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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2020-001626

Exquis Event Center and Twala Rohiya Scott, Appellants below,
Of which Exquis Event Center is the Appellant,

V.

Bre Retail Np Festival Centre, Respondent

INITIAL BRIEF OF APPELLANT

TRISTAN M. SHAFFER

Tristan M. Shaffer
P.O. Box 1027
Chapin, SC 29036
(803) 626-0188
tristan@shafferlawsc.com

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Magistrate Court err in refusing to dismiss Respondent's eviction action pursuant to Rule 12(b)(8), SCRCP, when the basis of eviction was a breach of the same lease contract that was also being litigated in the Court of Common Pleas?
2. Did the Magistrate Judge and the Circuit Court violate Appellant's right to due process in summarily dismissing Appellant's appeal from magistrate court based solely based on Respondent's assertion that Appellant failed to comply with the appeal bond.

STATEMENT OF THE CASE

On July 29, 2020, Respondent filed an Application for Ejectment in the Dorchester County Magistrate Court. The grounds for eviction was the failure to pay rent pursuant to the lease agreement. (R* Magistrate Return, pgs. 1, 23; R* Summons and Complaint CP Action). On July 30, 2020, Respondent also filed an action in the Dorchester County Court of Common Pleas for breach of contract. (R* Summons and Complaint CP Action). In the Common Pleas action Respondent sought money damages for the failure to pay rent pursuant to the lease agreement. (R*Magistrate Return, pg. 1).

In his response to the eviction action, Appellant asserted that the magistrate court case should be dismissed pursuant to Rule 12(b)(8), SCRCF. (R* Magistrate Return, pgs. 18-19). On September 3, 2020, this motion was heard before the Honorable Ryan Templeton. Magistrate Templeton denied Appellant's motion because the two cases sought different relief. (R* Magistrate Return, pg. 1).

On October 20, 2020, a hearing was convened on the merits of the eviction matter before the Honorable Amanda Leviner. (R* Magistrate Return, pg. 2). Judge Leviner entered judgement in favor of Respondent. (R* Magistrate Return, pg. 3).

On Oct 23, 2020, Appellant filed a Notice of Intent to Appeal with the Court of Common Pleas. (R* Magistrate Return, pg. 5-6). On October 27, 2020, Judger Leviner issued an appeal bond requiring Appellant to pay \$89,361.50 in arrearages and \$12,301.53 per month. (R* Magistrate Return, pg. 12). The monthly rent was based on representations by Respondent's Counsel during the bond hearing. (R* Motion to Alter or Amend). For the purposes of the bond hearing, Appellant counsel did not dispute the amount of the rent. (R* Motion to Alter or Amend).

On November 2, 2020, Appellant paid \$89,361.50 in arrearage. On November 5, 2020,

Appellant paid \$12,301.53 for November rent. (R* Motion to Alter or Amend).

December 5th 2020 was a Saturday. Appellant paid \$11,421.77 on Monday December 7, 2020. (R* Affidavit of Twala Scott). On December 9, 2020, Appellant paid Respondent an additional \$835.00 to comply with the monthly rent per the appeal bond. (R* Affidavit of Twala Scott). However, Respondent returned the \$835.00 to Appellant. (R* Affidavit of Twala Scott).

On December 8, 2020, Respondent submitted an affidavit to the magistrate court for asking for the appeal to be dismissed for failure to comply with the appeal bond. On December 9, 2020, Appellate responded with an email asking to be heard on the matter. (R* Affidavit of Twala Scott). The Court later informed the Appellant that the order dismissing the appeal had already been sent to the Court of Common Pleas. (R* Affidavit of Twala Scott).

On December 10, 2020, Appellant filed a Motion to Alter or Amend. (R* Motion to Alter or Amend). In the Motion to Alter or Amend, Appellant argued that her right to due process was violated when the magistrate court and the clerk of court summarily dismissed the appeal based solely on the affidavit of Respondent. (R* Motion to Alter or Amend).

