

Jul 03 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2023-CP-07-02252
)	
EK Real Estate Services of NY, LLC,)	
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO RECONSIDER
)	AND GRANTING PLAINTIFF'S
Yvonne L. DeLoach,)	MOTION TO REMAND
)	
Defendant.)	

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This matter came before the Court virtually on March 5, 2024, on three motions: Plaintiff's Motion to Remand, Defendant's Motion for Entry of Default, and Defendant's Motion to Strike or Dismiss. All motions were taken under advisement. On April 8, 2024, Plaintiff EK Real Estate¹ filed a Notice of Dismissal pursuant to Rule 41(a)(1)(A), SCRPC. This Court subsequently held that the motions from March 5 are now moot. In response, Defendant filed a Motion to Reconsider.

For reasons stated below, the Court GRANTS Defendant's Motion to Reconsider and further GRANTS Plaintiff's Motion to Remand.

RELEVANT FACTS AND PROCEDURAL HISTORY

Throughout August 2019, Plaintiff EK Real Estate and Defendant DeLoach executed several documents pertaining to Defendant's property located at 1919 Duke Street in Beaufort, including a Residential Real Estate Sales Agreement, Repair Holdback Agreement, 1st Addendum to Contract, Warranty Deed, and Lease Agreement.² Plaintiff contends the transaction transferred title to Plaintiff and allowed Defendant to remain in the home as a tenant pursuant to a formal

¹ The caption of the Notice of Dismissal includes a second Plaintiff, Easyknock, Inc. However, no Motion to Amend the Caption has been filed or granted.

² Two Settlement Statements were also prepared, but it is unclear whether the parties ever signed the documents.

lease. Defendant, in contrast, claims Plaintiff used fraud and deceptive trade practices such that Defendant believed the transaction was a type of home equity loan, and thus Defendant disputes the validity of the transfer of title.

On October 11, 2023, Plaintiff filed an Application for Ejectment on the grounds "tenant fails or refuses to pay rent when due or when demanded in the amount of \$21,178.35." Defendant responded by filing an Answer and Counterclaim indicating the title is in dispute. She also filed a Motion to Transfer pursuant to S.C. Code Ann. § 22-3-20(2) ("No magistrate shall have cognizance of a civil action . . . [w]hen the title to real property shall come in question, except as provided in Article 11 of this chapter.").

The case came before the magistrate on October 25, 2023 on Plaintiff's Order to Vacate and Defendant's Motion to Transfer. On November 29, 2023, the magistrate granted the Motion to Transfer. Neither party filed a Motion to Reconsider. The following month—with the matter now in Circuit Court—Plaintiff filed a Complaint and a Motion to Remand. Defendant filed a Motion for Entry of Default, based on Plaintiff's failure to timely file a response to Defendant's Answer and Counterclaim, which had been filed in magistrate court. Defendant also filed a Motion to Strike or Dismiss Plaintiff's Complaint.

While the Court took the motions under advisement, Plaintiff filed a Notice of Dismissal. The Court issued an Order acknowledging the dismissal and declaring the motions to be moot. In response, Defendant filed a Motion to Reconsider.

MOTION TO RECONSIDER

This Court is asked to reconsider the effect of Plaintiff's Voluntary Dismissal pursuant to Rule 41(a)(1), SCRPC, which states "an action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party

of an answer or motion for summary judgment."

This action commenced via Application for Ejectment filed with the magistrate court. Defendant then timely filed an Answer and Counterclaim and served them upon Plaintiff by mail on October 26, 2023. In transferring the case to this Court, the magistrate indicated "[t]he *original complaint and all associated paper work* in reference to the above listed civil case is being transmitted for disposition" in Common Pleas Court." Certificate of Transmittal from Beaufort Mag. Ct. (emphasis added). Because Plaintiff filed and served the notice of dismissal *after* Defendant served the Answer, the case cannot be dismissed pursuant to Rule 41(a)(1) absent a "stipulation of dismissal signed by all parties." Rule 41(a)(1)(B), SCRCF.

Therefore, Plaintiff's Notice of Dismissal does not end the case and the Motions are still pending before this Court.

MOTION TO REMAND

Chapter 3 of the South Carolina Code of Laws makes clear that magistrate court does not have jurisdiction over a civil action "[w]hen the title to real property shall come in question, *except as provided in Article 11.*" S.C. Code Ann. § 22-3-20(2) (emphasis added). Article 11 dictates the procedure a defendant must complete upon raising a question of title:

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

S.C. Code Ann. § 22-3-1120. In other words, the statute requires Defendant "to file an undertaking as assurance that the defendant will promptly file an action in circuit court over title to the property." *Rivers v. Smith*, 440 S.C. 183, 189, 889 S.E.2d 254, 257 (Ct. App. 2023).

"Precedent explains the magistrate retains jurisdiction if the defendant does not comply with the statutory procedure for raising a question as to title or offer any evidence drawing title into question." *Id.* at 188, 889 S.E.2d at 257. Here, however, Defendant immediately raised the question of title in her Answer and Counterclaim. At that point, the magistrate's actions are limited to those prescribed under Article 11.

In this case, the magistrate instead transferred the case to circuit court directly. Section 22-3-30 governs the transfer of cases from magistrate court to circuit court:

When a counterclaim is filed which if successful would exceed the magistrate's civil jurisdictional amount *as provided in Section 22-3-10*, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit.

S.C. Code Ann. § 22-3-30. Section 22-3-10 does not include circumstances in which the title related to a landlord-tenant dispute comes into question, as is the situation here.

Therefore, the proper way forward is for this case to be remanded to magistrate court, whereupon Defendant can further pursue the title dispute pursuant to Article 11 and *Rivers v. Smith*.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant's Motion to Reconsider is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Remand is hereby GRANTED. Based upon these findings, the two remaining motions are not properly before this court.

IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE FOLLOWS



Beaufort Common Pleas

Case Caption: Ek Real Estate Services Of Ny Llc VS Yvonne L Deloach

Case Number: 2023CP0702252

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

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