THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No.: 2021-000171

Resource Properties, Inc.,

Respondent,

v.

CSS Enterprises, LLC,
Douglas E. Crolley, and Jeff C. Crolley

Appellants,

BRIEF OF RESPONDENTS, RESOURCE PROPERTIES, INC.

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STATEMENT OF THE CASE

This case was originally filed on May 24, 2018, with Respondent alleging breach of contract against the Appellants. Respondent generally plead that Appellants, individually and collectively, failed to honor the terms of a certain commercial lease agreement existing between the parties. Specifically, Respondent alleged that by abandoning the Property prior to the Lease term expiration and failing to pay rent when rent became due, Appellants breached the lease agreement.

Appellants responded to Respondent's complaint on September 17, 2018, denying Respondent's allegations, pleading affirmative defenses of laches, estoppel, waiver, failure to mitigate damages, and Respondent's prior breach. Further, Appellants asserted three counterclaims against Respondent for, breach of contract, breach of contract – lease (breach of covenant of good faith and fair dealing), and quantum meruit.

Trial of the matter was held before the Richland County Court of Common Pleas, Honorable Alison R. Lee presiding, on June 30-July 1, 2020. Respondents called six witnesses in its case in chief: Douglas E. Crolley, Jeff C. Crolley, Anna Belle "Boo" Kibler-Moca, Kim Beasenburg, Wesley Shull, and Mickie Dawson. Appellants called the owner of CSS, LLC, Douglas E. Crolley, in their case in chief.

Based upon the testimony of witnesses, exhibits, evidence and the arguments presented by the parties and counsel, The Honorable Alison R. Lee found in favor of the Respondent on its sole cause of action, issuing a judgment in favor of Respondent against the Appellants, jointly and severally, and found that the Appellants failed to meet their burden of proof on any of the

counterclaims asserted against Respondent. (Order p. 11-13) Final Order of Judge Alison R. Lee was entered on January 8, 2021.

STATEMENT OF FACTS

On or about July 21, 2016, Appellants CSS Enterprises LLC ("CSS") through its agents Appellants Jeff C. Crolley ("JCC") and Douglas E. Crolley ("DEC"), (CSS, DEC, and JCC hereinafter collectively referred to as "Appellants"), entered into a commercial lease agreement agreement (the "Lease") with Respondent for commercial space located at Suite 140, The Business Park of St. Andrews, St. Andrews Road, Columbia, SC 29210 (the "Property"). (Pl. ['s] Ex. 11) Appellants admitted having rented the Property from Respondent but disputed individual liability under the Lease. (Tr. pp. 15, 54-55, 60-63, 67)

Prior to July 28, 2017, the Respondent was a South Carolina corporation, and its day-to-day activities were managed and operated by its principal, Mr. Michael Duffy ("Mr. Duffy"), who is now deceased. (Tr. pp. 378-379) After Mr. Duffy's passing in July 2017, Mr. Duffy's estate collected Respondent's business records and hired Wilson Kibler, Inc. (the "Property Manager" or "WK") to manage the Respondent's commercial real estate and leases, including the Lease which is the subject of the underlying lawsuit and this Appeal. (Tr. pp. 369-370, 372-374) Importantly, the Lease was executed by Mr. Duffy on behalf of Respondent and Appellants made payments consistent with the terms of the Lease during periods of time prior to and after Mr. Duffy's passing. (Tr. pp. 67, 284-287, 376)

Respondent claims the Appellants, in their individual and corporate capacities, executed the Lease. Appellant, DEC, did not deny that his signature was on the Lease, that the Lease had been signed on behalf of Appellant, CSS, and other signatures on the lease appeared to be the

signature of Appellant, JCC. (Tr. pp. 37-39, 47-48) Pursuant to the Lease, the lessees are obligated to pay base rent, common area maintenance costs, and certain other additional costs in exchange for the Respondent allowing the Appellants access to and use of the Property. (Tr. pp. 55) The Lease provided for a term of three (3) years, commencing on August 1, 2016 and ending on August 31, 2019 (the Lease "Term"). (Tr. pp. 54-55)

