

City of Charleston Housing Authority

Katrina Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- 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 \_\_\_\_\_
- 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 of the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

FILED  
 APR 24 AM 8:55  
 JILLIE J. ARMSTRONG  
 CLERK OF COURT

**INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge Al Shreeve

Judge Code 2118

Date 4/17/2018

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Adam Protheroe

Jacqueline Dixon Phillips

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

RECEIVED

DEC 05 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 City of Charleston Housing Authority, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Katrina Brown, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

Docket No.: 2017-CP-10-02711

ORDER  
 RECEIVED  
 DEC 05 2018  
 SC Court of Appeals

BY  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

2018 APR 24 AM 8:55

FILED

This matter came before the Court on an appeal filed on May 31, 2017 by Appellant Katrina Brown ("Brown") from a decision of the magistrate court granting an eviction. A hearing on the matter was held on September 5, 2017. Present at the hearing were Adam Protheroe, Esquire, attorney for City of Charleston Housing Authority ("CHA"), and Jacqueline Dixon Phillips, Esquire, attorney for Brown. This is the second appeal in this matter.

CHA filed an action to evict Brown in magistrate court on March 1, 2016. A hearing on the eviction was conducted on March 16, 2016 during which several witnesses testified. The magistrate issued an order denying the eviction which was subsequently appealed to the circuit court. A hearing on the appeal was conducted in January 2017. On January 11, 2017, the circuit court remanded the matter to the magistrate for additional consideration of the U.S. Supreme Court decision in *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002). On remand the magistrate considered all of the evidence in light of the *Rucker* decision and issued an Order on May 15, 2017 granting the eviction. This appeal followed.<sup>1</sup> Brown primarily argues that the magistrate erred in ordering an eviction because CHA failed to exercise its discretion in determining whether eviction was appropriate in light of the facts and the decision in *Rucker*.

S.C. Code Ann. § 18-7-170 provides the standard of review on appeal from the judgment of a magistrate. "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.

<sup>1</sup> For a detailed recitation of the facts and the orders issued by the magistrate and the circuit court, reference is made to the Magistrate Return and the Orders contained therein.

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In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

The undisputed facts are as follows: CHA entered into a lease agreement ("Lease") with Brown on December 16, 2015 for her to occupy 2214-A Sunnyside Drive in Charleston, South Carolina. Under the Lease, Brown occupied the premises with three other persons: Rashauna Brown, Anthony Cobb ("Cobb"), and Janique Richardson. Brown's son, Cobb, was arrested on January 13, 2016 for unlawful carrying of a pistol. Because he fit the physical description of the suspect of an attempted armed robbery, he was questioned about that incident which took place on January 11, 2016. The attempted armed robbery occurred approximately one mile from the grounds of the housing authority. During a post-*Miranda* interview, Cobb confessed to the attempted armed robbery after his arrest on the weapons charge. During the interview, Cobb would not reveal the name of the second perpetrator involved in the attempted armed robbery.

Charleston Police Department contacted Cobb's mother, Brown. She assured the detective that her son would tell them the name of the second perpetrator. During a second interview, Cobb still refused to reveal the name. Thereafter, Brown told Cobb not to talk with police anymore.

At trial before the magistrate, Brown confirmed that all of the alleged activity took place away from CHA property and that she had no knowledge of the incidents until her son was arrested. Brown testified that if Cobb was granted a bond and released from custody, he would live with his grandmother, would not return to the apartment on CHA property, and would no longer live at the CHA dwelling.

CHA sought to evict Brown for violating Sections 5(c), 5(d), 5(e), 5(f), 16(n), and 16(u), of the Lease which prohibit "unlawful" or "criminal" conduct by residents or household members. The magistrate initially found that Brown was not in substantial breach of the Lease and denied the application for ejectment with leave for CHA to remove Cobb as a household member. Upon appeal, the circuit court remanded the matter for the magistrate to make findings consistent with *Rucker*. Without making any new findings of fact or considering any additional evidence, the magistrate considered *Rucker* and subsequently evicted Brown. This appeal followed.

Brown argues there is no evidentiary support for finding that the alleged criminal activity threatened the health, safety, or right to peaceful enjoyment of other residents or of those residing in the immediate vicinity of the housing complex. Specifically, Brown argues that the criminal activity is not drug related as in *Rucker* and therefore, CHA must prove that the criminal activity

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threatens the health, safety, or right of peaceful enjoyment of other residents and those living in the immediate vicinity of the housing complex.

In *Rucker*, four separate ejectment actions were brought by the Oakland Housing Authority against its tenants whose guests or household members had engaged in drug-related criminal activity at the public housing complex. The tenants challenged the Department of Housing and Urban Development's ("HUD") interpretation of 42 U.S.C. § 1437d(1)(6). The U.S. Supreme Court in *Rucker* held that "Section 1437d(1)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity." 535 U.S. at 136, 122 S. Ct. at 1236. *Rucker* does not address eviction for conduct other than drug related activity.

