

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL from CHARLESTON COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

CASE NO. 2014-CP-10-04340
Appellate Case No.: 2018-001089

Gwendolyn Brown, individually, and as natural guardian of Qunintez Lee Sapp, Deville Kiez Simmons, Haroldlett Uneke Simmons, and Glenn Simmons, Plaintiffs, Of Whom Gwendolyn Brown, , Deville Kiez Simmons, Haroldlett Uneke Simmons are the
.....Appellants,

v.

Housing Authority of the City of Charleston, South
Carolina.....Respondent

APPELLANTS' AMENDED INITIAL BRIEF

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STATEMENT OF THE ISSUE ON APPEAL

1. THE TRIAL COURT ERRED BY NOT APPLYING THE STATUTE OF LIMITATION APPLICABLE TO THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT.

STATEMENT OF THE CASE

Plaintiff, Gwendolyn Brown, is the mother of four (4) children who are the other parties to this action. Ms. Brown rented an apartment from the Housing Authority of the City of Charleston, South Carolina. Ms. Brown and her children were named occupants of this dwelling unit according to the subject lease. On August 9, 2007, Ms. Brown was injured when she fell through a defective floor in her unit. She made every effort to avoid the deteriorated floor. Ms. Brown and her children suffered from environmental allergen conditions as a result of mold contamination in their unit.

On August 4, 2010, Plaintiffs filed suit seeking compensation for all harm and losses experienced. The matter was dismissed pursuant to SCRPC Rule 40(j), then reinstated in the late fall of 2013. A Second Amended Complaint was filed on August 16, 2017. Summary Judgment argument was heard in February, 2018 and Judgment in-Part for the Housing Authority was enrolled in May, 2018: the trial court held that Plaintiffs Gwendolyn Brown, Deville Kiez Simmons, and Haroldlett Uneke Simmons, did not have a three (3) year statute of limitation. The affected Plaintiffs now appeal.

ARGUMENT

I. THE TRIAL COURT ERRED BY NOT APPLYING THE STATUTE OF LIMITATION APPLICABLE TO THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT.

The South Carolina Residential Landlord and Tenant Act (hereinafter RLTA) establishes the standards for the proper relationship of the landlord and tenant and provides the basis for evaluating the behavior of the parties. The relevant sections giving rise to this action are S. C. Code Ann. 27-40-440 (Landlord to maintain premises) and S.C. Code Ann. 27-40-610(b) (Noncompliance by landlord in general). Section 27-40-440 lists the scope of the landlord's responsibilities per the state code. Section 27-40-610(b) allows the tenant to recover actual damages and obtain injunctive relief...for any noncompliance by the landlord with the rental agreement or 27-40-440. Section 27-40-610(b) does allow recovery of reasonable attorney's fees if the landlord's noncompliance is willful.

S.C. Code Ann. 27-40-120 of the RLTA excludes nine (9) kinds of resident/property owner relations; public housing is not excluded from RLTA coverage. Where the language of a statute is plain and unambiguous, its terms should be given their clear meaning. Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319(1994). The general rule of statutory construction is that a specific statute prevails over a more general one. Atlas Food Systems and Services, Inc. v. Crane National Division of Unidynamics Corporation, 319 S.C. 556, 462 S.E.2d 858 (1995) (holding that "Actions arising under Article 2 of the U.C.C. are governed by sec. 36-2-725's statute of limitations.") "General and special statutes should be read together and harmonized, if possible. But to the extent of any conflict between the two, the special statute must prevail," Criterion Insurance Company v. Hoffmann, 258 S.C. 282, 188 S.E. 2d 459 (1972) citing, Culbreth v. Prudence Life Ins. Co. 241 S.C. 46, 127 S.E.2d 132 (1962).

In Atlas Food Systems and Services, Inc., 319 S.C. 556, 462 S.E.2d 858 (1995), the Court emphasized that the subject matter of the legislation determined what statute of limitation would apply, and overruled four cases “ to the extent this holding is inconsistent with dicta [therein]...” 319 S.C. at 559, 462 S.E.2d at 860.

