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MAR 27 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT of COMMON PLEAS

COUNTY OF AIKEN

SECOND JUDICIAL CIRCUIT

Robert William Robertson

CASE NO 2016-CP-02 - 01550

Plaintiff,

MASTER IN EQUITY ORDER

vs.

Huddle House, Inc.

Defendants.

FILED 2.27.17

[Signature]
CCJP. & G.S.

Anita Knoepfle 315
Deputy Clerk ddr

DATE OF HEARING: November 23, 2016

JUDGE: The Honorable M. Anderson Griffith

ATTORNEY FOR PLAINTIFF: Brad Brodie

ATTORNEY FOR DEFENDANT: Paul Simons, Jr. & David E. Hudson

Court Reporter: Alice Boni

Procedure

1. The Summons and Complaint were filed on July 11, 2016.
2. An Answer was filed on August 22, 2016.
3. An Order of Reference was filed on October 10, 2016.
4. The Defendant filed a pre-hearing brief on November 3, 2016.
5. An Order admitting David E. Hudson, Pro Hac Vice was filed on November 15, 2016.
6. The Plaintiff filed a pre-hearing brief on November 15, 2016.
7. A hearing was held on November 23, 2016. The Plaintiff was represented by his attorney, Brad Brodie. The Defendant was represented by its attorneys Paul Simons, Jr. and David E. Hudson.
8. The parties stipulated to the admission of the following documents:
 - A) Plaintiff's Exhibits A- Legal description of property.
 - B) Plaintiff's Exhibit B- Lease dated May 31, 2011 between

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T&Z Associates, as the Landlord and Fine Food, LLC(hereinafter referred to as Fine Food) as the Tenant.

- C) Plaintiff's Exhibit C- Collateral Assignment of Lease. Fine Food, LLC is the Assignor and Huddle House, Inc.(hereinafter referred to as Huddle House) is the Assignee. Attachment 1 is a Schedule of Leases. Attachment 2 is a Consent and Agreement of Lessor (T&Z Associates).
- D) Plaintiff's Exhibit D- Deed dated June 9, 2014 recorded in the Aiken County RMC Office in BK: RB4508, PG: 1518-1519. T&Z Associates transferred the property to Robert William Robertson for \$508,000.00.
- E) The parties stipulated to the admission of the affidavit of Tyrone Counts with the attachments.
- F) The parties stipulated to the admission of the affidavit of Thomas Robertson with the attachments.

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The Plaintiff's position is that based on the language in the Collateral Assignment of Lease, the Plaintiff can terminate the Lease with 30 day notice to the Defendant. The Plaintiff does not believe he is bound by the Franchise Agreement, which was not executed or assigned to the Plaintiff. The Plaintiff wants an order finding that the Plaintiff can evict Defendant after providing the 30 day notice.

The Defendant's position is that paragraph 29 of the Lease allows the Tenant, even without the consent of the Landlord, to assign its rights under the Lease. If Huddle House is the Tenant, no written approval is required. Further, the Defendant argues that Fine Food, the prior Tenant, provided written notice to the Plaintiff to renew the lease for 60 months. The Defendant wants an order that Huddle House is entitled to occupy the leased premises.

The Defendant believes that it took possession and assumed the rights of the Tenant under the Franchise Agreement. It does not believe that the Collateral Assignment of Lease has any application in this matter.

Robert William Robertson

The Plaintiff testified that he purchased the property from T&Z Associates in 2011. The business was already operating as a Huddle House. Fine Food was the Tenant.

The Plaintiff believes the Franchise Agreement ended in July, 2016. The business is not operating at this time. The Plaintiff has not signed any other documents with Huddle House. He believes he can evict the Defendant with thirty days notice based on the language in the Collateral Assignment of Lease. He did not sign the Franchise Agreement and does not believe that he is bound by the contract.

On cross-examination, Mr. Robertson agreed that Huddle House was still paying the rent on a monthly basis. Fine Food did remove some equipment. The Plaintiff read a portion of his deposition that is part of litigation in Georgia. In the deposition, he agreed that Fine Food had delivered the renewal notice for the sixty month renewal period and that he did receive the renewal.

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At the close of the Plaintiff's case, the Plaintiff made a motion for a directed verdict. The Court denied the motion.

