

THE STATE OF SOUTH CAROLINA
In the Court of Appeals.

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

2010-CP-10-9956

Case No. 2012-213055

Frewil, LLC.....Respondent.

v.

Madison Price and Carter Smith.....Appellant,

APPELLANTS' FINAL BRIEF

Irish Ryan Neville
Attorney for Respondent
P.O. Box 859
Charleston, S.C. 29402

Joseph F. Runey
Attorney for Appellant
14 Exchange Street
Charleston, S.C. 29401
(843)722-2904 Phone
(843)722-2905 Fax
South Carolina Bar Number 4836

RECEIVED

DEC 12 2013

SC Court of Appeals

INDEX

Page

1. Table of Contents and Table of Citations
2. Issues on Appeal
3. Factual Background
4. Argument One
5. Argument Two
6. Argument Three
7. Conclusion and Certificate of Attorney

ISSUES ON APPEAL

1. Is there sufficient evidence in the record herein which would sustain the Trial Judge's issuance of Summary Judgment in favor of the Plaintiff?
2. Did the Trial Judge commit reversible error in finding that there were no genuine issues of facts which would preclude the issuance of a Summary Judgment in this Case?
3. Did the Trial Judge commit reversible error in failing to rule on Defendants' counterclaims in this case?

FACTUAL BACKGROUND

The Defendants signed a lease on April 20, 2009 to rent an apartment from the Plaintiff which was not to go into effect until August 1, 2009 (R.p.56) At the time the Defendants signed this lease with Plaintiff they were only allowed to view the inside of the apartment for a few minutes. The Defendants were not allowed to inspect the apartment because there were tenants living there at the time of the Defendants' viewing. Prior to signing the lease with the Plaintiff both Defendants specifically asked Plaintiff if the apartment included a dishwasher and a washer and dryer and they were informed that the appliances were included in the apartment (R.p 49-55).

The Defendants were enrolled as freshmen at the College of Charleston and they were scheduled to start school on August 3, 2009. The Defendants were in the process of moving into the Plaintiff's apartment on August 1, 2009, when they inspected the apartment they discovered that the apartment did not have the required appliances and they refused to move into Plaintiff's apartment. Because of the Defendants refusal to accept the Plaintiff's apartment without the required appliances the Plaintiff offered to rent the Defendants another apartment which had the appliances required by the Defendants and the Defendants accepted the Plaintiff's offer (R.p. 45). For reasons unknown to the Defendants the Plaintiff did not rent the other Apartment to the Defendants and the Defendants were forced to find another apartment from someone other than the Plaintiff.

ARGUMENT ONE

It is the Defendants position that there is insufficient evidence in this case which would allow the Trial Judge to issue a Summary Judgment for either Party. Although it is undisputed that the Defendants signed a lease to rent the Plaintiff's apartment, the Lease and Security Deposit Agreement are ambiguous and in dispute with each other. It is undisputed in this case that the Defendants signed Plaintiff's lease on the 20th day April, 2009. It is also undisputed that the Defendants refused to accept the Plaintiff's apartment when they went to move into the apartment on August 1, 2009 and inspected the Apartment. It is also undisputed that because of the Defendants refusal to move into the apartment Plaintiff offered to allow the Defendants to lease another apartment which he had for rent. However, the Plaintiff failed to lease the other apartment to the Defendants for reasons unknown to Defendants. Because of the Plaintiff's failure to rent the other apartment to the Defendants, this creates a question of fact which must be resolved before a Summary Judgment can be rendered. The Lease Agreement does not state that a dishwasher and washer and dryer would be provided by the Plaintiff. However, the Security Deposit Agreement, which was signed contemporaneously, with the Lease and was incorporated into the Lease documents required that the Defendants clean the dishwasher in order to have their security deposit refunded to them. This discrepancy alone creates a sufficient dispute of material fact which would prevent Summary Judgment. The Security deposit Agreement was signed contemporaneously with the Lease and as part of the Leasing Documents. The Lease between the Parties provides, that all forms including, but not limited, to, the Application and Security Deposit Agreement form the entire Agreement between the Parties, and cannot be changed amended or modified except in writing executed by both Parties. Since the Security Deposit Agreement requires the Defendants to clean the dishwasher as a prerequisite to receiving a refund of their Security deposit, it is clear and unambiguous that the Defendants believed that there was a dishwasher in the apartment. This discrepancy by itself should have been sufficient to preclude the issuance of a Summary Judgment in this case.

ARGUMENT TWO

It is the Defendants position that in addition to the ambiguity in the leasing documents there are numerous other issues of disputed facts in this case which should have precluded the Trial Judge from issuing a Summary Judgment.

First: The Defendants insist that they were never given the opportunity to inspect the Plaintiff's apartment before signing the Lease. When they were given the opportunity to inspect the Plaintiff's apartment they refused to move into it because it did not contain the appliances required by the Defendants even though it was represented by the Plaintiff that the appliances were present in the apartment.

Second: The Defendants insist that they were informed by the Plaintiff that the apartment that they were leasing had a dishwasher and a washer and dryer. When the Defendants discovered that the apartment did have the appliances required by the Defendants the Defendants refused to move into the apartment. The Plaintiff subsequently agreed to allow the Defendants to lease another apartment owned by the Plaintiff which had the required appliances. The Defendants agreed to accept the alternate apartment, however, Plaintiff failed to lease the other apartment to the Defendants.