The terms and provisions of the Lease provide that the Appellants, individually and collectively, are obligated to pay Respondent monthly rent in the amount of One Thousand Three Hundred Ninety-Five and 00/100 ($1,395.00) Dollars (the "Base Rent") on or before the 1st of each month, commencing September 1, 2016, with Appellants' final payment being made on or before August 1, 2019. (Pl.['s] Ex. 11) Over the course of the Lease Term, payments of the Base Rent would total Fifty-One Thousand Six Hundred Fifteen and 00/100 ($51,615.00) Dollars. In addition to the Base Rent, Respondent claimed the Appellants were responsible for paying common area maintenance costs ("CAM") and other charges specified in the Lease (the "Additional Costs") including, but not limited to, applicable taxes, late charges, collection costs, charges for returned checks, and wire/bank fees associated with the Appellants' payments. (Pl.['s] Ex. 11) (Tr. pp. 54-55)

In late 2017, the Appellants (individually and/or collectively) began short-paying and/or failing to satisfy the payment obligations established in the Lease. Evidence of the Appellants' failure to comply with the Lease's payment terms is established in the Property Manager's account statements. (Pl.['s] Ex. 19) On or about February 5, 2018, eighteen (18) months before the Lease Term expiration, the Appellants submitted their last payment on the Lease. Id. Shortly thereafter, the Property Manager realized that the Appellants had abandoned the Property prior to the

expiration of the Lease term. (Tr. pp. 197-199) Appellants acknowledged having vacated the Property prior to the expiration of the Lease Term and admitted that lessees shall not abandon or otherwise vacate the Property during the Lease Term (Tr. pp. 122-123, 144-145).

Accordingly, on or about March 30, 2018, the Respondent placed the Appellants on notice of default (the "NoD") pursuant to the terms of the Lease. (Tr. p. 390) The Respondent's NoD placed the Appellants on notice that the Appellants (individually and collectively) were delinquent in remitting Lease payments to Respondent and that the Appellants had abandoned the Property as strictly prohibited by the Lease (the "Events of Default"). The Appellants failed to cure their Events of Default, and the Respondent initiated its Complaint against the Appellants for breach of contract. From the time Appellants abandoned the property and through the pendency of the underlying lawsuit, the Property Manager took reasonable efforts to market and obtain new tenants for the Property. (Tr. pp. 203-207, 236, 388-389) However, Respondent was unable to procure a replacement tenant for the Property until August 2019. (Tr. pp. 206-207)

Appellants claimed to have entered into a written modification to the Lease with Mr. Duffy (the "Side Agreement"). However, at trial, Appellants testified having never met Mr. Duffy and offered testimony that the person having executed the Side Agreement was not Mr. Duffy. (Tr. pp. 142-143) Appellants offered no witnesses or evidence to positively name or identify the person they claim to have signed the Side Agreement. (Order p. 6) Respondent offered testimony supporting that it was not a party to the Side Agreement and that the Side Agreement contained an unauthentic or forgery of Mr. Duffy's signature. (Tr. pp. 151, 154, 158, 160, 376-378) Appellant, JCC, offered testimony that the purpose of the Side Agreement was to escape liability arising out of modifications to the Property. (Tr. p. 355) Contrary to the testimony of the Appellants,

Respondent offered testimony that the Side Agreement was not executed by or on behalf of Respondent, and that the improvements that were to be performed on the Property by the Appellants were expressly contemplated in written pre-Lease negotiations and in the Lease itself. (Tr. pp. 55-58, 180-184, 374-376)

STANDARD OF REVIEW

A breach of contract action seeking damages is an action at law. *Conway v. Charleston Lincoln Mercury, Inc.*, 363 S.C. 301, 305, 609 S.E.2d 838, 841 (Ct. App. 2005). "When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law." *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005). "The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The admission or exclusion of evidence is within the circuit court's discretion, and the circuit court's ruling on the admissibility of evidence is not subject to reversal on appeal absent a showing of a clear abuse of that discretion. *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 589, 846 S.E.2d 1, 11 (Ct. App. 2020). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion is without evidentiary support. *Id*. To warrant a reversal based on the admission of evidence, the appellant must show both error and resulting prejudice. *Hoyler v. State*, 428 S.C. 279, 308, 833 S.E.2d 845, 860–61 (Ct. App. 2019).

