THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2015-001472

Lawrence R. Potts, Candace Marie Potts, and Lanette Zimmerman,

Appellants

v.

Edward E. Yager,

Respondent

BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Plaintiffs' allege that the trial judge erred in finding that the plaintiffs could not prove any damages in entering judgment for Defendant.

STATEMENT OF THE CASE

On July 19, 2012, Plaintiffs brought this action against Defendant alleging that Defendant's conversion of the Plaintiffs' trailer and personal property to his own use was without Plaintiffs' permission and consent. (R.10.) On September 21, 2012, Defendant answered that despite written notification by him to the Plaintiff regarding Plaintiff's default, Plaintiff took no steps to remedy the default. Defendant considered the trailer abandoned. The failure of Plaintiff to remedy the default constituted an abandonment by him of the subject trailer. (R.30.) A two-day bench trial was held on November 18, 2014 and November 19, 2014, and an Order was entered on January 26, 2015, finding "the testimony of Lawrence and Candace Potts not credible. Particularly, the values assigned to the contents of the trailer is outrageous to the court and is unsubstantiated. As damages remain unproven, this Court finds for the Defendant, Edward Yager." Plaintiffs' post-trial motion was denied on June 3, 2015. (R.3.)

STATEMENT OF FACTS

Plaintiff Lawrence R. Potts and Defendant Edward E. Yager (Defendant) entered into a rental agreement on July 1, 2006 for the rental of a parking space located at 1837 North Main Street, Summerville, SC 29483. (R. 35-36.) Under the terms of this rental agreement, Plaintiff agreed to make regular payments of $50.00 per month in addition to his $50.00 security deposit. (R. 36.) Plaintiff also agreed that if he failed to "abide by the obligations of this agreement, including the obligation to make rental payments when due, [Defendant] shall have the option to cancel this agreement by providing 7 days written notice to the renter." (R. 98.) The agreement

further states that the contract "contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written." (R. 145.)

Plaintiff followed the terms of the parties' contracts for three years until November 2009 when he made his last payment. (R. 34.) Two years later, in August 2011, Defendant sent notice of default to Plaintiff's last known address in the file and the letter was never returned unsent. (R. 34, R. 148.) This letter explained to the Plaintiff that Defendant intended to exercise his right to terminate the contract and that he would consider the trailer abandoned if it was left on his property. (R. 148.) Plaintiff did not respond, and eighty-six days later, Defendant sold the abandoned trailer as-is to recover a portion of Plaintiff's balance owed. (R. 43.)

The plain language of the parties' contract clearly states that "Renter shall pay to Owner . . . $50 per month rental for each parking space, and $50 security deposit . . ." (R. 145, ¶2). The contract further states that "this agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written." (R. 145, ¶12). Lastly, the parties' contract states expressly that "this agreement may be modified or amended, only if the amendment is made in writing and is signed by both parties." (R. 145, ¶13).

It is undisputed that Plaintiff failed to make proper and timely payments under the contract. ("I know that there were times when I was behind on payments."). (R. 99.) Under the plain terms of the contract, this default was sufficient to trigger Defendant's rights under paragraph eight, the "Default" paragraph. Indeed, notwithstanding Mr. Potts' alleged efforts to cure his deficiency (which ceased altogether years before Defendant took action), any extension or renegotiation of the payment schedule would only be an effective modification of the parties' contract if it were made "in writing and . . . signed by both parties." (R. 145, ¶13).

Because the parties did not amend the contract, under the unambiguous terms of the parties' agreement the Plaintiff defaulted on the contract and Defendant was within his rights to terminate the contract pursuant to paragraph 8 as a matter of law. Under the parties' agreement, when Mr. Potts failed to "abide by the obligations of [the] agreement . . . [Defendant Yager] [had] the option to cancel [the] agreement by providing 7 days written notice to [Mr. Potts.]" (R. 145, ¶8). Alternatively, the agreement could also have been terminated within thirty days by providing written notice to the other party. (R. 145, ¶11). Here, Defendant provided plain, written notice to the Plaintiff at Plaintiff's last-known address. (R. 148.) This letter was sent to the address provided by the Plaintiff on the parties' contract, 107 Ramelias Drive, Summerville, SC 29483. (R. 145, R. 148.)

