THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Conley.....Appellant,

v.

April Morganson.....Respondent.

FINAL BRIEF OF APPELLANT

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II. DID THE LOWER COURT ERR WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3)?

III. DID THE LOWER COURT ERR WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT OR MAILED BY REGISTERED OR CERTIFIED MAIL?

IV. DID THE LOWER COURT ERR WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE UNAMBIGUOUS{ REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE BR DELIVERED IN HAND TO THE TENANT OR MAILED BY REGISTERED OR CERTIFIED MAIL?

STATEMENT OF THE CASE

This matter began with the filing of the Complaint of Appellant/Tenant, Morgan Conley in the Richland County Court of Common Pleas, First Amended on May 24, 2017 (R. pp. 5-11). The Respondent/Landlord refusal to return Appellant/Tenant's prepaid rent of $920.00, and security deposit of $1,200.00, caused Appellant/Tenant to file a Complaint, which contained Causes of Action for Breach of Contract, and Violations of the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann., §27-40-240, §27-40-330(b), §27-40-410(a), §27-40-410, §27-40-430, and §27-40-620, (1976, as amended), (R. pp. 5-11). The Respondent/Landlord filed her Answer and Counterclaim to the First Amended Complaint on June 16, 2017, (R. pp. 12-14). A bench trial was held before the Honorable Clifton Newman on September 28, 2018, (R. p. 15). At the conclusion of that Trial the Respondent/Landlord's Motion for Directed Verdict was granted (R. pp. 1-4). Also, at the conclusion of the Appellant/Tenant's case, the Respondent/Landlord affirmatively abandoned her Counterclaim, (R. p. 3). Thereafter, the Trial Court issued its Order of August 16, 2019, (R. pp. 1-4). Appellant/Tenant's Notice of Appeal followed on September 11, 2019. Appellant/Tenant's Appeal follows.

STATEMENT OF THE FACTS

Appellant/Tenant and Respondent/Landlord entered into a Rental Agreement in Richland County in May, 2016, (R. p. 37). The Rental Agreement expressly attorned to the South Carolina Residential Landlord and Tenant Act, (R. pp. 37-43). At that time, Appellant/Tenant deposited $1,200 with the Respondent/Landlord as a security deposit and $920 was also given to Respondent/Landlord, for the prepaid rent (R. p. 17 lines 13-16). Appellant/Tenant alleged that the Respondent/Landlord failed to deliver the rental premises and demanded a return of Appellant/Tenant's security deposit and prepaid rent (R. p. 17 line 19- p. 18 line 11). In fact, Appellant/Tenant never moved into the Rental Premises, (R. p. 17 lines 19-20). Respondent/Landlord refused to return Appellant/Tenant's security deposit and prepaid rent, despite Appellant/Tenant's written demand for return of the same, (R. p. 17 line 13 – p. 18 line 5). The Appellant/Tenant provided the Respondent/Landlord with a forwarding address, (R. p. 29 lines 18-20). Thereafter, Appellant/Tenant filed a Complaint against Respondent/Landlord in the Richland County Court of Common Pleas, (R. pp. 5-11).

The Respondent/Landlord never returned Appellant/Tenant's security deposit or prepaid rent and the Respondent/Landlord did not provide a written reconciliation of Respondent/Landlords confiscation of Appellant/Tenant's security deposit and prepaid rent, (R. p. 18 lines 3-11).

STATEMENT OF THE FACTS (Cont.)

The Respondent/Landlord's Answer to Appellant/Tenant's Complaint reveals that Respondent/Landlord does not allege or plead that Respondent/Landlord provided the required Notice by Mail[1], by Registered or Certified Mail as required under the South Carolina Residential Landlord and Tenant Act, (R. pp. 12-14); (R. p. 44).

In fact, it is uncontroverted that the Respondent/Landlord failed to provide Notice by Mail, by Registered or Certified Mail to the Appellant/Tenant of her confiscation of the Appellant/Tenant's security deposit and prepaid rent (R. p. 18 lines 3-11); (R. p. 27 lines 2-3). It is further uncontroverted that S.C. Code Ann., §27-40-240(B)(3), required Notice by Mail, by Registered or Certified Mail (R. p. 44). At Trial, the Trial Judge refused to enforce the plain and ordinary requirements of the Act, that Notice be by Mail, Registered or Certified Mail, (R. pp. 2-3); (R. p. 44).

The Trial Judge opined that he believed that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send electronic mail, not by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be by Mail, by Registered or Certified Mail, (R. p. 34 lines 10-20); (R. p. 44).

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[1] The Statute §27-40-240(B)(3), actually reads, "...**delivered in hand** to the tenant or mailed by registered or certified mail to the tenant....", (emphasis not in original). However, it is uncontroverted that **there was no testimony, or claim** before the Lower Court that Notice was hand-delivered to the Appellant/Tenant.

STATEMENT OF THE FACTS (Cont.)

