

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE CIRCUIT COURT OF HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

Circuit Court Case No. 2016CP2600204

Gregory Faubel, Appellant

v.

Tom Pate, Respondent

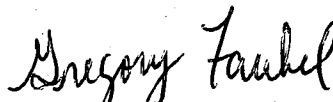
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FEB 12 2018

SC Court of Appeals

BRIEF OF APPELLANT

COURT OF APPEALS CASE NUMBER 2017-001074


Gregory Faubel, Appellant

6251 Olga Lane

Loris, SC 29569

(843) 877-9459

STATEMENT OF ISSUES ON APPEAL

1. Did the trial courts fail to see this matter as a breach of contract?
2. Did the trial courts fail to see this matter as a sales contract?
3. Title of real property

STATEMENT OF THE CASE

1. Upon signing the sales contract we had to evict his tenants in order take possession of property.
2. Part of the property was surveyed out of the contract after the contract was signed.
3. Mr. Pate put a mobile home on the property and rented it out.
4. When Mr. Pate was informed of the damage his tenants had done to the house his reply was to sue his tenants or take him to court.
5. This case has never been for litigation, and with the allegations of breach of contract we feel it should have went to litigation before it went to a trial.

ARGUMENTS

1. With the damage of the property, done by his tenants that he rented the dwelling to, we have had to slowly fix and repair in the house to be able to make it a livable dwelling.
2. With the land that Mr. Pate surveyed out of the contract that was part of the property on our sales agreement, we feel like he collected rent on the mobile home that he placed on the

land was payment for our land.

3. The breach of contract done by Mr. Pate, when he survived land out of the contract, refused to remove his tenants when contract was signed and he received deposit.

4. Hazardous material that was left on property that we have had to slowly remove.

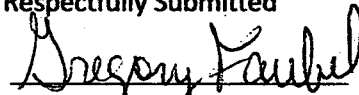
5. The misrepresentation of the property when the contract was signed was supposed to be a 3 bedroom 2 bath house and it ended up being a 2 bedroom 1 bathroom house.

CONCLUSION

For the reasons stated, this Court should reverse the judgement of the circuit court.

January 19, 2018

Respectfully Submitted



Gregory Faubel, Appellant
2951 Olga Lane
Loris, SC 29569
843-358-2316

Notice of Appeal from Common Pleas Regarding a Magistrate or Municipal Court

The State of South Carolina

In the Court of Appeals

Appeal From Horry County

Court of Common Pleas

Benjamin Culvertson Circuit Court Judge

Case Number 2016CP2600204

Gregory Faubel

Appellant

V

Tom Pate

Respondent

Appellant Case Number : 2017-001074

INDEX

Fact 1 : Page 5 line 19 to Page 4 line 3 Breach of Contract

Page 6 line 3 to line 11 Breach of Contract

Page 8 line 5 to line 11 Breach of Contract

**Fact 2 : Page 9 line 8 to line 12 Respondent admitted in open court this is a
Land Sales Contract**

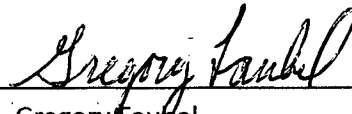
**Fact 3 : Page 8 line 1 to line 9 Respondent admitted in open that
Magistrate Judge Meyers, ruled it as a Land Sales Contract. Three or Four times it
went back to Judge Meyers for conformation on rulingas there was No definate ruling.**

Fact 4 : page 8 line 11 to 15 Magistrate Meyers would not make a

clear decision on the case.

Fact 5 : page 8 line 11 to line 23 Respondent cut land out of what was included in the Land Sale Contract after the contract was signed and he accepted the down payment. Then he placed a mobile home on the said cut out land and rented it out for \$550.00 a month which was more than our payments.

Submitted Respectfully



Gregory Faubel
6251 Olga lane
Loris, SC 29569
843-358-2316

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2016-CP-26-204

Gregory Faubel, et al.,)

Plaintiffs,)

vs.)

Tom K. Pate,)

Defendant.)

Transcript of Record

April 12, 2017

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Gregory Faubel, Plaintiff
Appearing Pro Se

Tom K. Pate, Defendant
Appearing Pro Se

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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SC Court of Appeals

1 (There were no exhibits marked during the hearing.)
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1 (On the record, April 12, 2017.)

2 THE COURT: All right. Next is 2016-CP-26-204. All
3 right. This is 2016-CP-26-204, the case of Gregory -- is it
4 Faubel?

5 MR. FAUBEL: Yes, sir.

6 THE COURT: Faubel -- versus Thomas K. Pate. The matter
7 is before the Court on an appeal from Conway -- from the
8 magistrate. All right. Please give the court reporter your
9 names and who you represent.

10 MR. FAUBEL: Greg Faubel. I represent myself.

11 THE COURT: All right.

12 MR. PATE: Tom Pate, myself.

13 THE COURT: All right. Mr. Faubel, this is your
14 appeal?

15 MR. FAUBEL: Yes, sir.

16 THE COURT: All right. Let me hear from you.

17 MR. FAUBEL: I thoroughly apologize for the way I'm
18 dressed because I've had surgeries and the swelling it's the
19 only thing I could wear. Appeal is a breach of contract for
20 land that was excluded from the land when we bought it. It
21 was surveyed off the contract after the contract was signed.
22 It was part of Tract Four that was attached to my land and he,
23 he cut it out, surveyed it out, put trailers on it, rented
24 them out. There's a trailer previously on it right now being
25 rented out for 550 a month. I said, "Well, if you're going to

1 take my land then, you know, and was going to charge them \$550
2 a month I'm not going to pay you mortgage on top of what
3 you've used on my property." Then the other part of the
4 breach of contract is he didn't evict his tenants. He left
5 them in there and they damaged the house. When he was
6 contacted at the time that the house was damaged to come out
7 and look at it he refused to come and look and said, "Well,
8 sue them." "I can't sue the tenants. I didn't rent to them."
9 You -- it was your job. You said you were going to evict the
10 tenants when we give you a deposit. You've never evicted your
11 tenants. I had to do it. With that being said, I can resolve
12 this whole issue today if Mr. Pate'll work with us, no more
13 appeals, no more nothing. What I'm asking for is a jury
14 trial. If he wants -- and a -- there's never been
15 litigation. If Mr. Pate'll work with us, give me 90 days,
16 there won't be no more court appeals or nothing, I'll be off
17 his property.

