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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Charles M. Watson, Jr., Special Referee

Case No. 2025-000569

Greenville Mills, Inc., Respondent,

v.

Rodney White., Appellant.

APPELLANT'S INITIAL BRIEF

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Cases

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169 N.C. 628, 86 S.E. 516, 517 (N.C. 1915). 9

Johnson v. Johnson,
296 S.C. 289, 304, 372 S.E.2d 107, 115 (Ct. App. 1988). 9

Lewis v. Premium Inv. Corp.,
351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002). 9, 10

Woods v. Bivens,
292 S.C. 76, 79-80, 354 S.E.2d 909, 911 (1987). 10

Rules and Statutes

Rule 60, South Carolina Rules of Civil Procedure. 7

Rule 201, South Carolina Appellate Court Rules. 6

ISSUE PRESENTED

- I. **WHETHER THE TRIAL COURT ERRED IN FAILING TO DETERMINE WHAT LEGAL AND EQUITABLE RIGHTS THE APPELLANT HAD BEFORE DETERMINING THAT ALL SUCH RIGHTS SHOULD BE EXTINGUISHED.**

STATEMENT OF THE CASE

This case began in 2003, when the parties entered into an installment contract for the property that is the subject of this dispute. The Appellant made approximately eight payments under the contract but then made no further payments, although he continued to occupy the property.

On April 30, 2021, the parties entered into a second sale/purchase contract, although unlike the first contract, the second did not involve owner financing, but rather required the Appellant to pay the full purchase amount by May 31, 2021. When the Appellant did not make the payment, the Respondent informed him that it was rescinding the offer and subsequently brought suit. Appellant, who raised claims of adverse possession, continued to occupy and/or store items of personalty on the property and continues to do so to this day.

In July or August of 2022, while Appellant was not present, the Respondent had the home on the property demolished. Appellant then sought to recover the value of the items he lost as a result of the demolition.

On November 24, 2024, the Special Referee entered an order granting partial summary judgment in favor of the Respondent, ruling that the Appellant had no ownership or equitable interest in the property. On February 21, 2025, the Special Referee entered a second order in which he ruled in favor of the Respondent on Appellant's counterclaims and denied the Appellant's motion to reconsider the November 24, 2024 order.

GROUND FOR APPELLATE REVIEW

The Appellant respectfully appeals from the November 24, 2024 ruling on partial summary judgment and the final order entered on February 21, 2025 pursuant to Rule 201 of the South Carolina Appellate Court Rules.

STATEMENT OF THE FACTS

The Appellant, Mr. White, began his presence on the property in question as a tenant. However, in 2003, the parties entered into a seller financed contract for a total of \$50,300. For the sale of at least a portion of the property. The Appellant made a \$5,000 down payment under the agreement and made a series of payments, but stopped making payments after a few years. Transcript of November 6, 2024 hearing, p. 5, lines 4-11.

However, the seller took no action to regain its interest in the property, advising the Appellant that it was taking no such action at that time. Thus, the Respondent characterizes the Appellant as having been a permissible tenant during much of that time, but the Appellant has argued that his possession of the property was adverse.

Nevertheless, the parties entered into a separate purchase agreement in 2021, which Appellant contends resulted from misrepresentation and duress. When Appellant failed to pay the full purchase price, the Respondent decided to terminate the agreement, although the Appellant contends that he never received any notice of termination. Transcript of November 6, 2024 hearing, lines 1-14.

Appellant has resided on the property for more than 20 years, living there as a purchaser under an installment agreement, a purchaser under a purchase money agreement, and has occupied the land during that time as a permissible tenant and/or adverse possessor. Transcript of November 6 hearing, lines 3-5.

ARGUMENT I.

THE TRIAL COURT ERRED IN FAILING TO DETERMINE WHAT LEGAL AND EQUITABLE RIGHTS THE APPELLANT HAD BEFORE DETERMINING THAT ALL SUCH RIGHTS SHOULD BE EXTINGUISHED.

STANDARD OF REVIEW

When a court fails to properly determine the rights of a party before making a decision affecting the party's rights, the court necessarily commits an abuse of discretion. "A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion." *Johnson v. Johnson*, 296 S.C. 289, 304, 372 S.E.2d 107, 115 (Ct. App. 1988).

ARGUMENT

On April 22, 2025, Plaintiff filed a motion pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure in which it asked the court to amend its February 21, 2025, order by including a provision ordering Appellant to vacate the property. The trial court ended up not granting the motion, but the fact that the motion was filed demonstrates that neither of the parties were clear, at that point in time, as to the legal, equitable or possessive rights that existed in light of the court's final order. Which, in turn, shows that the record fails to provide clarity as to any equitable, legal, or possessory rights the Appellant might have or have had. Clearly, the Respondent believed that Appellant continued to enjoy some possessory rights or it would not have asked for the order to be modified to extinguish Appellant's existing possessory rights.

