

RECEIVED

Jul 21 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

Appellant Case No. 2019-001243

KATKAMS VENTURES, LLC, and
SUPREMA, LLC, as successors in
interest to 521, LLC,

Respondents,

v.

NO LIMIT, LLC d/b/a No Limit
Financial, LLC, and Erich Simpson,

Appellants.

FINAL BRIEF OF THE RESPONDENTS

Brian W. Tyson, Esq.
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, North Carolina 28277
(704) 644-1855
Attorney for Respondents

TABLE OF CONTENTS

Table of Authorities iii

Statement of Issues on Appeal 1

Statement of Fact1

Argument

 1. THE APPELLANTS ARE NOT ENTITLED TO FUTURE RENTAL
 DAMAGES REDUCED TO PRESENT VALUE.....2

Conclusion5

Certificate of Service.....6

TABLE OF AUTHORITIES

CASES

SUPREME COURT OF SOUTH CAROLINA

E & S Investment Corp. v. Richland Bowl, Inc., 264 S.C. 582, 216 S.E.2d (1975)3

Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927).....3

U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956).....3

SOUTH CAROLINA COURT OF APPEALS

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 772 S.E.2d 882 (2015).....2, 3

STATEMENT OF ISSUES ON APPEAL

1. ARE THE APPELLANTS ENTITLED TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

STATEMENT OF FACTS

On July 11, 2016, 521, LLC (the “Original Landlord”) and the entity Appellant, No Limit, LLC, entered into a Commercial Lease Agreement (“Lease Agreement”) for a lease term of sixty (60) months (R. p. 22). On July 11, 2016, Appellant Erich Simpson (hereinafter collectively referred to as “Appellants”) executed a Guaranty of Lease (R. pp. 35-39). On or around June 2017, the Appellants vacated the premises in violation of the Lease Agreement. On July 1, 2017, the Appellants failed to make the monthly rental payment pursuant to the terms of the Lease Agreement, which constituted a default. From July 1, 2017 to January 31, 2018, the Appellants failed to make any monthly rental payments pursuant to the terms of the Lease Agreement and failed to cure the default pursuant to the Guaranty. As of February 1, 2018, the Appellants had a total remaining base rent balance of One Hundred Thirteen Thousand Nine Hundred Eighty-Four Dollars and Ninety-Two Cents (\$113,984.92) (R. p. 112) which was the amount of base rent due pursuant to the Lease Agreement, less what the Appellants paid, and less the past due rent for July 2017 through January 2018. During the default period, Respondents made diligent efforts to mitigate their damages to re-lease the premises and were able to find a new tenant, whose rental payment obligations began on February 1, 2018, per the terms of the new lease agreement (R. pp. 74-86). The New Lease Agreement has a stipulated rent value of Eighty-Five Thousand One Hundred Fifty-Eight Dollars and Sixty Cents (\$85,158.60) (R. p. 112).

ARGUMENT**1. THE APPELLANTS ARE NOT ENTITLED TO FUTURE RENTAL DAMAGES REDUCED TO PRESENT VALUE.**

The Appellants are not entitled to future rental damages reduced to the present value, as the Appellants had a contractual liability under the lease to make rental payments as stipulated and established by the Lease Agreement. The South Carolina Court of Appeals has previously held that,

Although the landlord-tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rest for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages.

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 568, 772 S.E.2d 882, 890 (2015).

The Appellants in this matter abandoned the property in or around June 2017 and defaulted on the monthly rental payment due on July 1, 2017. The Appellants' abandonment of the property constituted a termination of the Lease Agreement but did not discharge the Appellants from their duty to make rental payments pursuant to the rental agreement. Appellant admitted to the terms of the Lease Agreement and the breach of the Lease Agreement. Moreover, the Appellants' have failed to raise any issues in regard to the Respondents' mitigation efforts. The value of all rental periods under the Lease Agreement were calculated, communicated, and agreed to by the parties. The future rental damages cannot be reduced to the present value, as the value was specifically and contractually preestablished by the parties and is a stipulated amount calculated by parties as damages at the time the lease commenced.