In Dreher v. South Carolina Dept. of Health and Environment Control, 412 S.C. 244, 772 S.E.2d 505 (2015), the property owner (Dreher) appealed from a final order of the Administrative Law Court affirming denial of her application to construct a bridge to property she owned on an island. The Administrative Law Court ruling was based on a finding that Dreher’s property was a coastal island subject to regulatory restrictions. The Court of Appeals, 399 S.C. 259, 730 S.E.2d 922, reversed, and the Department of Health and Environment Control (DHEC) petitioned for writ of certiorari, which was granted. The Supreme Court held that the property was not a coastal island within the meaning of the cited regulation prohibiting construction of bridges to coastal islands.

In affirming the Court of Appeals, the Supreme Court examined the subject matter of the regulations and determined that Dreher’s property was defined more specifically than the general definition of “coastal island” and therefore she could construct a bridge to her property. The specific regulatory exemption for Folly Island controlled over the more general regulatory definition of “ coastal island.” Dreher, 772 S.E.2d at 509. In this appeal, Appellants should prevail based on the legal standards discussed above.

The South Carolina Tort Claims Act (hereinafter ‘TCA’) is a general tort statute and it controls a broad scope of relationships. The TCA does not address the landlord-tenant relationship in any way. (See, S.C.Code Ann. 15-78-60). In fact, the TCA’s prohibition on conduct “outside the scope of [] official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude” would leave many tenants without remedies

for any number of causes. S.C. Code Ann. 15-78-60 (17) (1986).

The RLTA controls one relationship and provides specific bases for bringing an action against a landlord or a tenant. There are at least eight causes within the RLTA, and they all provide for actual damages, and/or treble damages, and attorney's fees: for any noncompliance by the landlord with the rental agreement or sec. 27-40-440 (27-40-610(b)); for the landlord's malicious use of the rental agreement (27-40-330(b)); for a landlord's failure to deliver possession of the dwelling (27-40-620 (b)); for a bad faith counterclaim by a tenant (27-40-640 (a)); where the landlord unlawfully ousts or excludes the tenant (27-40-660); a tenant in willful holdover violates the RLTA (27-40-770)(c)); a landlord's or tenant's abuse of access is a cause (27-40-780(a)(b)); retaliatory acts by the landlord and bad faith claims of retaliatory acts by tenants are subject to claim's (27-40-910(b)(h)). The RLTA creates rights and obligations in residential landlord -tenant relationships and this construct is based on compliance or noncompliance with the obligations assigned to those parties.

Our RLTA is South Carolina's version of the Uniform Residential Landlord and Tenant Act drafted by the National Conference of Commissioners on Uniform State Laws (hereinafter, NCCUSL) and approved by the NCCUSL with amendments in 1974, and approved by the American Bar Association at its Midyear Meeting in February, 1974. Reference to the drafters' comments illustrate how the Act was developed and what it means. In section 1.101, the comment declares that the "Act concerns landlord-tenant relationships under rental agreements for residential purposes; in section 1.202 the comment states that " This Act is intended to apply to government or public agencies acting as landlords." The foregoing considerations are noteworthy as they are consistent with our RLTA not excluding public housing.

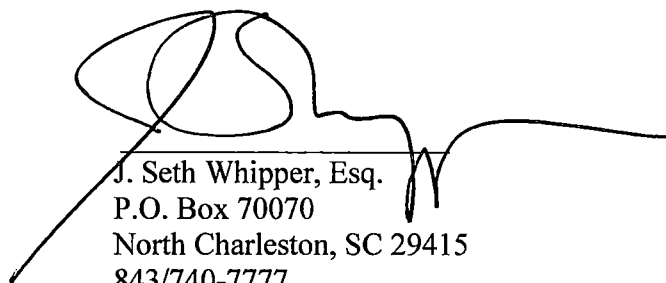
In Culbreth v. Prudence Life Insurance Co., 241 S.C. 46, 127 S.E.2d 132 (1962), the S.C. Supreme Court compared a general law relating to insurance and a law that dealt “ specially with health and accident insurance policies”. The court held that the general law did not control the time period for contesting the validity of the policy: “ if there be any conflict between the two statutes, the special statute must prevail” Id. at 136, 127 S.E.2d 132. The TCA does not manage residential landlord-tenant relations and would change all the burdens of the landlord-tenant act and limit the causes available to the parties. The RLTA cannot be subsumed by the TCA. The RLTA is special law compared to the TCA and carries the statute of limitations of S.C. Code Ann. 15-3-530(1)(2) (1976). See, Watson v. Sellers, 299 S.C. 426, 385 S.E.2d 369 (1989) (... that the General Assembly of South Carolina directed this court by section 27-40-20 to implement its intent...); City of Newberry v. Newberry Electric Cooperative, Inc., Opinion No. 2008-UP-200 (S.C. App. 3/24/2008) (S.C. App. 2008) (“The language of section 15-3-530 simply means an action is based upon a liability created by statute if the asserted right is one which would not exist but for the existence of a statute”...). The South Carolina Residential Landlord and Tenant Act creates rights in South Carolina that would not exist if the Act was not in existence.