ARGUMENTS

I. THE LOWER COURT PROPERLY ADMITTED THE LEASE INTO EVIDENCE

Appellant asserts in its Initial Brief that absent testimony from a witness with personal knowledge, the Court has no way of determining if the purported disputed Lease (offered into evidence as Pl.['s] Ex. 11) was an authentic and genuine lease entered into between the parties. (Appellants' Br. pp. 5-6) Appellants argue it was improper, an abuse of discretion, and/or in error at law for the Court to admit the purported lease into evidence as properly authenticated. The Lease was entered into evidence by the Lower Court over objection of the Appellant's counsel. (Tr. pp. 183-184)

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Rule 901(a), SCRE. Rule 901(b), SCRE, sets forth, by way of illustration and not by way of limitation, many ways documents or other evidence may be authenticated. In order to authenticate the Lease pursuant to 901(b)(1), a witness with knowledge of the transaction may testify that a matter is what is is claimed to be. The Lease may also be authenticated pursuant to Rule 901(b)(3), SCRE, by the trier of fact or by expert witness comparing the unauthenticated document with specimens which have been authenticated. Furthermore, under Rule 901(b)(4) of SCRE, the Lease may be authenticated based on appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. The authentication requirement is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015). The burden to authenticate is not high and requires only that the proponent offers a satisfactory foundation from which the jury could reasonably find that the evidence is authentic. *Id*.

Appellants assert that Kim Beasenburg ("Ms. Beasenburg"), Mr. Duffy's daughter and current President of Resource Properties, lacked personal knowledge to authenticate the Lease between Appellants and Respondents. (Appellants' Br. p. 6) Even though the Appellant claims Ms. Beasenburg contradicted her prior deposition testimony and Ms. Beasenburg was not a participant in the preparation or execution of the disputed Lease, the Appellants' argument is unfounded. In *Keel*, the Court determined that even though the witness did not know "when, how, or by whom the documents were prepared, the Court ruled that the elements of Rule 901(a) were satisfied. The Court in *Keel* set a low bar for determining whether the witness had sufficient personal knowledge to authenticate a document. Here, Ms. Beasenburg may not have known every specific detail regarding the Lease or all the details of how her father caused the Lease to be executed at the time of her deposition. However, her testimony demonstrated that she had personal knowledge of the ordinary course of dealings of Respondent, the historical conduct and preferred methods and means of Mr. Duffy in the conduct of Respondent's business, that the Lease (entered into evidence at Pl.['s] Ex. 11) was the same kept in the records of Respondent at the time of Mr. Duffy's passing and transition to the Property Manager, and that the Lease had been executed by her father on behalf of Respondent. (Tr. pp. 366-379)

Furthermore, and even if Appellants argue that Ms. Beasenburg lacked sufficient personal knowledge to authenticate the Lease under Rule 901(b)(1), the lease can be authenticated pursuant to other sections of Rule 901(b), SCRE, which contains a non-exclusive list of ways to authenticate matters. Rule 901(b)(3), SCRE, allows the trier of fact to compare authenticated documents with specimens which have not yet been authenticated. To this end, Respondent elicited testimony from the Appellants regarding their respective signatures and the Court admitted into evidence

documents exhibiting the Appellants known signatures and handwriting. (Pl.['s] Ex. 2, 6, 8, 9, 11) Further, Rule 901(b)(4), SCRE, provides matters may be authenticated based on appearance, contents, substance, internal patterns, or other distinctive characteristics, that are taken in conjunction with the other circumstances. To this end, Respondent elicited detailed testimony from DEC, JCC, the Property Manager representatives, and Ms. Beasenburg regarding, *inter alia*: (i) Mr. Duffy's record keeping habits; (ii) the content of Respondent's records and files at the time of Mr. Duffy's passing and at the time the Property Manager began operating as agent of Respondent; and (iii) contemporaneous emails having been provided to Appellants on behalf of Respondent which specify terms consistent with the lease. Accordingly, the Court, in its discretion, was able to determine whether the Lease had been properly authenticated for the purpose it was introduced and later make use of the Lease together with the Respondent's extensive testimony and evidence to reasonably find the Lease as the controlling agreement between the parties.

