

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

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JAN 09 2018

SC Court of Appeals

Case No. 2016-CP-02-01550

Robert William Robertson, Appellant,

V.

Huddle House, Inc., Respondent.

FINAL BRIEF OF APPELLANT

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1. BECAUSE THE COLLATERAL ASSIGNMENT OF LEASE BETWEEN THE PARTIES PROVIDED THAT "ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE, INC.) SHALL BE DEEMED TO BE UNDER A MONTH-TO-MONTH TENANCY", THE TRIAL COURT ERRED BY FINDING THIS UNAMBIGUOUS PROVISION DID NOT APPLY AND FINDING THAT HUDDLE HOUSE, INC. HAD MORE THAN A MONTH-TO-MONTH TENANCY .. 1

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT THE LANGUAGE IN THE COLLATERAL ASSIGNMENT OF LEASE WHICH STATED THAT "ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE) SHALL BE DEEMED TO BE UNDER A MONTH-TO MONTH TENANCY" IS NOT ENFORCEABLE BY APPELLANT?

STATEMENT OF THE CASE

On July 11, 2016, Robert William Robertson brought this action for a declaratory judgment against Huddle House, Inc. alleging that under the terms of the Collateral Assignment of Lease between the parties, Huddle House, Inc. was under a month-to-month tenancy, which therefore could be terminated by Robert William Robertson with a 30 day notice. The action was tried on November 23, 2016, and judgment entered on February 27, 2017, and the Court found that the month-to-month tenancy language was not controlling.

On March 24, 2017 Robert William Robertson served the Notice of Appeal.

- I. BECAUSE THE COLLATERAL ASSIGNMENT OF LEASE BETWEEN THE PARTIES PROVIDED THAT "ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE, INC.) SHALL BE DEEMED TO BE UNDER A MONTH-TO-MONTH TENANCY", THE TRIAL COURT ERRED BY FINDING THIS UNAMBIGUOUS PROVISION DID NOT APPLY AND FINDING THAT HUDDLE HOUSE, INC. HAD MORE THAN A MONTH-TO-MONTH TENANCY.

As described in the Complaint, Appellant is the owner of certain property which was under lease to Fine Food, LLC. (R., p. 35) Respondent is not a party, or signatory to the lease. Respondent is a party to and did execute a Collateral Assignment of Lease, which contained certain terms, including language that provided that "*Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be*

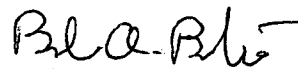
deemed to have assumed any obligations of Assignor, except for the payment of the monthly rental payments as set forth in the lease during such period of occupancy by Assignee.” (R., pp. 122-127)

Respondent has taken possession of the property and it is the Appellant's position that the possession is under a month-to-month tenancy, and that the trial Court erred in finding otherwise. The language is not ambiguous and should have been enforced by the Court according to its plain meaning. The Collateral Assignment of Lease is subject to general rules of contract construction and the trial court should enforce, not write the contract and should give the contractual language its plain, ordinary and popular meaning. State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478 S.E. 2d 831 (S.C., 1996)

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Master-in-Equity, and order that the possession by Respondent is under a month-to-month tenancy, as described in the Collateral Assignment of Lease.

Respectfully submitted,



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January 2, 2018

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief Complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant; Rule 211(b) SCACR Certificate; and Motion of Extension by depositing a copy of it in the United States Mail, postage prepaid, on January 2, 2018, addressed to its attorneys of record, Paul Simons, Jr., Hull Barrett, PC, P.O. Box 517, Aiken, South Carolina 29802, and to David E. Hudson, Hull Barrett, PC, P.O. Box 1564, Augusta, Georgia 30903-1564.

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