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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2023-CP-46-04090
Appellant Case No. 2025-000031

Swarna Ramamurthy & Vijayanand
Bhoopalan.....Appellants,

v.

Darin Short.....Respondent.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DENYING AN AWARD OF ATTORNEY'S FEES *IN TOTO* TO APPELLANT'S?

STATEMENT OF THE CASE

Respondent initiated this case in the Magistrate's Court. The Magistrate, *sua sponta*, transferred the case to the Circuit Court (Order for Civil Case requiring transfer to Court of Common Pleas dated December 19, 2023). After filing several iterations of Respondent's Complaint and Amended Complaints, and Appellants responses to them, the Circuit Court granted (Order Granting Motion to Amend filed February 14, 2024) Respondent's Motion to Amend Complaint filed January 24, 2024 (Respondent's Motion to Amend Complaint filed January 24, 2024). Respondent filed an Amended Complaint in the Circuit Court on February 29, 2024 arising out of the presence of mold and alleging causes of action for breach of lease, negligence, gross negligence, recklessness, willfulness, and wantonness in connection of violation of the South Carolina Landlord/Tenant Act, constructive eviction, outrage, and defamation, Respondent sought actual, direct, incidental, consequential, punitive, and special damages, including attorney's fees (Amended Summons and Complaint filed February 29, 2024).

Appellants filed an Answer and Counterclaim to Plaintiff's Amended Complaint on March 29, 2024 denying the allegations of the Complaint and counterclaiming for breach of lease, damages, costs, and attorney's fees (Answer & Counterclaim filed March 29, 2024). Respondent replied on April 29, 2024 (Reply to Defendants' Answer & Counterclaim filed April 29, 2024). Appellants filed a Motion for Summary Judgment on July 9, 2024 (Motion for Summary Judgment filed July 9, 2024). The Circuit Court granted Appellants' Motion for

Summary Judgment in the amount of \$6,750.00 and denied Respondent's Complaint on August 7, 2024 (Order for Summary Judgment filed August 7, 2024). Respondent filed a Motion for Reconsideration on August 14, 2024 (Respondent's Motion for Reconsideration filed August 14, 2024). The Circuit Court denied Respondent's Motion for Reconsideration on September 19, 2024 (Order denying Motion for Reconsideration filed September 19, 2024). Appellants filed their Motion for Attorney's Fees on September 29, 2024 (Motion for Attorney's Fees and Affidavit with NEF filed September 29, 2024), which was the redacted version and was filed stamped by the clerk and posted on the public index on September 30, 2024 (Motion for Attorney's Fees and Affidavit with NEF filed September 29, 2024). Respondent opposed Appellant's Motion for Attorney's Fees (Respondent's Response in Opposition to Attorney's Fees filed December 2, 2024). Appellants filed their reply to Respondent's Response in Opposition to Attorney's Fees on December 4, 2024 (Reply to Respondent's Response to Opposition to Attorney's Fees filed December 4, 2024.) Appellants filed a Supplemental Affidavit in Support of Attorney's Fees on December 10, 2024 (Appellants' Affidavit in Support of Attorney's Fees filed December 10, 2024). The Circuit Court denied the Appellants' Motion for Attorney's Fees by an Order filed December 17, 2024 (Order filed December 17, 2024). Appellants' Notice of Appeal was filed and served on January 2, 2025.

STANDARD OF REVIEW

“In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.” *Townes Associates, Ltd. v. The City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENTS

I. BECAUSE THE TRIAL COURT ERRED IN DENYING AN AWARD OF ATTORNEY'S FEES *IN TOTO* TO APPELLANTS, THE TRIAL COURT ABUSED ITS DISCRETION.

S.C. Code § 27-40-750 provides, “If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees.”

The sole argument for the Court of Appeals to review is: Does a judge have discretion to deny attorney's fees to a prevailing landlord under S.C. Code § 27-40-750?

Appellants argue that the statute entitles the prevailing landlord to attorney's fees as a matter of right; however, the statute also gives the judge broad discretion to determine the amount of the fees, depending on the facts and equities of each case.

The language of S.C. Code § 27-40-750 is similar to the language of S.C. Code § 27-40-410(b). In construing that code section, the Court of Appeals held that “the statute is unambiguous and absolute” and that the court has no discretion. *Prevatte v. Asbury Arms*, 396 S.E.2d 642 (Ct. App. 1990).

While the court has no discretion to deny attorney's fees,

What constitutes a reasonable fee is a matter for the court to determine as a matter [of] informed judicial discretion. In deciding the amount of the fee, the court should take into consideration the facts and equities of the particular case. Its discretion should be guided by the following factors, among others:

- (1) The nature, extent and difficulty of services rendered;
- (2) The time and labor necessarily devoted to the case;
- (3) The professional standing of counsel;
- (4) The contingency of compensation;
- (5) The fee customarily charged in locality for similar legal services; and
- (6) The beneficial results obtained. (*Id.*)

The record in this case shows the Appellants' legal counsel's affidavit affirms that he has been, *inter alia*, actively admitted in good standing to practice law in the state of South Carolina since 1984 and has a written hourly retainer agreement (Affidavit filed September 29, 2024) with the Appellants which shows total attorney's fees and costs paid as of December 10, 2024 in the amount of \$51,266.47 (Affidavit filed December 10, 2024).

Furthermore, the record shows Appellants were successful at recovering judgment against Respondent in the sum of \$6,750.00 and Order protecting Appellants from an award against them for actual, direct, incidental, consequential, punitive, and special damages, including attorney's fees.

Therefore, the Circuit Court should have considered all of the above-noted factors and then determined reasonable attorney's fees and costs.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Circuit Court and remand the case for the Circuit Court to determine the reasonable attorney's fees to be awarded to Appellants.

February 3, 2025

Respectfully submitted,

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