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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Presiding Judge

Appellate Case No. 2025-000113

T&S Real Estate,.....Appellant,

v.

One Helms, LLC,Respondent.

INITIAL BRIEF OF APPELLANT

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Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984).....

Other:

South Carolina Code Section 27-37-150

South Carolina Code Section 27-39-210

South Carolina Rules of Civil Procedure 12(b)(8)

STATEMENT OF ISSUES

- I. Did the circuit court err in affirming the ejectment and monetary judgment without testimony or evidence in the record?
- II. Did the circuit court err in affirming the judgment awarded against the purchaser when the request for monetary relief was not included in the pleadings?
- III. Did the circuit court err in affirming the ejectment because a substantially identical action was pending in circuit court?
- IV. Does the circuit court err in affirming an ejectment when the purchaser under a rent-to-own agreement possesses an interest in the property that has not been foreclosed upon?

STATEMENT OF THE CASE

This is an appeal of a circuit court order affirming a commercial ejectment and judgment awarded by the magistrate court against Appellant T&S Real Estate. T&S is a company owned by Timothy and Shelby Dickensheets.

Respondent One Helms owns property located at 2420 Shop Road, Columbia, South Carolina (“Property”). (R. at __; Ord. October 25, 2024, p. 1). David Helms founded and owned One Helms until his death. (R. at __; Oct. 5, 2022, Tr. 5:3–4). One Helms and T&S entered into a landlord-tenant agreement for the Property with a term of one year beginning on September 15, 2020. (R. at __; Lease Agreement § B). The lease provided T&S would pay rent in the amount of \$5,000 per month and all applicable real estate taxes and assessments. (R. at __; Lease Agreement ¶¶ 1, 7). On the same day as the lease agreement, the parties entered into a rent-to-buy agreement with a term of one year. (R. at __; Contract of Sale p. 1). At the expiration of the rent-to-buy agreement, the parties orally extended the contract on a month-to-month basis. (Hg. Tr., 10 Oct. 2022, p. 5:11–13).

The following timeline outlines the history of the disputes between the parties:

- | | |
|--------------------|--|
| January, 2021 | T&S Real Estate pays a total of \$60,000 in cash according to the argument of counsel for One Helms, allegedly for \$25,000 in rent and \$35,000 “paid towards anything else.” (R. at __; Nov. 14, Tr. 17:16–19). T&S Real Estate argues the \$35,000 cash payment is paid towards equity. (R. at __; Nov. 14, Tr. 17:16–19). |
| September 15, 2021 | The parties do not dispute that prior to expiration, David Helms and T&S Real Estate extend the rental and purchase agreements orally on a month-to-month basis. (R. at __; Nov. 14, Tr. 4:18–19). Then, the original lease agreement expired. One Helms argues the rent increases to \$7,500 per month under the holdover term of the lease agreement on this date. (R. at __; Nov. 14, Tr. 5:13–18). |
| July 15, 2022 | T&S Real Estate filed a lawsuit in circuit court against One Helms and Edisto Recycling over disagreements in the lease and rent-to-buy agreements. (R. at __; C/A No. 2022-CP-40-03612, Compl. p. 1). |

September 6, 2022 One Helms files its amended answer and counterclaims in the circuit court case alleging trespass, damages for waste, and possession of the property. (R. at __; 2022-CP-40-03612; Def’s Am. Answer).

September 14, 2022 One Helms files an amended application for ejectment in the Magistrate Court for Richland County. (R. at __, Am. App. Ejectment, p. 1). The rule to show cause requested ejectment from the property and referenced an affidavit of Christopher Riley on behalf of One Helms. (R. at __, Rule to Show Cause p. 1). The affidavit of Riley requested unpaid rent and property taxes according to the terms of the lease agreement. (R. at __; Aff. Christopher Riley, 22 Aug. 2022, ¶¶ 5, 12, 15b).

October 5, 2022 The initial hearing for the ejectment action is held. The Magistrate made no decision, and no testimony or evidence was entered into the record. One Helms contended at this hearing that Chris Riley purchased One Helms from David Helms prior to his death. (R. at __; Oct. 5, Tr. p. 5:5–6).

