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ELECTRONICALLY FILED - 2024 Jan 25 9:38 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2305194

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2023CP2305194

Tonya Ellington,)
)
Appellant,)
)
v.)
)
Rose Edwards Assoc., LLC/Edward Rose)
Assoc., LLC (Emerald Creek Apts.),)
)
Respondents.)
)

ORDER AFFIRMING THE
MAGISTRATE COURT

RECEIVED

Feb 01 2024

SC Court of Appeals

This matter came before this Court through an appeal from a decision rendered by the Magistrate’s Court. Tonya Ellington (“Appellant”) appealed Magistrate Judge Jacquelyn I. Duckett’s grant of a directed verdict for Edward Rose Associates, Inc. (“Respondent”) following a bench trial. A hearing on the appeal was held on January 8, 2024. Appellant appeared *pro se*. Respondent was represented by Jason D. Wyman, Esq. After review of the file, submissions of the parties, and oral argument, this Court finds there was no error in the decision below. Accordingly, the Magistrate’s decision is affirmed.

STANDARD OF REVIEW

On an appeal from the Magistrate’s Court, the Circuit Court, acting as an appellate court, reviews the matters raised in the notice of appeal. S.C. Code Ann. § 18-7-30. When reviewing an appeal of a magistrate’s judgment, this Court “shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.” S.C. Code Ann. § 18-7-170. This Court “may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact and may also make its own findings

of fact.” *Id.*; See *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001).

BACKGROUND

On or about October 29, 2020, Appellant entered into a lease agreement (the “Original Lease”) for Unit 4313 of the Emerald Creek Apartment. Appellant renewed the Original Lease on October 29, 2021 (the “First Renewal”). Plaintiff then renewed her lease for a second time on or about October 25, 2022 (the “Second Renewal”).

On June 28, 2023, Appellant emailed Respondent’s representatives and declined to renew her lease for a third time and stated she would vacate the unit on September 8, 2023. In this email, Appellant agreed to withdraw her “written complaint” in exchange for an agreement to waive any fees due to her early termination of the Lease, a request which Respondent honored.

On July 7, 2023, Appellant filed a Complaint in the Magistrate’s Court in Greenville County seeking the “maximum \$7,500 plus \$80 filing fee.” As part of her Complaint, Appellant submitted an Affidavit and Itemization of Accounts, which further detailed her claims for damages. There, she stated she was seeking damages for “2 years difference of increase from my previous residency”; “pain and suffering, emotional distress”; “cleaning time / breach of lease”; “excessive access to unit, bullying unethical behaviors, moving expenses and retaliation.”

Respondent filed its Answer on or about August 23, 2023. On September 19, 2023, Magistrate Judge Jacquelyn I. Duckett presided over a bench trial. After hearing extensive testimony from Appellant and following the close of Appellant’s case in chief, Respondent’s counsel moved for a directed verdict. The Magistrate Judge granted the motion, and it was reduced to a written order filed on October 3, 2023. Appellant filed her Notice of Appeal on October 6, 2023. The Magistrate filed her Return on November 2, 2023.

CONCLUSIONS OF LAW

Appellant's Notice of Appeal is difficult to decipher, but it appears Appellant takes issue with her alleged inability to present certain evidence at the Magistrate's Court trial and argues the Magistrate's grant of a directed verdict was incorrect. Each will be addressed in turn.

I. Issues with the Bench Trial

Initially, this Court notes Appellant is held to the same standard as an attorney even though she is proceeding *pro se*. "A pro se litigant who knowingly elects to represent [herself] assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.").

The Magistrate's Report provides Appellant was allowed to testify for fifty minutes and put forth "substantial amount of evidence of pictures, documents, e-mails, and online google reviews of the apartment complex." Based on this Court's review of the Return and the record, this Court finds Appellant was afforded an adequate opportunity to present her case to the Magistrate.