The parties agreed that the Defendant would submit the affidavit of Tyrone P. Counts. The affiant states that he is the Chief Operating Officer of Huddle House. On July 28, 2011, Huddle House and Fine Food executed a Franchise Agreement. The parties also executed a Collateral Assignment of Lease on July 28, 2011. Mr. Counts stated that the purpose of the Collateral Assignment was for security if Fine Food lost the use of the premises or damaged Huddle House's goodwill at the Aiken location. He believes

the Collateral Agreement allows Huddle House to take possession of the premises and cure any default.

Exhibit 3 to his affidavit is a letter dated January 26, 2016 from Huddle House to Fine Food. Huddle House requested that Fine Food exercise its right to renew the Lease for the Aiken Huddle House location. By letter dated January 29, 2016, the Plaintiff received written notice to extend the term of the Lease for an additional sixty-month term beginning on June 1, 2016.

It is his understanding that Fine Food agreed to continue operating the Aiken Huddle House until July 14, 2016. Huddle House took possession the Aiken location on July 14, 2016. Huddle House alleges that Fine Food removed much of the furniture, fixtures and equipment from the Aiken location. Huddle House has closed the location but continues to pay rent to await delivery of new furniture, fixtures and equipment.

MAG 4 Prior to re-opening, the Plaintiff's filed the summons and complaint. Again, the Plaintiff's position is that the Plaintiff has the right to terminate the lease on thirty days' notice. Mr. Counts states that Huddle House has budgeted approximately \$216,000.00 to replace equipment, purchase food and training. He believes that if the contract is terminated, Huddle House would have to invest approximately \$1,300,000.00 for construction, land and equipment for a new location. Also, the current customer base at the Aiken location generated approximately \$56,720.00 per month in sales.

Exhibit 9 to the Affidavit of Tyrone P. Counts is a letter dated June 10, 2016 from the general counsel for Huddle House to Mary Jane Robinson with Fine Food and her attorney. Huddle House advised Fine Food that it was exercising its option in the Franchise Agreement to take assignment of the Aiken location. Huddle House also provided a copy of that letter to the Plaintiff,

as Landlord, to advise him that Huddle House was taking assignment of the Lease. The letter also advised the Plaintiff that Huddle House believed the Landlord was obligated by the renewal of the Lease.

Exhibit 10 to the Affidavit of Mr. Counts is a June 13, 2016 email from the attorney for Fine Food that Huddle House would only be entitled to a month to month tenancy. The same attorney notified Huddle House that Fine Food elected not to renew the Franchise Agreement. Huddle House responded by notifying the attorney for Fine Food and the attorney for the Plaintiff that Huddle House took assignment of Fine Food's interest in the Lease that had already been renewed for the additional sixty month term. Huddle House's position was that the expiration of the Franchise Agreement triggered the right of Huddle House to take assignment of the premises. Huddle House believed that Mr. Robertson, as the Landlord, agreed, pursuant to Section 29 of the Lease, that the Tenant could assign the Lease without the Landlord's consent.

THE LEASE

- MAG#5
1. The Lease identified the Landlord as T&Z Associates. The Tenant identified Fine Food as the Tenant.
 2. The agreement was dated May 31, 2011.
 3. a) Paragraph 3.1 defines the original term as three years beginning on June 1, 2011 and ending May 31, 2016.
b) Paragraph 3.2 states that if the Tenant is not in default, it shall have the right to renew the Lease for two additional sixty month periods.
c) The renewal notice must be in writing and provided not less than three months prior to the termination date.
d) Based on the testimony and exhibits, Fine Food provided the notice for a sixty month renewal. Based on his testimony, the Plaintiff agreed that he was notified of the renewal.

4. Paragraph 26 defines the term "Landlord" to "include first party, its representatives, assigns and successors..." "Tenant" is defined "to include" second party, its representatives, and if the Lease shall be validly assigned or sublet, shall include Tenant assignees or sublessees...."

5. Paragraph 28 states that the Lease contains the entire agreement of the parties. Any change or addition must be in writing and properly executed by the parties.

6. a) Paragraph 29 is entitled "Rights of Huddle House" Both the Landlord and the Tenant acknowledged that a Huddle House restaurant would be operated at that location. The parties agreed that Huddle House had certain rights pursuant to the Franchise Agreement.

b) The Landlord also agreed that the Tenant, without the consent of the Landlord could sublease or assign its interest under the Lease. If the assignment was to Huddle House, the written approval of Huddle House was not required.