The Motion to Alter or Amend was denied by order dated December 14, 2020. (R* Order Denying Motion to Alter or Amend). This appeal follows.

ARGUMENT

- I. The Magistrate Court erred in refusing to dismiss Respondent's ejectment action pursuant to Rule 12(b)(8), SCRPC, when the basis of eviction was a breach of the same lease contract that was also being litigated in the Court of Common Pleas.

Relevant Facts

Since 2017, Appellant has rented 5101 Ashley Phosphate Road, Suite 149, North Charleston, South Carolina from Respondent. The property is used as an event center. Appellant makes the space available for private events such as weddings and parties. (R* Affidavit of Twala Scott). Exquis Event Center is located on property which Appellant leases from Respondent. (R* Affidavit of Twala Scott).

The COVID-19 pandemic caused Appellant to fall several months behind on rent. (R* Magistrate's Return, pg. 10). On July 29, 2020, Respondent pursued an eviction case in the Dorchester County Magistrate Court. The grounds alleged for eviction was the failure to pay rent pursuant to the lease agreement. (R* Magistrate's Return, pg. 23). On July 30, 2020, Respondent also filed an action in the Dorchester County Court of Common Pleas for breach of contract. In the Common Pleas action Respondent sought money damages for the failure to pay rent pursuant to the lease agreement. (R* Magistrate Return, pgs. 1, 23; R* Summons and Complaint CP Action).

In his response to the eviction action, Appellant asserted that the magistrate court case should be dismissed pursuant to Rule 12(b)(8), SCRPC. On September 3, 2020, this matter was heard. The Honorable Ryan Templeton denied Appellant's motion to Dismiss stating the following:

“although the parties and subject matter [are] identical, each action requested different remedies.”

(R* Magistrate Return, Pg. 1).

Standard of Review

Appellant would assert that the Magistrate Court erred in finding that Rule 12(b)(8), SCRPC required identical relief sought to warrant dismissal. Appellant asserts this is an error of law subject

to a *de novo* standard of review. *See Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (stating an appellate court applies a *de novo* standard of review to the circuit court's grant or denial of a motion for dismissal of a case pursuant to Rule 12(b)(8)).

Argument

“In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (Ct. App. 2009). Although this rule has been narrowly applied, The South Carolina Supreme Court has found that dismissal pursuant to Rule 12(b)(8) is appropriate even in a case where the two actions seek different remedies. *See Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 176-77, 551 S.E.2d 263, 273 (2001) (finding that an action for breach of contract and declaratory judgment should have been dismissed pursuant to Rule 12(b)(8), SCRCF when there was also an action pending between the parties pursuant to the procurement code.).

The magistrate found properly found that the “parties and subject matter were identical.” (R* Magistrate Return, Pg. 1). The Common Pleas case involves the same parties and the same lease agreement which is at issue in the eviction case. (R* Magistrate Return, pgs. 1, 23-72; R* Summons and Complaint CP Action).

The magistrate erred in finding that the Rule 12(b)(8) requires that the relief sought be identical. *See Unisys Corp.*, 346 S.C. at 176-77, 551 S.E.2d at 273. Therefore, the eviction judgment should be reversed and Respondent may then seek eviction in the action pending in the Court of Common Pleas.

II. The Court of Common Pleas violated Appellant’s right to due process in summarily dismissing Appellant’s appeal from magistrate court based solely based on Respondent’s assertion that Appellant failed to comply with the appeal bond.

Relevant Facts

On October 20, 2020, a hearing was convened on the merits of the eviction matter before the Honorable Amanda Leviner. (R* Magistrate Return, pg. 2). Judge Leviner entered judgement in favor of Respondent. (R* Magistrate Return, pg. 3).