The Lease at issue here provides that "neither the Resident nor any household members, guest, or other person under the Resident's control shall engage in any violent or drug-related criminal activity *on or off the premises.*" (Emphasis added). *Dwelling Lease Agreement* ¶5f. Paragraph 16n of the Lease Agreement states that the "Landlord shall not terminate ... the Lease other than for serious or repeated violation of material terms of the Lease, such as, ... any violent or drug-related criminal activity performed by any household members, guests, other persons under the Resident's control *on or off the premises, not just on or near the premises.*" (Emphasis added). *Dwelling Lease Agreement* ¶ 16n. Based upon the evidence presented to the magistrate, it is undisputed that neither Brown nor her son Cobb engaged in any violent or drug-related criminal activity *on* the premises in violation of the Lease.

Cobb was charged by the Charleston Police Department with attempted armed robbery, which is a felony and a violent crime under S.C. Code Ann. § 16-1-60. Additionally, he was also charged with the unlawful carrying of a pistol. These were two separate charges that occurred in two separate incidents within a one week period off CHA's premises. CHA had the right to terminate the lease based upon both Paragraphs 5f and 16n.

Brown argues that the regulations interpreting the federal statute support eviction only for drug related criminal activity occurring on or off the public housing premises, and for other criminal activity which poses a threat to the community. 24 C.F.R. § 966.4(1)(2)(iii)(A) Brown advocates that the CHA lease terms prohibiting violent criminal activity on or off the premises is "not rationally related to a legitimate housing purpose" and therefore runs afoul of the prohibition

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against unreasonable terms in such leases contained in 42 U.S.C. § 1437d(1)(1). See *Richmond Tenants Org., Inc. v. Richmond Redevelopment & Hous. Auth.*, 751 F.Supp. 1204 at 1205 (E.D. Va. 1990), *aff'd*, 947 F.2d 942 (4<sup>th</sup> Cir. 1991) (lease provisions making misdemeanor convictions a material breach of lease unreasonable in violation of 42 U.S.C. § 1437d(1)(1) because it could be used to evict tenant for an offense that bore no relation to the housing development).

The regulations interpreting the federal statutes clearly state that the tenant shall be obligated "to assure that no ... member of the tenant's household ... engages in any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents." 24 C.F.R. § 966.4(f)(12)(i)(A). Further, the lease shall contain provisions relating to eviction for "other good cause" which includes "criminal activity ... provided in paragraph (l)(5) of this section." 24 C.F.R. § 966.4(l)(iii)(A). Under Paragraph (l)(5), the public housing authority has authority to terminate the tenancy for criminal activity or alcohol abuse. For non-drug activity, "the lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment by other residents... or threatened the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy." 24 C.F.R. § 966.4(l)(5)(ii)(A) The tenant may be evicted for criminal activity by judicial action if the housing authority determines that the "covered person has engaged in criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction." 24 C.F.R. § 966.4(l)(5)(iii)(A).

Pursuant to the lease, CHA had the authority to terminate the lease for a serious violation of the terms of the lease such as violent criminal activity performed by a member of the household or a person under the resident's control occurring on or off the premises. As previously stated Cobb was a member of the household who was arrested for violent criminal activity (attempted armed robbery) within one mile of CHA's property. According to the testimony, as reflected in the Return, at approximately 2:00 am, the victim was at 1 Cool Blow when approached by two subjects, one of whom racked the gun in an attempt to rob the victim of a phone and wallet. The incident occurred about a mile off CHA premises but it involved acts, from which it can be inferred, created a threat to the health, safety and right to peaceful enjoyment by residents in the vicinity of CHA's property.

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Brown challenges the constitutionality of the federal statute and regulations that seem to allow the eviction of "so-called 'innocent' tenants" such as herself. The U.S. Supreme Court in *Rucker* considered the same question and specifically held "that 42 U.S.C. § 1437d(1)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members ... whether or not the tenant knew, or should have known, about the activity." 535 U.S. at 130, 122 S. Ct. at 1233. Specifically, 42 U.S.C. § 1437d(1)(6) states: "Each public housing agency shall utilize leases which ... provide that ... *any criminal activity* that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." *Id.* (Emphasis added). By the terms of the statute, *Rucker* is not limited only to drug related activity. It applies to any criminal activity.

Further, the U.S. Supreme Court stated that the federal statute does not require a housing authority to evict under the circumstances provided here, but the local housing authority has been vested with the power, by Congress pursuant to the statute, to determine the circumstances under which it may exercise its authority because it is in the best position to do so. Under the statute, the housing authority has the power to evict the tenant as well as the household member. The U.S. Supreme Court in *Rucker* has interpreted the statute and authorized eviction of the tenant even in the absence of any offending behavior by the tenant or knowledge thereof. "Such 'no-fault' eviction is a common 'incident of tenant responsibility under normal landlord tenant law and practice.'" 535 U.S. at 134, 122 S. Ct. at 1235. [Citation omitted]. Strict liability maximizes deterrence and eases enforcement difficulties." *Id.*

Here, CHA became aware of the circumstances surrounding the arrest of Cobb for not one incident but two separate incidents occurring within a short period of time. CHA alone had the discretion to bring an eviction action individually against the tenant (Brown) or the household member (Cobb), or both. Additionally, the magistrate considered the argument by Brown that the offending household member could be removed from the lease and prohibited from entering the property. The magistrate also properly applied the legal standard set forth in *Rucker*.

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For the reasons stated herein, the Final Order upon Remand issued by the magistrate is  
**AFFIRMED.**

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
ALISON RENEE LEE

April 17, 2018  
Columbia, South Carolina