November 14, 2022 The second hearing for the ejectment is held. Judge Simons stated he would hear the summaries of counsel and render a decision. (R. at __; Nov. 14, Tr. 4:10–21). Judge Simons entered the First Order, awarding possession of the Property to One Helms and entering a judgement against T&S Real Estate for \$79,932.30. (Or. Judge Simons, 14 Nov. 2022, p. 1–2; R. at __). Judge Simons stated his ruling was based on the “exhibits and summaries of counsel.” (*Id.* p.1; R. at __).

November 18, 2022 T&S Real Estate appealed Judge Simons’ first order. (R. at __; C/A No. 2022-CP-40-06107).

November 23, 2022 Upon a motion by One Helms, Judge Simons ordered T&S Real Estate to post bond in the amount of \$443,618.19 before appealing the judgment. (R. at __; Or. Nov. 23, 2022).

December 1, 2022 T&S Real Estate voluntarily left the Property. (R. at __; Dec. 7, Tr. 8:3–7).

December 2, 2022 Judge Simons dismissed the appeal for failure to post bond under S.C. Code Ann. § 27-37-130. (R. at __; Or. Culbertson p. 4).

January 6, 2023 T&S Real Estate Appealed the denial of the first appeal for failure to post bond. (R. at __; Or. Culbertson, p. 4).

For the first and second appeals, Judge Culbertson affirmed the award of monetary judgment and the dismissal of the ejectment appeal for failure to post bond. (Or. Culbertson, p. 6–7; R. at ____). Judge Culbertson reversed Judge Simons’ dismissal of the monetary judgment for failure to post bond, allowing the appeal to be maintained over the \$79,932.30. (*Id.*; R. at ____). Judge Culbertson found that T&S Real Estate did not carry its burden of showing error because there was no testimony on record. (*Id.* at p. 5; R. at ____). Judge Culbertson noted T&S did not request any sworn testimony from any witnesses, the lower court did not deny any sworn testimony, and therefore T&S had no testimony to serve as a foundation for reversal. (*Id.*; R. at ____). This appeal follows.

STANDARD OF REVIEW

On a matter first heard in magistrate court, this Court reviews the findings of the circuit court to determine if there is any supporting evidence. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). Determining the proper interpretation of a statute, however, is a question of law that this Court reviews de novo. *Palmetto Co. v. McMahon*, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011). This Court retains de novo review of whether the facts show the circuit court’s affirmance was controlled or affected by errors of law. *Bowers v. Thomas*, 373 S.C. 240, 245, 644 S.E.2d 751, 753 (Ct. App. 2007) (citing *Hadfield v. Gilchrist*, 343 S.C. 88, 92–93, 538 S.E.2d 268, 270 (Ct. App. 2000)).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN AFFIRMING THIS JUDGMENT AS THERE WAS NO TESTIMONY TO SUPPORT THE EJECTMENT AND MONETARY JUDGMENT.

Judge Simons entered a \$79,932.30 judgment for allegedly past due rent and property taxes. There was no testimony presented to Judge Simons to determine this amount. There were no exhibits entered into the record, and Judge Simons inappropriately assessed this judgment.

After the October hearing, Judge Simons entered a judgment ordering T&S Real Estate to pay \$79,932.30 with no support in the record for the finding. On appeal, the circuit court ruled that this judgment can stand despite the lack of evidence in the record.

A trial court taking testimony has great latitude for determining facts, however, there must be evidence in the record to support a magistrate judge's findings. There is no evidence in the record supporting the findings of Judge Simons. For this reason, the order should be overturned.

In *Parks v. Characters Nightclub*, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001), this Court reversed a circuit court's affirmation of a magistrate because there was not sufficient testimony entered into the record to support the magistrate's findings. *Id.* at 500, 548 S.E.2d at 614. In that case, the magistrate had taken testimony from witnesses. *Id.* at 488, 548 S.E.2d at 607. However, this Court held there was no evidence submitted to sustain the negligence claims made by the plaintiff. *Id.* at 500, 548 S.E.2d at 613–14. Ms. Parks suffered injuries when a pool ball was thrown through her car window in the parking lot of Characters Nightclub. She sued for negligent security and failure to prevent the fight that led to her injury. *Id.* at 488, 548 S.E.2d at 607. The magistrate court entered a judgment in her favor. On appeal, the circuit court affirmed finding that "evidence was presented to the magistrate that there was a fight, and that this incident occurred at approximately the same timeframe." *Id.* at 491, 548 S.E.2d at 608. Reviewing the record, the Court