Although the Respondents mitigated their damages through the establishment of a new lease agreement, this does not relieve the Appellants of their obligation under the Lease Agreement for the stipulated rental payments. The Supreme Court of South Carolina in Investment Corp. v. Richland Bowl, Inc. stated that “Damages are to be the difference between the rent under the old lease and the amount realized under the new lease. The crucial word is *realize*. We must place a construction upon it as is reasonable, considering the damage clause of the lease in its entirety.” E & S Investment Corp. v. Richland Bowl, Inc., 264 S.C. 582, 591, 216 S.E.2d 522, 526 (1975) (emphasis added). The South Carolina Supreme Court has given further weight to the Respondent’s entitlement to the full amount of future damages, albeit through factually distinguishable, but no less noteworthy, case law precedent. “The termination of a lease agreement does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, *unless the lease shall provide that*, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations.” Simon v. Kirkpatrick, 141 S.C. 251, 262, 139 S.E. 614, 618 (1927) (emphasis added). The Court in Simon clearly stated that the tenant would be responsible at the termination of the lease for future rent as damages if the lease so provided. The Court in Bluffton, upon examining Simon, and later expanding on the opinion, stated: “[W]e hold that Simon remains valid law.” Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 565, 772 S.E.2d 882, 888 (2015). Bluffton establishes a bright-line rule of law for a tenant’s obligation for future damages following a termination, and is factually similar to the present matter, as the Lease Agreement (R. pp. 22-34) between the two parties provides the Respondents the opportunity to pursue future damages.

The Supreme Court of South Carolina in U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956) which is often referenced in conjunction with Simon, and is factually

distinguishable from the present case, but nonetheless establishes **the importance of the contractual intentions between parties of a lease agreement**, and the rights of the landlord to pursue its contractual remedies for damages which have clearly survived said termination. In the present matter, Section 20 of the Lease Agreement states:

Landlord may relet the premise or a portion of the premises for any reasonable use, and Landlord shall be entitled to recover from Tenant an amount equal to the amount of all rents reserved under this Lease, less the net rent, if any, collected by the Landlord on reletting the Demised Premises.

R. p. 28.

By examining the lease, the parties have contractually agreed to be bound by the stipulations of the Lease Agreement, the terms of the which were contemplated by the parties prior to execution and commencement. The Lease Agreement provides a clear and unambiguous calculation of rental payments due, and further allows for the Respondents to recover stipulated rental payments as a result of the Appellants' default, less the net rent collected upon reletting. Based on South Carolina law, the Respondents are entitled to the calculation of damages as set forth in Bluffton, and as properly applied by the court of common pleas.

The Appellants, while offering a persuasive argument for a reduction of the future rent damages value, have failed to offer any controlling authority that outweighs the contractual agreement between the parties. Their argument for a reduction to present value fails because it is attempting to unilaterally redefine fixed terms of the Lease Agreement and limits the Respondents' ability to recover as established by legal precedents. The Appellants, therefore, are not entitled to a reduction in the value of the future rental damages.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the court of common pleas and deny the Appellants' request to reduce the future damages awarded to the present value.

Respectfully submitted,

July 21, 2020

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, North Carolina 28277
Phone: (704) 644-1855 | Fax: (704) 644-1856
brian@paulbassllc.com

Attorney for Respondents

RECEIVED

Jul 21 2020

SC Court of Appeals

6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

The Honorable Brian Gibbons, Circuit Court Judge

Appellant Case No. 2019-001243

KATKAMS VENTURES, LLC and
SUPREMA, LLC, as successors in
interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC d/b/a No Limit
Financial, LLC, and Erich Simpson, Appellants.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of the Respondents, dated July 21, 2020, on the following counsel or persons of record, by depositing the same with the United States mail, with sufficient first class postage attached, properly address to the Clerk of Court for the South Carolina Court of Appeals, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below, pursuant to Rule 262(b) of the South Carolina Appellate Court Rules:

John Martin Foster, Esq.
P.O. Box 106
Rock Hill, South Carolina 29731-6106
Attorney for Appellants

July 21, 2020

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, North Carolina 28277
Phone: (704) 644-1855 | Fax: (704) 644-1856
brian@paulbassllc.com

Attorney for Respondents