18 THE COURT: Okay.

19 MR. FAUBEL: I have a trailer being set up in Marion
20 right now. I'll be off his property within 90 days.

21 THE COURT: All right.

22 MR. FAUBEL: You know, there won't be no more court
23 appeals, no more nothing. He can have it.

24 THE COURT: All right. Mr. Pate.

25 MR. PATE: Yes, sir. We entered a land sales contract in.

1 May of 2011 and they paid up until January of the following
2 year, which would be 2012, and that's been -- this May'll be
3 five years they haven't paid a penny on that property. I
4 haven't gotten any money out of it. The lease says they
5 supposed to pay insurance. They haven't put any insurance on
6 it. They were supposed to pay the taxes on it. They haven't
7 paid the taxes on it. I've been to magistrate court three
8 times. This is either my third or fourth time in this court
9 trying to get them out of this house. On my land sales
10 contract that's where it was here a couple of times and they
11 sent it back to the lower court to get the, the magistrate to
12 decide on what kind of contract it was, and specifically in my
13 contract 9(F) says if they don't pay their rent I can use it
14 as a landlord tenant contract and I can go to magistrate court
15 and have an eviction just like you do in a regular -- when you
16 have to evict somebody.

17 I've got about 30 or 40 properties that I lease out, and
18 this is the first time it's took me five years to get somebody
19 out of my house, five years. I've paid the insurance on that
20 house. I've paid the taxes on that house. I've not received
21 a penny from these people since January of 2012, and this is
22 getting a little bit crazy.

23 THE COURT: All right. Thank you. Anything in
24 reply?

25 MR. PATE: Let me say one more thing if you don't mind.

1 The reason we're here today, like I said earlier, Judge Mayers
2 rendered it a sales contract, but he also said that it could
3 be used as a -- since they broke the lease or contract, let's
4 say the sales contract, I could go back to a landlord tenant.
5 So Judge Mayers ruled on it. These guys here appealed it. We
6 back -- went back to this court two or three times. They sent
7 it back to Judge Mayers again. So he ruled on it. It could
8 be a landlord tenant. So now we're back here again for the
9 third or fourth time. Thank you.

10 THE COURT: All right. Anything in reply?

11 MR. FAUBEL: Your Honor, Your Honor, Judge Mayers said it
12 could be either way. He couldn't make a -- they couldn't get
13 him to make a ruling on it. They couldn't get him to make a
14 ruling on it, and the whole thing is, you know, it's a breach
15 of contract. When he was notified of the breach of contract
16 he made money on the land he cut out of our, our contract,
17 which he was excluded from ours after the contract was signed.
18 So he breached the contract, and he breached the contract by
19 leaving his tenants in there and not evicting them out and
20 which I think you have in your records it was over \$100,000
21 worth of damage done to the house where they took -- cut the
22 floors out of it. I've had to do all that repair work in
23 there.

24 THE COURT: Okay.

25 MR. FAUBEL: And I'm just saying another 90 days I can be

1 out of there.

2 THE COURT: All right.

3 MR. FAUBEL: And he can have it and stop all the court
4 mess.

5 THE COURT: All right. Well, I find that the magistrate
6 did submit another return remanding the matter back where they
7 did find that it was a landlord tenant relationship. All I do
8 is review whether or not the magistrate made any errors of law
9 or if there's no evidence to support the decision. I find
10 that there is evidence to support the magistrate's decision.
11 I affirm the decision. All right.

12 MR. PATE: So what, what does this mean?

13 THE COURT: So it means that it's a landlord tenant
14 relationship. The order for ejectment is enforceable.

15 MR. PATE: So I have to go back and do another
16 eviction?

17 THE COURT: Well, the -- as I read the transcript he
18 issued an order of ejectment.

19 MR. PATE: Yes, sir.

20 THE COURT: But he just did not pursue enforcement until
21 this appeal was heard.

22 MR. PATE: So I need to go to Judge Mayers.

23 THE COURT: So you'll need to advise the magistrate that
24 the Court has affirmed his decision. Therefore, he can go
25 forward and enforce the order of ejectment.

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MR. PATE: Thank you.

THE COURT: All right. Thank you.

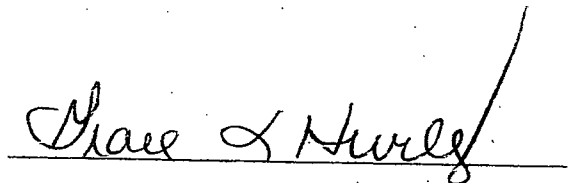
(Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Gregory Faubel, et al. versus Tom K. Pate, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 12, 2017.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

July 1, 2017

//

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson , Circuit Court Judge

Case No. 2017-001074

Gregory Faubel, Appellant,

v.

Tom Pate, Respondant

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FEB 12 2018

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

April 5, 2001 s/ Gregory Faubel


Gregory Faubel

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Loris, South Carolina 29569

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