At trial of this matter, the Lease (Pl.['s] Ex. 11) was offered into evidence, "for the purposes of establishing that Resource Properties had an agreement for Unit 140 at the time of Wilson Kibler receiving the files and this is the agreement that Wilson Kibler received for Unit 140." (Tr. pp. 183-184). In addition to offering the Lease into evidence for the above stated purpose, the Respondent's witnesses provided ample testimony regarding the Lease including, *inter alia*:

(i) Appellant, DEC, believed DEC's and JCC's signature was exhibited on the signature page of the Lease and that it was possible the Lease was entered into on July 21, 2016 (Tr. pp. 36-39, 59-60, 101-103) (Pl.['s] Ex. 6);

(ii) that the disputed Lease containing Appellants signatures indicates that Appellants were lessees under the contract (Tr. pp 37-38);

(iii) Appellants made modifications to the Property as contemplated by the Lease (Tr. pp. 42-45, 55-56);

(iv) Appellants occupied the Property which is the subject of the Lease and paid rent commensurate with the Lease (Tr. pp. 43, 55);

(v) Appellants acknowledged having received and responded to contemporaneous communications from Respondent containing terms consistent with the Lease (Tr. pp. 48-58, 318-319, 321-323, 339-340) (Pl. ['s] Ex. 1,11); and

(vi) knowledge of Mr. Duffy's record preparation and keeping habits and conduct in managing the day-to-day operations of Respondent (Tr. pp. 175-180, 371-376, 382-387) (Pl.['s] Ex. 22];

The foregoing exemplars of testimony (and exhibits referenced therein) serve as additional means to authenticate the Lease although entered into the record at various times throughout the course of trial. At the time of introducing the Lease and moving to admit the same into evidence, it was clearly stated for what purpose the document was being introduced. Afterward, additional testimony and evidence was entered into the record which, taken as a whole, support the courts finding that the Lease was the operative and controlling agreement between the parties.

Ultimately, it appears the Appellants would contend that only a person having physically witnessed the signatures on the Lease could authenticate the Lease absent Mr. Duffy. Respondent contends the Appellants' position is untenable. To the extent the Appellants' arguments were found to be proper, no sole proprietorship would be able to authenticate any contract upon the

passing of the sole proprietor, absent the party against whom the contract is being enforced admitting to being bound by the contract. The Lease, on its face, appeared to be a professionally prepared commercial lease agreement between individuals and corporate entities expressly named therein (in multiple locations), and setting forth, in significant detail, the substance of the parties' agreement. (Pl.['s] Ex. 11) The Lease also includes specific and distinctive information such as the Respondent's letterhead, payment terms, the rules and regulations for the Business Park of St. Andrews, and a new tenant checklist, all of which having distinctive markings and characteristics. *See Deep Keel, LLC,* 413 S.C. at 66, 773 S.E.2d at 611(Court found that "specific and distinctive information on the face of the note, considered in connection with the mortgage, is sufficient to support a finding that the note was the one Atlantic executed in 2008"). It is not a matter of evidence, but rather, a question of fact as to whether the Appellants signed or are bound by the Lease

Therefore, not only did Ms. Beasenburg have sufficient knowledge to support a finding that the Lease was what the Respondents claimed, but the Lease was also properly authenticated by Rules 901(b)(3) and 901(b)(4) based on comparing the signatures on the Lease to authenticated specimens containing the Appellants' handwriting and signatures, the Appellants' testimony regarding their handwriting and signatures, and the specific and distinctive information presented in the Lease when compared to other authentic leases and records of Respondent.

II. THE LOWER COURT PROPERLY ALLOWED THE INTRODUCTION OF PLAINTIFF'S EXHIBIT 11 AND TESTIMONY TO SHOW A CONTRACTUAL AGREEMENT BETWEEN THE PARTIES

The Appellants assert that because the disputed Lease was not initially admitted into evidence for the purpose of being the definitive agreement between the parties, there was an abuse

of discretion by the Trial Court in finding that the Lease was the operative and controlling agreement between the parties. Further, Appellants rely on their arguments that the Lease was not properly authenticated. (Appellants' Br. p. 8) The Appellants' latter argument is addressed in Section I above.