Appellant agrees with the Respondent's contention that the order was tainted by uncertainty, and contends that the source of that uncertainty was the court's failure to delineate and account for all possible rights and remedies that might have existed for Appellant to enjoy. It

is clear that the court's final order does not describe with sufficient clarity the rights and obligations of the parties with respect to eviction.

Although the court found that the Appellant had no legal or equitable ownership in the property, it did not identify or clarify the proper mechanism to extinguish any rights that the Appellant may have or may have once had as a holder of legal or equitable title holder, tenant, or other long-term occupant.

Without identifying the nature and character of Appellant's occupancy, it is impossible for an appellate court to meaningfully review the trial court's determination of the absence of legal and/or equitable interests, and impossible to properly consider Respondent's present efforts at removing the Defendant from the property.

Defendant has occupied the property under an installment contract and under a purchase/sale agreement, has been characterized as a permissive tenant by the Plaintiff, and has described himself as an adverse possessor. Those options each provide for unique and, in some cases, multiple mechanisms by which an occupant may be removed, and in order to determine whether the proper procedures have been followed and ejectment legally justified, the parties must first be made aware of which set of procedures the trial court determines apply to this case.

"Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice." *Lane v. New York Life Ins. Co.*, 147 S.C. 333, 374, 145 S.E. 196, 209 (1928) citing *Bangert v. John L. Roper Lumber Co.*, 169 N.C. 628, 86 S.E. 516, 517 (N.C. 1915); *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002).

As our courts have held under general principles of contract law, a provision in an installment land contract declaring forfeiture in the event of purchaser default can, in particular

circumstances, constitute a penalty. “In those circumstances, as in other contractual instances where a stipulated sum amounts to a penalty, we conclude it would be inequitable to enforce the forfeiture provision without first allowing the purchaser an opportunity to redeem the installment contract by paying the entire purchase price.” *Id.*

Further, it is unclear that the purchase agreement of 2001, which the trial court held to be a novation, should be treated differently than a mortgage, which would provide an equitable right of redemption.

The common law recognized an equitable right of redemption in the context of mortgages well before any statutory right was granted. The mortgagor was given an equitable right to redeem the property irrespective of the terms of the mortgage and this right to redeem was considered an equitable interest in the land. For years, in an executory contract for the sale of land our Court has equated the vendor with the mortgagee and the vendee with the mortgagor. There is no equitable reason why the right of redemption should not likewise be afforded to vendees in an installment land contract in appropriate circumstances.

Id. (citation omitted).

The *Lewis* court went on to remand the matter to provide for the possibility of equitable redemption by the purchaser, which is the outcome the Appellant respectfully urges in this case.

In addition to being a buyer under an installment agreement and a purchase agreement, the Appellant was also characterized by the Respondent as being a permitted tenant at various times. Under the landlord/tenant act, a tenant has certain possessory rights that cannot be extinguished without due process. As the act provides, a tenant must receive notice of a breach and, upon refusing to vacate the premises, must be removed by a writ of ejectment.

However, the Appellant's rights to the property are not as straightforward as is often seen in a landlord/tenant dispute. During a long part of Appellant's occupancy and use of the land, he claimed to not be a permissive tenant but an adverse possessor of the property.

If it appears that the party occupying the premises holds not in recognition of, but in hostility to, the rights of his co-tenants, his possession ceases to amount to constructive possession by them, becomes adverse, and if maintained for the twenty-year period, or for the period provided for by the statute of limitations, will vest in the possessor a sole title by adverse possession to the premises.

Woods v. Bivens, 292 S.C. 76, 79-80, 354 S.E.2d 909, 911 (1987).

Therefore, what the court was faced with was a possessor of property who had lawfully possessed the land under an installment agreement, had possessed it under a purchase money agreement, had been a permissible tenant, and had been an adverse possessor. Each of those possessory interests carries different legal and equitable rights, including rights of occupancy and redemption.

Given that the Respondent moved to clarify the court's final order, it does not appear that the Respondent believes that it is clear that the court properly extinguished all of the Appellant's legal and/or equitable rights to possess the property. The Appellant agrees with the Respondent that the order itself is insufficiently clear on whether those rights were properly extinguished because it fails to properly identify each of those rights and explain how each of those rights could be extinguished without providing an equitable remedy providing a means for the Appellant to redeem whatever interests were being extinguished.

As it stands, neither side appears to be able to determine the scope of the court's final order because it cannot know the basis of that order, given the latent ambiguity. Therefore, this

the court's order should be reversed and remanded for the court to enter an order setting forth each and every legal, equitable, and possessory right ever enjoyed by the Appellant since his initial occupancy of the land in 2001, and explaining how each of those rights are subject to extinguishment without further due process or without a right of redemption.

CONCLUSION

For the reasons cited above, the Appellant respectfully asks that this Court reverse the November 24, 2024 order granting partial summary judgment and the February 21, 2025 final order, and remand this case for further hearing and determination to identify each legal, equitable, and possessory interest enjoyed by Appellant, including a proper determination of when Appellant enjoyed any such interests, how Appellant could have lost such interests, and whether Appellant had any right to redeem following any such loss of rights.

Respectfully submitted

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