Third: The Defendants alleged that the Plaintiff made numerous misrepresentations to them concerning the rental of his apartments. These misrepresentations were made both, before and after, the Lease was signed by the Defendants. The Trial Judge in this case did not consider the misrepresentations made by Plaintiff to the Defendants when he awarded Plaintiff a Summary Judgment. The Trial Judge did not determine why the Plaintiff failed to rent the alternate apartment to the Defendants. This disputed issue was material to the Defendants counterclaim and should have been resolved by the Court.

FREWIL V. MADISON PRICE
APPELLATE CASE NUMBER: 2012-213055

Fourth: Both Parties submitted Affidavits in support of their positions in this controversy. These Affidavits contained numerous factual issues which should have been resolved before a Summary Judgment could be issued. It is the Defendants position that these disputed issues of material facts were not addressed by the Court when it issued its Summary Judgment Order in this case.

ARGUMENT THREE

The Defendants filed multiple counterclaims against the Plaintiff alleging Breach of Contract, Fraudulent Misrepresentations before and after the execution of the Lease Agreement and Violation of the South Carolina Landlord and Tenant Act. The Trial Judge failed to make any Finding of Fact in regards to the Defendants' Counterclaims. The Trial Judge merely stated that the Defendants failed to prove specific facts showing that there were genuine disputed issues of material facts concerning Defendants' Counterclaims. The Affidavits submitted by the Defendants clearly show that there were numerous factual issues which were disputed by both Parties in this case. The Trial Judge committed reversal error when he found that the Defendants failed to produce sufficient evidence concerning their counterclaim. The Defendants do not have the burden of proving their case at a Summary Judgment Hearing. The Defendants merely have to show that there are material factual issues which are disputed. The Defendants expressly state that they met their burden of proof in this case.

Furthermore, The Trial Judge erred when he failed to address the Defendants' Counterclaim concerning whether, or not, the Plaintiff violated the South Carolina Landlord and Tenant Act in failing to refund the Defendants security deposit back to them. The Plaintiff knew the Defendants were students at the College of Charleston and he failed to send any mail to the Defendants rather he chose to send a letter to the Defendants' parent's address. Since the Trial Judge failed to address any of the Defendants Counterclaims and it was improper for him to award the Plaintiff a Summary Judgment without addressing these issues.

FREWIL V. MADISON PRICE
APPELLATE CASE NUMBER: 2012-213055

Based upon the numerous issues of disputed material facts in this case the Trial Judge should have viewed all of the evidence in a light most favorable to the Defendants. Since the Trial Judge failed to view the evidence in a light most favorable the Defendants, he committed reversible error.

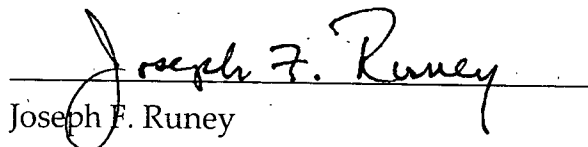
CONCLUSION

Summary Judgment is appropriate only when the evidence, the record and Affidavits show that there is no genuine issue as to any material facts barring such evidence the moving party is entitled to a Judgment as a Matter of Law. (*Christina G. deBoudt vs. Carlton Motor Cars, Inc.*, 536 S.C. 2d 399, 403 SC ct. App. 2000). The moving party has the burden of proof in showing that there are no genuine issues of material fact. All evidence in this case must be viewed in light most favorable to the non moving party. (*Perini Corp v. Perino Const., Inc.* 915 F zd 121, 4th Cir 1990)

In this case, the Plaintiff failed to meet his burden of proof that there were no genuine issues of material facts and the Defendants met their burden of presenting evidence of disputed material facts. Based upon the Affidavits by the Parties herein, there were numerous issues of material facts which were not resolved by the Trial Judge before issuing his Summary Judgment Ordered. Accordingly, The Trial Judge committed reversible error granting Plaintiff a Summary Judgment.

Charleston, South Carolina

Dated: Dec 9, 2013



Joseph F. Runey

South Carolina Bar Number: 4836

Attorney for Appellant

P.O. Box 6

Charleston, S.C. 29401

(843)722-2904 Phone

(843)722-2905 Fax

I hereby certify that the Final Brief herein complies with Rule 211(b).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

2010-CP-10-9956

Case No. 2012-213055

RECEIVED
DEC 12 2013
SC Court of Appeals

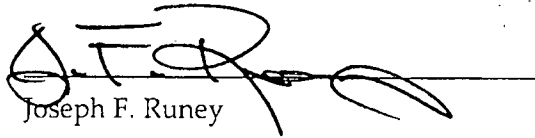
Frewil, LLC.....Respondent.

v.

Madison Price and Carter Smith.....Appellant,

PROOF OF SERVICE

I certify that I served three (3) copies of the Record on Appeal and Appellant's Final Brief to Respondent Frewil, LLC by hand delivery to the attorney of record, Wills and Massalon, LLC, Ryan Neville, Esquire, 97 Broad Street, Charleston, South Carolina, 29402, Phone 843-727-1144 on July 2, 2013.



Joseph F. Runey
Attorney for Appellant
14 Exchange Street
Charleston, S.C. 29401
(843)722-2904 Phone
(843)722-2905 Fax
South Carolina Bar Number 4836

December 11, 2013