CONCLUSION

The RLTA is written to govern the landlord-tenant relationship. Section 27-40-610(b) allows the tenant to recover actual damages and obtain injunctive relief...for any noncompliance by the landlord with the rental agreement or 27-40-440. The RLTA includes public housing. The rights given to tenants under the RLTA exist solely because of the RLTA. Under the RLTA, these Plaintiffs are entitled to the three (3) year statute of limitations (S.C. Code Ann.15-3-530(1)(2)), and according to the date of filing (August 4, 2010), their claims are before the court timely.

Respectfully Submitted
WHIPPER LAW FIRM

July 2, 2019

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke extending to the right.

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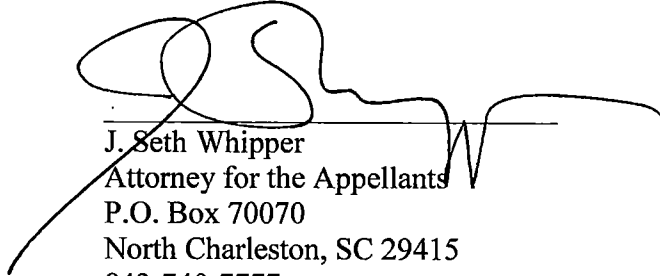
v.

Housing Authority of the City of Charleston, South Carolina.....Respondent

PROOF OF SERVICE

The undersigned hereby certifies that the true copy of the foregoing Appellants' Amended Initial Brief and Amended Designation of Matter has been served on the South Carolina Court of Appeals by depositing a copy to them in the United States Mail, postage prepaid, on July 2, 2019, addressed to Clerk, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211 and served the same on: Mary Bass Lohr, Robert W. Achurch, III, and William H. Cox, III, Attorneys for Respondent, Post Office Box 40 Beaufort, SC 29901.

July 2, 2019



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July 2, 2019

The Honorable Jenny Abbott Kitchings
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U.S MAIL ONLY

Re: **Gwendolyn Brown, individually, and as natural guardian of Qunintez Lee Sapp, Deville Kiez Simmons, Haroldlett Uneke Simmons, and Glenn Simmons, Plaintiffs, Of whom Gwendolyn Brown, Deville Kiez Simmons Haroldlett Uneke Simmons are the Appellants v. Housing Authority of the City of Charleston, South Carolina, Respondent**
Appellate Case No.: 2018-001089
Appellants' Amended Initial Brief- For Filing
Amended Designation of Matter- For Filing
Proof of Service- For Filing

Dear Ms. Kitchings:

Find enclosed an original and one copy of the following: Appellants' Amended Initial Brief, Amended Designation of Matter, and the Proof of Service for the same. Find enclosed a self-addressed, stamped envelope for the return of all copies.

By copy of this letter, I am serving the same on Robert W. Archurch, III, Esq., William H. Cox, III, Esq. and Mary Bass Lohr, Esq., attorneys for Respondent.

Sincerely,
WHIPPER LAW FIRM

J. Seth Whipper, Esquire

Enclosure

JSW/lids

xc: Robert W. Achurch, III, Esq.
William Hewitt Cox, III, Esq.
Mary Bass Lohr, Esq.



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