: (866) 733-1909

Jeff@jwklegal.com

Attorney for Appellant

At Charleston, South Carolina
This the 7th day of August, 2023.