In construing a judge's order, an appellate court must do so in light of the judge's intent as discerned from the order as a whole. *See White's Mill Colony, Inc. v. Williams, 363 S.C. 117, 123 n.1, 609 S.E.2d 811, 814 n.1 (Ct. App. 2005); see also Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009).* The laws of this State provide, no action may be brought to charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; Unless the agreement upon which such action shall be brought shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized. *Robert Harmon & Bore, Inc. v. Jenkins*, 282 S.C. 189, 318 S.E.2d 371 (Ct. App. 1984). "For a writing relied on to establish a lease agreement in particular, the writing "must embody all the essential and material parts of the lease contemplated to be thereafter executed with such clarity and certainty as to show that the minds of the parties had met on all material terms and with no material matter left for future agreement or negotiation." Id.

"A lease agreement is a contract, and an action to construe a contract is an action at law." *Middleton v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010) (citations omitted). Interpretation of a contract "is governed by the objective manifestation of the parties' assent at the time the contract was made," rather than "the subjective, after the fact meaning one party assigns to it. *Nichols Holding, LLC v. Divine Cap. Grp., LLC*, 416 S.C. 327, 335, 785 S.E.2d 613, 617 (Ct.

App. 2016). In other words, the Court must ascertain and give effect to the intention of the parties, looking first to the language of the contract. *Id* at 416 S.C. 335-336, 785 S.E.2d at 617.

After having elicited testimony from Appellant, DEC, on the terms of the Lease and the signatures reflected thereon, the Respondent laid additional foundation regarding the existence of the Lease via testimony of Anna Belle Moca, a representative of Respondent's Property Manager. (Tr. pp. 36-38, 42-43, 45-56, 95, 175-184, 195-199) (Pl.['s] Ex. 1, 2, 5, 6, 11) During Respondent's colloquy with Ms. Moca, Respondent moved to introduce the Lease into evidence and offered the same, not for the purpose of authenticating the signatures thereon, but to establish that Respondent had and agreement for the space leased by Appellants at the time the Property Manager began acting as agent for Respondent and to show the Lease as the agreement the Property Manger received for the subject Property during the time period relevant to the case. (Tr. pp. 183-184) Following the admission of the Lease into evidence, each of the Respondent's witnesses testified with respect to their knowledge of the Lease, the substance and terms of the Lease, contemporaneous and consistent written communications between the Respondent (via Mr. Duffy) and Appellants, the Appellants occupancy of the Property which is the subject of the Lease, Appellants' payment of rents consistent with the Lease, and Appellants' abandonment of the Property.

Respondent disagrees that the Lease, once introduced, may only be used for the purposes identified at the time of introduction. Appellants did not request that the Trial Court limit the scope of Plaintiff's Ex. 11 at the time of its introduction, or for that matter any time thereafter when the Lease was referred to in questioning witnesses. (Tr. pp. 183-184). Further, both parties were provided opportunity at trial to fully present evidence and testimony concerning the subject matter

of the underlying lawsuit. Prior to and after admission of Pl.['s] Ex. 11 into evidence, Respondent elicited testimony regarding, *inter alia*: (i) Respondent's normal and customary practices in negotiating, preparing, and entering into lease agreements, modifications and amendments thereto; (ii) Respondents record keeping and transition of property files and records following the death of Mr. Duffy; (iii) the existence and receipt of contemporaneous written communications which set forth terms consistent with those found in the Lease; and (iv) Appellants' acknowledgment of course of conduct consistent with the terms of the Lease including occupancy of the Property and payment of rents in amounts reflected in the Lease. The factual issues of the case were fully aired at trial and evidence in addition to the Lease were admitted into the record which substantiate the Respondent's claims. Accordingly, the evidence, when taken as a whole, reasonably supports the Trial Court's findings that the Lease was the operative and controlling agreement between the parties. The Trial Court did not abuse its discretion nor did the Trial Court's admission and use of the Lease result in prejudice to Appellants. *See Hoyler,* 428 S.C. at 308, 833 S.E.2d at 860–61; *see also State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

III. THE LOWER COURT DID NOT ERR OR FAIL TO CONSIDER PLAINTIFF'S MITIGATION OF DAMAGES

Appellants assert in their Initial Brief that Respondents breached their duty to mitigate its damages and that the Lower Court failed to address the issue of mitigation at all in the Final Order.