On Oct 23, 2020, Appellant filed a Notice of Intent to Appeal with the Court of Common Pleas. (R* Magistrate Return, pg. 5-6). On October 27, 2020, Judge Leviner issued an appeal bond requiring Appellant to pay \$89,361.50 in arrearages and \$12,301.53 per month. (R* Magistrate Return, pg. 12). The monthly rent was based on representations by Respondent's Counsel during the bond hearing. (R* Motion to Alter or Amend). For the purposes of the bond hearing, Appellant counsel did not dispute the amount of the rent. (R* Motion to Alter or Amend).

On November 2, 2020, Appellant paid \$89,361.50 in arrearage. On November 5, 2020, Appellant paid \$12,301.53 for November rent. (R* Motion to Alter or Amend).

December 5th fell on a Saturday. (R* Affidavit of Twala Scott). Appellant did not have a way to deliver the payment to Respondent on the Saturday so Appellant paid December rent on Monday December 7, 2020. Appellant inadvertently paid Respondent \$11,421.77 for the December rent. This accounting error was based upon the last written correspondence from the Respondent informing Appellant of a rent increase. (R* Affidavit of Twala Scott). On December 9, 2020, Appellant became aware of the mistake she immediately paid Respondent an additional \$835.00 to comply with the monthly rent per the appeal bond. (R* Affidavit of Twala Scott). However, Respondent returned the \$835.00 to Appellant. (R* Affidavit of Twala Scott).

On December 8, 2020, Respondent submitted an affidavit to the magistrate court for asking for the appeal to be dismissed for failure to comply with the appeal bond. (R* Affidavit of Twala Scott). On December 9, 2020 at 12:09 p.m., Appellate responded with an email asking to be heard

on the matter. (R* Motion to Alter or Amend-Exhibit). Appellant was not given an opportunity to be heard on this matter. (R* Motion to Alter or Amend). On December 9, 2020 at 3:56 p.m. an order dismissing the appeal was filed in the Court of Common Pleas. (R* Order Dismissing Appeal).

On December 10, 2020, Appellant filed a Motion to Alter or Amend. (R* Motion to Alter or Amend). In the Motion to Alter or Amend, Appellant argued that her right to due process was violated when the magistrate court and the clerk of court summarily dismissed the appeal based solely on the affidavit of Respondent. (R* Motion to Alter or Amend).

The motion to alter or amend was denied by order dated December 14, 2020. (R* Order on Motion to Alter or Amend). The Court of Common Pleas found the following:

Pursuant to this Court's authority under Rule 59 SCRPC, the Appellant's Motion to Reconsider is dismissed without oral argument and determined upon the motion and affidavit filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

(R* Order on Motion to Alter or Amend).¹ This Appeal Follows.

Argument

Due process is provided for by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 22 of the South Carolina Constitution. "Due process requires that there be an opportunity to present every available defense..." *Am. Sur. Co. v. Baldwin*, 287

¹ Appellant respectfully submits that this ruling from the court does not address the issue raised in Appellant's motion to alter or amend. However, Appellant asserts that it would be improper to file a subsequent motion to alter or amend raising the same issues. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) ("Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.") (*quoting* James F. Flanagan, *South Carolina Civil Procedure* 475 (2d ed. 1996)).

U.S. 156, 168, 53 S. Ct. 98, 102 (1932). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Robert K. v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

Appellant was not afforded any opportunity to be heard on the dismissal of the appeal even though Appellant’s Counsel emailed the magistrate requesting to be heard nearly four hours before the order was filed. (R* Motion to Alter or Amend-Exhibit). Instead of allowing both parties to be heard, the Magistrate dismissed the appeal solely on the affidavit of Respondent’s employee. Appellant respectfully submits that the Magistrate Judge erred in dismissing the appeal and the Circuit Judge erred in denying the motion to alter or amend.

CONCLUSION

For the foregoing reasons Appellant respectfully requests that this Court reverse the eviction in this case.

Respectfully submitted,

s/ Tristan M. Shaffer
Tristan M. Shaffer (SC Bar 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 626-0188
tristan@shafferlawsc.com

ATTORNEY FOR APPELLANT.

This 1st day of March, 2021.