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7. Paragraph 37 states that the Lease is contingent upon the following:

a) Huddle House entering a Franchise Agreement with Lessee (Fine Food). All parties agreed that there was a Franchise Agreement.

b) The Landlord was to enter into Huddle House's Collateral Assignment of Lease. The Lease expressly states that the form provided Huddle House with the ability to lease the property from the Landlord if the conditions outlined in the agreement occur. If those two conditions were not met, the Tenant could declare the Lease "null, void and of no force and effect".

c) Attachment 2 to the Collateral Assignment of Lease is entitled "Consent and Agreement of Lessor." The Landlord,

T&Z Associates executed the document.

COLLATERAL ASSIGNMENT OF LEASE

1. This is an agreement that identifies Fine Food as the Assignor and Huddle House as the Assignee.
2. By the terms of the agreement, the Assignor assigned and transferred to the Assignee "all of Assignor's right, title and interest as tenant in, to and under those certain leases, identified on Attachment 1". The third paragraph describes that upon default the Assignor (Fine Food) under the Lease or Franchise Agreement, the Assignee (Huddle House) has authority to take possession of the property.

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This agreement expressly states that it "is for collateral purposes only..." The document does contain the language that, "Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to have assumed any obligation of Assignor, except for the payment of the monthly payments of the monthly rental payments set forth in the Lease during such period of occupancy by Assignee." This document was signed by Fine Food and Huddle House.

Attachment 2 to this document is identified as "Consent and Agreement of Lessor" T&Z Associates, the owner of the real estate now owned by the Plaintiff, consented to the Collateral Assignment and that the Assignee (Huddle House) would be recognized as the Tenant under the terms of the Lease. The document discusses default by assignor (Fine Food). In this matter, there was no default by the terms of the Lease or Franchise Agreement.

FRANCHISE AGREEMENT

1. The Franchise Agreement was signed by Huddle House and Fine Food. Huddle House is identified as the "Company". Fine Food is identified as the "Operator".
2. The initial term in paragraph 3 ended on May 31, 2016. This

agreement contains language for two sixty-month renewal terms.

3. Paragraph 3(c) states that the Operator must exercise a right to renew the Franchise Agreement not less than six months or more than twelve months prior to the expiration date of the initial term of the agreement. The notice must be in writing. If the Operator does not exercise the renewal option, the Company can exercise its options pursuant to paragraph 15 of the Franchise Agreement.

4. Paragraph 15(b) provides the following:

"Due to the unique nature of the Huddle House System, there may be certain locations that Company believes are irreplaceable, and vital to the Huddle House System, resulting from development and growth patterns or otherwise, and which locations Company believes must remain as Huddle House units. If, upon termination or expiration of the Agreement, Company in good faith believes the Premises are vital to the Huddle House System, and if the Premises will not otherwise remain a Huddle House Unit (e.g., by way of renewal or transfer to a new franchise owner), and if Company is willing to acquire such Premises for fair market value, then Company, its successors and assigns, or its nominee shall have the right, at its option, upon notice to Operator within thirty (30) days after termination or expiration of this Agreement to state its preliminary intent to purchase for cash, or upon such terms as agreed upon, Operator's interest in the Premises at fair market value. If Company and Operator have not agreed upon a fair market value within the thirty (30) day period and cannot, by mutual agreement within seven (7) days of the expiration of such period, appoint an appraiser to determine fair market value, Company, within fourteen (14) days thereafter, shall notify Operator of the

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names of two appraisers or firms having the capacity to perform or engage others to perform appraisals of the Premises. Operator shall select, within seven (7) days after such notification by Company, one of such appraisers or firms to be responsible for determining fair market value; otherwise, Company shall select one such appraiser or firm to be responsible for determining fair market value and such appraiser's or firm's decision shall be binding. Each party shall divide equally the cost of any appraiser or firm. Within ten (10) days after Company has been notified of the fair market value, Company may exercise its option to purchase by notice to Operator, with closing to be no sooner than fifteen (15) days from the date Company exercises its option and no later than (90) days thereafter; otherwise such option shall expire".

CONCLUSIONS OF LAW

The Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this Court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

"The primary concern of the court interpreting a contract is to give effect to the intent of the parties." *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) "The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language of the contract." *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (2014).

The Lease was executed by T&Z Associates and Fine Food.