of Appeals held there was no evidence that Characters did not supply appropriate security or that it was on notice of a potential problem. *Id.* at 499, 548 S.E.2d at 613. There was also no evidence that a participant in the fight threw the object injuring Ms. Parks. *Id.* For that reason, the Court of Appeals overturned the circuit court. *Id.* at 613–14, 500.

The Circuit Court stated that when there is no testimony on record, there is not enough before the court to allow for reversal. (Or. Culbertson, p. 5; R. at ____, citing *Conran v. Joe Jenkins Realty, Inc.*, 263 S.C. 332, 334, 210 S.E.2d 309, 310 (1974)). The *Conran* court relied on precedent handling incomplete records, rendering the transcript prejudicial to one of the parties. *See, S.C. State Highway Dep't v. Meredith*, 241 S.C., 306, 128 S.E.2d 179, (1962) (noting omitted arguments from the record rendered it prejudicial and remanding the case to correct omissions in the record).

This case is different. Judge Simons received no testimony. This Court reviews the record to determine if there is “any supporting evidence” to uphold the judgment. *Vacation Time of Hilton Head Island*, 280 S.C. at 233, 312 S.E.2d at 21. The Magistrate did not list any testimony in the return, and there is none in the recorded transcript submitted to the court. The Magistrate simply accepted arguments from counsel for One Helms that the amount of rent and taxes due was \$79,932.30. Like the court in *Parks v. Characters Nightclub*, there is insufficient evidence to support what the Magistrate has done. As arguments of counsel do not create evidence. *See Brown v. Johnson*, 276 S.C. 68, 72, 275 S.E.2d 876, 878 (1981) (“we can only say that argument of counsel is not a substitute for evidence”). For this reason, T&S Real Estate asks this Court to reverse the monetary judgment as there is no evidence entered to support the judgment entered by the Magistrate.

II. THE MONETARY JUDGMENT WAS NOT PROPERLY BEFORE THE TRIAL COURT BECAUSE THERE WAS NO REQUEST FOR MONETARY RELIEF IN THE PLEADINGS.

The action before the magistrate court began with One Helms' application for ejectment. (R. at ___; Am. Application for Ejectment, 25 Aug. 2022). Importantly, One Helms did not fill in the request on their amended application stating, "The Tenant has failed or refuses to pay rent when due or upon demand." Instead, the magistrate court and the circuit court relied on the affidavit of Christopher Riley. (R. at ___; Or. Culbertson p. 2). The application for ejectment stated, "Please see [the Riley affidavit] where plaintiff asks the court to issue a rule to show cause requiring the defendant to vacate the demised premises." (R. at ___; Am. Application for Ejectment p. 1). In that affidavit, Riley acknowledges unpaid rent in the amount of \$22,500. (R. at ___; Riley Aff. ¶ 15b). Riley's request for unpaid rent contained in the affidavit states that rent will continue to accrue monthly for as long as T&S Real Estate remains on the premises. *Id.* This reference is not enough to cure the defect in the pleadings.

Even construing Riley's affidavit as an attempt to recover rent amounts through distress proceedings, the pleadings remain defective. One Helms is correct in that South Carolina Code § 27-37-150 provides that rent for use and occupancy of the premises continues to accrue for as long as the tenant remains in possession but also requires the collection to be "enforced by distress as herein provided." *Id.* Collection of rent by distress mandates the following steps: (1) the landowner submits an affidavit setting forth the amount of rent due submitted to a magistrate having jurisdiction; (2) that magistrate to deliver a notice to a constable or sheriff of the county stating the amount of rent due, including any cost, and fixing a time and place for a predistress hearing to be held; and (3) that notice to be delivered to the tenant. S.C. Code Ann. § 27-39-210.

Despite this notice provision being ignored and no request for monetary relief contained in the ejectment pleadings, Judge Simons awarded the judgment of \$79,932.30 against T&S Real Estate.