The Trial Judge stated that he was justified in changing the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in Trial Judge's opinion, a tenant attempting to enforce the plain and ordinary meaning of the Statute, §27-40-240(B)(3), (1976, as amended), against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25).

Appellant/Tenant argues, based on well settled South Carolina Law, that the Trial Judge was bound to give effect to the expressed intent of the South Carolina Legislature and that the plain language of the Statute may not be disregarded by the Trial Judge.

The Trial Judge thereafter issued a written Order, (R. pp. 1-4), wherein the Trial Judge expressly limited that statue's operation and the Trial Judge refused to enforce the clear terms of the Statute according to the terms' plain and ordinary meaning, all in non-compliance with South Carolina case law.

ARGUMENT

I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.

The Trial Judge stated, "...so I think it is time to simplify, clarify, modernize, and revise the laws concerning landlords and tenants." (R. p. 34 lines 11-13). This statement by the Trial Judge that he intended, in effect, to simplify, clarify, modernize and revise the South Carolina Residential Landlord and Tenant Act, is remarkable. Obviously, the Lower Court was without authority to take the actions he took at the conclusion of the Appellant/Tenant's case, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000). "Where a statue's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).

Consistent with the Trial Judge's statement that he intended to, *inter alia*, modernize and revise S.C. Code Ann., §27-40-240(B)(3), the Trial Judge's Order stated that, "The South Carolina Landlord/Tenant (*sic*) Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties lease." (R. p. 3). The Trial Judge erred by finding that electronic mail could be substituted for the Statute's requirement that Notice be mailed by Registered or Certified Mail, (R. p. 44).

II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).

At the conclusion of the Appellant/Tenant's case, the Trial Judge granted the Respondent/Landlord's Motion for Directed Verdict (R. pp. 1-3). The Trial Judge's grant of a Directed Verdict was erroneous and controlled by the Trial Judge's refusal to enforce the plain and ordinary requirements of the South Carolina Residential Landlord and Tenant Act, (hereinafter sometimes referred to as, the "Act"). Namely, that a Notice be mailed, by Registered or Certified Mail[2], as required by the Statute, (R. p. 44). The Trial Judge stated that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Tenant about the Respondent/Landlord's confiscation of both the Appellant/Tenant's prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge found it was acceptable to send the Notice by electronic mail, which was not mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), (R. pp. 1-4).

"Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000).

"The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (S.C. Ct. of App. 2005).

'Where a statue's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).

Accordingly, it was improper for the Trial Judge to impose another meaning at the conclusion of Appellant/Tenant's case, namely that electronic mail satisfied the Statute's requirement that Notice be mailed by Registered or Certified Mail, (R. p. 34 lines 10-20).

[2] S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.

The Trial Judge's comments in open Court, show that the Trial Judge intended to change and limit the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in the Trial Judge's opinion, a tenant's attempting to enforce the plain and ordinary meaning of the Statute[3], against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25). Appellant/Tenant argues that the Trial Judge was bound to give effect to the expressed intent of the South Carolina Legislature and that the plain language of the Statute may not be disregarded by the Trial Judge.

"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute." Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); "...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent]." State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

[3] S.C. Code Ann. §27-40-240(B)(3), (1976, as amended).

IV. THE LOWER COURT ERRED WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE VERBATIM REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE TO BE DELIVERED IN HAND TO THE TENANT OR, MAILED BY REGISTERED OR CERTIFIED MAIL.

The Trial Judge noted that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send Notice by electronic mail, not mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be mailed, by Registered or Certified Mail, (R. p. 34 lines 10-20). "What a legislature says in the text of a statue is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 533 SE 2d 576 (2000).

"The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (S.C. Ct. of App. 2005).

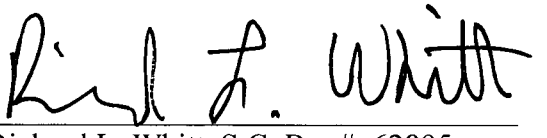
"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute." Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); "...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent]." State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

Until and unless both houses of the General assembly approve, and the governor signs, a bill amending the statute, the unambiguous terms of the statute control, regardless of any unilateral assessment by the Trial Court that the duly enacted law is antiquated.

CONCLUSION

Based on the foregoing, this Court should reverse the Trial Court's Directed Verdict and remand this case to the Trial Court for Trial.

Respectfully Submitted,



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January 9, 2020

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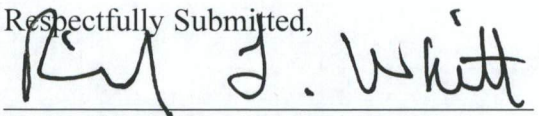
CERTIFICATE OF COMPLIANCE

I, Richard L. Whitt, as counsel for Appellant, hereby certify that the Final Brief of Appellant and the Final Reply Brief of Appellant complies with Rule 211(b), of the South Carolina Appellate Court Rules.

Respectfully Submitted,



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