Because Defendant sent proper notice to the Plaintiffs of his intent to terminate the contract and cure the deficiency through sale of property to the last known address, which was plainly written on the parties' contract, Defendant's actions were supported by the plain agreement of the parties. See Pinckney v. Pettijohn Builders, Inc., 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986) (upholding judgment in favor of Defendant lessors who sold a delinquent lessee's property to recoup unpaid rent). (R. 145, R. 148.) Furthermore, the contract specifically absolves Defendant of any liability for harm that comes to Plaintiffs' property. (R. 145, ¶6). Because Defendant had the legal right to sell Plaintiffs' property, and the parties agreed that Defendant would not be liable for any harm that came to the Plaintiffs' property, no breach occurred and Plaintiffs' claims for conversion should be dismissed as a matter of law.

STANDARD OF REVIEW

In Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976), the court recognized "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. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action." See also Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1974).

ARGUMENT

I. The trial court did not err in entering a judgment for Defendant.

In the present case, the Court was both the trier of fact and the arbiter of the law. The trial judge's factual findings in an action at law, tried without a jury, must be affirmed unless there is no evidence that reasonably supports the trial judge's findings. "Moreover, we will not disturb the trial judge's finding of fact that depend on the credibility of witnesses." Daisy Outdoor Advertising, Co. Inc. v. Dean Abbott, 317 S.C. 14, 16, 451 S.E.2d 394, 395 (Ct. App. 1994), *affirmed in part, and reversed in part*, 322 S.C. 489, 473 S.E.2d 47 (1996). Indeed, in the instant case the court determined as the trier of fact that the Plaintiffs were not credible witnesses.

The court found "Mr. Potts testimony as to the value of the contents and Mrs. Potts testimony not credible." (R. 3.) Accordingly, the trial court's ruling that Plaintiff had not proven damages is a matter of witness credibility and should not be disturbed on appeal.

CONCLUSION

For the reasons stated above, Respondent respectfully requests this Court to affirm the trial court's Order.

Signature On Following Page

Respectfully submitted,

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May 20, 2016

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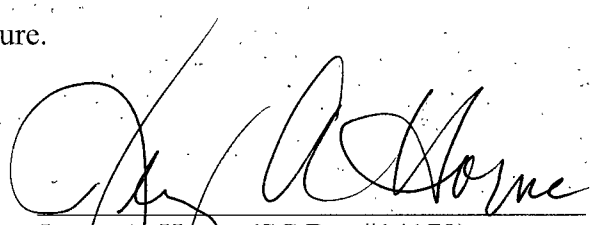
RULE 211 CERTIFICATE

The undersigned certifies that the Briefs of Respondent comply with Rule 211 of the South Carolina Rules of Appellate Procedure.



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PROOF OF SERVICE
(Final Brief of Respondent and Rule 11 Certificate)

I certify that on May 20, 2016, I mailed one copy of **Final Brief of Respondent** and **Rule 211 Certificate** to Jenny Abbott Kitchings, Clerk of Court for the South Carolina Court of Appeals, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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PROOF OF SERVICE
(Final Brief of Respondent and Rule 211 Certificate)

I certify that I have served the **Final Brief of Respondent** and Rule 211 Certificate on Appellants by depositing a copy of same in the United States Mail, postage prepaid, on May 20, 2016, addressed to their attorneys of record at the following addresses:

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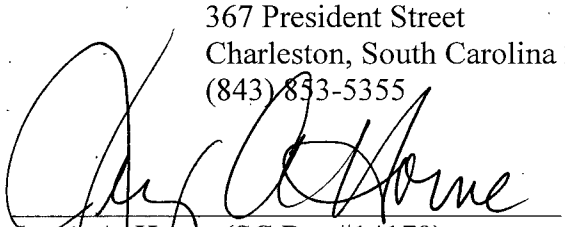

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