It is improper for a magistrate to award monetary relief which is not requested in the pleadings. Parties in general are limited to the requested relief in their pleadings. *See, Bass v. Bass*, 272 S.C. 177, 249 S.E.2d 905 (1978). In *Bass v. Bass*, a family court awarded the wife compensation for work and activities incident to the operation of the business. *Id.* at 179, 249 S.E.2d at 906. On appeal our supreme court reversed and held the judge erred as a matter of law in awarding the wife compensation for her work incident to the family business. *Id.* at 180, 249 S.E.2d at 906. The court held that the issue was not properly before the court because it was not pled in the complaint. *Id.* The Court indicated that while pleadings may be liberally construed, they “cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings.” *Id.* In fact, the court held that “due process requires that a litigant be placed on notice of the issues which the court is to consider.” *Id.*

Like the husband in *Bass*, T&S Real Estate was not served with pleadings seeking a monetary judgment. Instead, the Magistrate’s summons only seeks a writ of ejectment, the Magistrate’s instructions merely refer to a writ of ejectment, and the rule to show cause requests only a writ of ejectment. (Mot. Rule to Show Cause, p.1; R. at ____).

Judge Simons awarded \$79,932.30 as affirmative relief which was not requested in the pleadings. The form application for ejectment contains three grounds for an ejectment proceeding. On both the original and amended applications for ejectment, One Helms did not base its application on the failure to pay rent. Further, the application for ejectment contained no prayer for general relief.

Judge Simons awarded the rent without any sworn testimony supporting the entry of judgment, and without any notice to T&S Real Estate in either the summons, the application for ejectment, or in the magistrate’s instructions. As a result, Judge Simons committed an error of law in entering the judgment against T&S Real Estate, and the circuit court erred in affirming the judgment.

III. THE CIRCUIT COURT ERRED IN AFFIRMING THE JUDGMENT AGAINST T&S REAL ESTATE BECAUSE AT THE TIME OF THE EJECTMENT ANOTHER LAWSUIT BETWEEN THE PARTIES FOR THE SAME CLAIM TO THE PROPERTY WAS PENDING IN CIRCUIT COURT.

South Carolina Rule of Civil Procedure 12(b)(8) prevents the same matter between the same parties from proceeding in two different forums at the same time. The parties were engaged in litigation in circuit court the time One Helms filed their application for ejectment in magistrate court.

Nevertheless, Judge Simons denied T&S Real Estate’s motion under Rule 12(b)(8) and entered a judgment for \$79,932.30 for alleged rent and taxes. (R. at ___; Nov. 14 Tr. 8:1–12). The circuit court case captioned *T&S Real Estate, LLC and American Scrap Iron and Metal, LLC vs. One Helms, LLC, David W. Helms, Edisto Recycling, LLC and Christopher Riley vs. Timothy Eron Dickensheets*, C/A No. 2022-CP-40-03612 sought monetary relief as well. Specifically, One Helms requested immediate possession and damages for T&S Real Estate’s use of the property. The partial performance and extension of the subject contract for sale is central to this dispute. Therefore, there was a prior pending action between the parties, and the Magistrate should have declined to go forward with the judgment and ejectment under Rule 12(b)(8).

South Carolina Rule of Civil Procedure 12(b)(8) indicates that a legitimate basis to dismiss a complaint is that “another action is pending between the same parties for the same claim.” A

dismissal under Rule 12(b)(8) is appropriate when there is (1) another action pending, (2) between the same parties, and (3) for the same claim. *See Corbett v. City of Myrtle Beach*, 336 S.C. 602, 521 S.E.2d 276 (Ct. App. 1999). Ms. Corbett brought an action on behalf of her husband against John's Beach Service of Myrtle Beach after her husband drowned. *Id.* at 604, 521 S.E.2d at 278. Ms. Corbett originally brought wrongful death and survival actions. *Id.* Approximately one year after filing these claims, she filed a third complaint for negligent infliction of emotional distress as a bystander to her husband's drowning. *Id.* The trial judge dismissed her bystander claim under Rule 12(b)(8) on the basis that her claim involved the same parties, in the same capacity, and was based upon the same facts and circumstances as the first two actions. *Id.* at 610–11, 521 S.E.2d at 281. This Court affirmed. *Id.*