*L WAS NOT ALLOWED TO SUBMIT EVIDENCE @ MAGISTRATE'S COURT!!!
ALL SUBSTANTIAL AMOUNT OF EVIDENCE WAS SUBMITTED
TO COURT OF COMMON PLEAS. JUDGE DIDNT MAKE
RULING DAY OF APPEARANCE, BUT AFTERWARDS.
RECD HIS DECISION THROUGH MAIL.*

II. Merits of the Complaint

As to the merits of Appellant's Complaint, this Court finds the Magistrate Judge properly granted Respondent's Motion for a directed verdict.

A. Breach of Contract

Liberal construed, Appellant alleged Respondent violated the terms of the Lease. This cause of action required Appellant to prove that the parties had a contract, that Appellant performed

her obligations under the contract while Respondent did not, and that Respondent was damaged by Respondent's alleged breach. See *Hennes v. Shaw*, 397 S.C. 391, 399, 725 S.E.2d 501, 506 (Ct. App. 2012) (reminding that the elements of a contract claim are the existence of a contract, a breach thereof, and damages resulting from the breach); see also *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999). This Court notes Appellant entered into the Original Lease and then voluntarily chose to renew the Original Lease twice. Appellant's contentions boil down to her dissatisfaction with the cleanliness of the apartment complex. The Residential Landlord Tenant Act requires a landlord to keep the common areas of the premises in a reasonably clean condition. S.C. Code Ann. § 27-40-440. The evidence submitted suggests the common areas were reasonably clean. This Court finds that Appellant's dissatisfaction does not amount to a breach of the Lease or a breach of any provisions of the Residential Landlord Tenant Act. See *Fair v. United States*, 334 S.C. 321, 513 S.E.2d 616 (1999) (holding, in the tort context, that "a landlord may only be held liable for defects relating to the inherent physical state of the leased premises.").

Still refuse the truth of my disability + ongoing traveling out of state for surgery + doctor care. Also COVID was at an all time high.

B. Intentional Infliction of Emotional Distress

In her Complaint, Appellant asserted she was entitled to damages for emotional distress. To establish a claim for intentional infliction of emotional distress, Appellant must show the Respondent: (1) "intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct"; (2) that the conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community"; (3) such actions actually caused plaintiff's emotional distress; and (4) the emotional distress was so severe "no reasonable man could be expected to endure it." *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 169, 708 S.E.2d 218, 223 (Ct. App. 2011),

aff'd, 410 S.C. 346, 764 S.E.2d 912 (2014). Appellant has not pled or presented any evidence that Respondent intentionally or reckless inflicted emotion distress on her, or that such distress would result from Respondent's purported actions. No evidence supports any claim that Respondent's conduct was outrageous. Finally, Appellant has shown no actual emotional distress by third-party witness testimony or other corroborating evidence. "To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007). The Court finds the Magistrate Judge properly dismissed Appellant's cause of action for intentional infliction of emotional distress.

My doctors were all advised of my additional stress due to my living conditions @ EC.

C. Violation of the South Carolina Unfair Trade Practices Act

Appellant's final issue is her alleged dissatisfaction with the advertising of Emerald Creek. She claimed it was advertised as "Brand-New Luxury and Better Living Community" when in fact it is now marketed as "Modern Living." "In order to support a private action for advertising in violation of the South Carolina Unfair Trade Practices Act, the injured party must establish that he suffered an 'ascertainable loss of money or property, real or personal, as a result of the use or employment' of the unfair or deceptive advertising. The plaintiff must also establish that the advertising affected the public interest, not just the parties to the transaction." 1 S.C. Jur. Advertising § 8.

They made changes are all the bad reviews of past residents.

After reviewing the Record, this Court finds Appellant failed to establish how the alleged advertising of the apartment complex was unfair or that she suffered any recoverable losses. This Court also finds Appellant failed to establish the "public interest" element. Accordingly, the Magistrate Judge properly dismissed Appellant's cause of action under the South Carolina Unfair Trade Practices Act.



AFTER FIVE DAYS RETURN TO
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Greenville SC 29601-2121

Tonya Ellington
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