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Although Huddle House did not sign the Lease, the Landlord did acknowledge that the property would be used as a "restaurant franchised by Huddle House. The Landlord also agreed that the Tenant, "may at any time with or without the consent of the Landlord, sublease, assign or encumber, its interest, rights, privileges and obligations arising out of this Lease Contract, to any other person or persons, provided Tenant obtains the written approval of Huddle House its successors and assigns, for such subleasing or assignment. In the event that Huddle House is the Tenant hereunder, such written approval shall not be required."

Paragraph 37 of the Lease makes the Lease contingent upon the execution of the Franchise Agreement and the Landlord entering Huddle House's standard Collateral Assignment of Lease. The Landlord (T&Z Associates) executed the form. The parties stipulated to the submission of the Lease and the Collateral Assignment of Lease.

MAG #10 Paragraph 15 (b) of the Franchise Agreement provides a method for Huddle House, upon termination or expiration of the Agreement to assume the operator's interest. In this matter, the operator is Fine Food. The Operator had already obtained a sixty month extension on the lease.

The Collateral Assignment of Lease discusses what happens if the Assignor (Fine Food) defaults on the terms of the Lease or the Franchise Agreement. Based on the evidence submitted, there was no default by Fine Food. It simply decided to not request the extension or renewal of the Franchise Agreement. The letter dated June 10, 2016 (Exhibit 9 to the Affidavit of Tyrone P. Counts) advised Fine Food that Huddle House was exercising the option in the Franchise Agreement to take assignment of the Aiken location. The Plaintiff was also provided with a copy of this letter. The letter does reference Paragraph 29 of the Lease and the Collateral

Assignment of Lease. However, as stated above, there was no default of the Lease or the Franchise Agreement.

Fine Foods provided Huddle House with written notification that it would not exercise its right to renew the Franchise Agreement. Thomas Robertson, the Franchise Area Director for Huddle House met Mrs. Robertson on July 14, 2016. She turned the keys over to him for the Aiken location.

CONCLUSION

1. The Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this Court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

2. In paragraph 29 of the Lease, the Landlord acknowledged the property was a restaurant franchised by Huddle House. The Landlord also agreed that the Tenant could assign the Lease, without the Landlord's consent. In this matter, those rights were assigned to Huddle House.

3. Fine Foods obtained a sixty month extension of the Lease from the Plaintiff/Landlord.

4. The Franchise Agreement provides a method for Huddle House to assume the Operator's interest. Fine Foods did not renew the Franchise Agreement after the expiration date. Huddle House has assumed operation of the Aiken location. This occurred after the sixty month extension was obtained.

5. While the Plaintiff is correct about the language in the Collateral Assignment of Lease, a review of the entire document established the intent of the parties was that this document deals with a Tenant that defaults on the Lease or Franchise Agreement. In this case, there was no default.

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6. Rental payments have continued to be paid to the Landlord. There were no claims of default by the Tenant, Huddle House or the plaintiff.

7. Huddle House exercised its rights under the Franchise Agreement and not as a result of the default under the Collateral Assignment of Lease.

8. The Plaintiff is not entitled to evict Huddle House from the Aiken location based on the testimony, exhibits and a review of the documents. Huddle House is entitled to assume the rights of the former Tenant based on the language of the Lease, the Franchise Agreement, and the sixty month extension.

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AND IT IS SO ORDERED.

M.A. Griffith
M. Anderson Griffith
Master-in- Equity for Aiken County

Aiken, South Carolina

February 27, 2017

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP0201550

Robert William Robertson		Huddle House Inc	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
SEE ORDER	SEE ORDER	SEE ORDER

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

M.A. Griffith
 M. Anderson Griffith/Master In Equity

3076
 Judge Code

2/27/2017

Date 2 27 2017

For Clerk of Court Office Use Only

FILED 2 27 2017
Robert J. White
 C.C.P. & C.L.
Anita Knepper
 Deputy Clerk

227-17
This judgment was entered on 2.27.17, and a copy mailed first class or placed in the appropriate attorney's box or, to attorneys of record or to parties (when appearing pro se) as follows:

Bradley A. Brodie PO Box 519 Aiken, SC 29802-0519

Paul Knapp Simons Jr. Hull Barrett, PC 111 Park Avenue,
SW Aiken, SC 29801

ME

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Robert J. Haut by AMJ

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