Likewise, One Helms brought this ejectment action in magistrate court while a previously pending action between the parties regarding the ownership of the property was pending in circuit court. One Helms and T&S Real Estate appeared in the same capacity. One Helms requested the same relief for waste, judgment for unpaid rent under a theory of trespass, and the right to occupy the property in their answer and counterclaims to that suit. (2022-CP-40-3612; Def's Answer Am. Compl. ¶¶ 76, 82, 87, 96; R. at ____). One Helms subsequently filed their action for ejectment in the magistrate court alleging the same facts, against the same party, and requesting the same relief. The Magistrate, in refusing to dismiss the later filed action, allowed One Helms to circumvent the previously pending circuit court action. Therefore, the Magistrate erred in denying T&S Real Estate's motion to dismiss the action under Rule 12(b)(8), SCRCP, and the circuit court erred in affirming the Magistrate's decision.

IV. THE CIRCUIT COURT ERRED IN UPHOLDING THE LOWER COURT'S EJECTMENT ACTION BECAUSE T&S REAL ESTATE'S REMOVAL AMOUNTS TO A PENALTY INCONSISTENT WITH THEIR EQUITABLE INTEREST IN THE PROPERTY.

In an installment sale contract, the seller retains legal title to the land while an equitable interest arises to the purchaser. *See Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 173, 568 S.E.2d 361, 364 (2002). When forfeiture provisions in installment sale contracts arise to the level of a penalty, it is inequitable to enforce the forfeiture provision without allowing the purchaser an opportunity to redeem the installment contract. *Id.* at 173, 568 S.E.2d at 364. A forfeiture provision amounts to a penalty when the amount forfeited “greatly exceeds the [seller’s] loss.” *Id.* at 173, 568 S.E.2d at 364.

“The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity.” *Cody Disc., Inc. v. Merritt*, 368 S.C. 570, 575, 629 S.E.2d 697, 700 (Ct. App. 2006) (citing *Lewis*, at 172, 568 S.E.2d at 363). In *Cody Discount*, this Court overturned a master-in-equity holding that a forfeiture provision in an installment sale contract was enforceable. *Id.* at 576, 629 S.E.2d at 700. The Court applied the factors from *Lewis* examining “the amount of equity the purchaser has accumulated, the length and number of default, the amount of forfeiture, the speed in which equity is sought, and the amount of money the purchaser would forfeit in relation to the purchase price of the property.” *Id.* Ultimately holding that despite Merritt’s defaults stemming from late payments, her equity contributions within \$1,000 of the original contract price of \$44,500 entitled Merritt the opportunity to redeem the property. *Id.*

Because forfeitures are disfavored in South Carolina law, the magistrate court should have assessed whether the removal of T&S Real Estate amounted to a penalty. Instead, the court proceeded with ejectment without considering the extent of T&S Real Estate’s equitable interest

in the property. This failure prevented the determination of whether T&S Real Estate was entitled to redeem the installment contract before forfeiture.

Under *Cody Discount*, courts must examine specific factors when deciding whether a forfeiture provision functions as a penalty. The magistrate court failed to conduct any such review before ejecting T&S Real Estate.

When a forfeiture provision results in the loss of a substantial equity interest exceeding the seller's actual losses, the law requires an opportunity to redeem. The magistrate court failed to conduct any analysis of T&S Real Estate's accrued equity, the proportionality of forfeiture, or any potential right of redemption. Instead, the ejectment proceeded automatically.

Without this analysis, the magistrate court and circuit court could not conclude that ejectment was proper. This Court should remand the matter for a proper determination of whether T&S Real Estate was entitled to redeem the property before forfeiture.

CONCLUSION

T&S Real Estate respectfully asks this Court to reverse the circuit court's decision affirming the magistrate court's judgment of \$79,932.30 against T&S Real Estate because no evidence exists in the record to support the judgment, T&S Real Estate was not properly informed of the request for relief through the pleadings, a substantially identical case pending in circuit court prevented the ejectment action from being brought, and T&S Real Estate retained an equitable interest in the Property.

[Signature block to follow]

Respectfully submitted,

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