The measure of damages in a breach of lease case is the amount the landlord would have received as rent for the remainder of the term, had there been no default, less such amount as it may receive from the new tenant because it was the landlord's duty to minimize any damages. *U.S. Rubber Co. v. White Tire Co.*, 231 S.C. 84, 97 S.E.2d 403 (1956). A party injured by the acts of another is required to do those things a person of ordinary prudence would do under the

circumstances to mitigate damages; however, the law does not require unreasonable exertion or substantial expense for this to be accomplished. *Genovese v. Bergeron*, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997). Whether a party acted reasonably to mitigate damages is ordinarily a question of fact. *Baril v. Aiken Reg'l Med. Centers*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct. App. 2002). "When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law." *Epworth*, 365 S.C. 157, 164, 616 S.E.2d 710, 714.

Whether the Respondents appropriately mitigated their damages by advertising and marketing the Property was a question of fact, to be decided by the Trial Court. Appellants claim that efforts put forth by offering a marketing fliers (Pl.['s] Ex. 15) and, as reflected in the testimony of the Respondents Property Manager, sending e-blasts and placing signage at the Property evidencing availability for lease, were insufficient to prove Respondents properly mitigated damages. (Tr. pp. 205, 236, 388-389) However, it is the trial judge who hears and make determinations as to these questions of fact. Specifically, the Trial Court, after having been fully presented all of the facts and evidence in the underlying case, was faced with determining whether the Respondents had met the standard of what a "person of ordinary prudence would do under the circumstances to mitigate damages." *See Genovese*, 327 S.C. at 567, 490 S.E.2d at 611. Based upon Pl.['s] Ex. 14 & 15 and the testimony of Respondent's shareholder and Property Manager representatives , the trial judge believed that there was evidentiary support in which l conclusion on the questions of fact could be reached. Therefore, the trial court judge did not abuse her discretion, and the Appellants' argument that Respondents breached their duty to mitigate damages is unfounded.

The Appellant's claim that the lower Court failed to address mitigation of damages at all in the Order is baseless. In the Order, the Trial Court specifically states that "the Plaintiff attempted to mitigate its alleged damages by advertising and marketing the Property available for rent, and based on the testimony presented, Plaintiff was unable to secure a new tenant for the property until August 2019." (Order ¶ 3, p. 7) Therefore, the language in the Order shows that the Trial Court addressed the Plaintiff's attempt to mitigate damages and found that the Respondents properly mitigated damages.

IV. LOWER COURT PROPERLY CONCLUDED THAT PLAINTIFF'S DID NOT BREACH THE LEASE FIRST

The Appellants claim the Final Order does not address the materiality of the change in insurance obligations as a factor evidencing the alleged breach of the Lease by Respondent and believes Respondent breached the Lease prior to the occurrence of any breach by Appellants.

"A breach of contract claim warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose of the contract." *Palmetto Mortuary Transp., Inc. v. Knight Sys., Inc.*, 424 S.C. 444, 461, 818 S.E.2d 724, 734 (2018). "Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Id*.

Appellants argue, assuming the Lease is inadmissible or otherwise may not be considered by the Trial Court in determining the existence of a lease between the parties, that the Respondents breached the Lease by simply requesting Appellants provide Respondent with updated certificates of insurance. The Trial Court's Order clearly establishes that the Lease is the operative and controlling agreement between the parties. Notwithstanding the findings of the Trial Court, when provided the opportunity to fully air the facts and introduce testimony and evidence at trial, the

Appellants failed to offer anything in support of their allegations other than inconsistent testimony which was outweighed by the evidence presented by the Respondent.

Appellant, DEC, acknowledged that the Lease required the Appellants to carry insurance on the Property and the Respondent's Property Manager made requests (consistent with the Lease) for Appellants to provide such insurance. (Tr. pp. 123-125,136-137) (Pl.['s] Ex. 11 §2) While it was unchallenged that the Respondent requested insurance of the Appellants, no evidence was placed in the Trial Court's record indicating that Respondent prematurely terminated any lease agreement with Appellants or that Respondent used the failure to provide proof of insurance as a means for evicting the Appellants. Moreover, the Appellants did not offer any testimony or evidence regarding damages resulting from any such alleged breach. (Tr. pp. 193-197, 231, 255-256) The Appellants failed to introduce anything other than their own verbal testimony evidencing having placed the Respondent's on notice of the claimed breach. Accordingly, the Trial Court, as the trier of fact and law, considered and gave weight to the evidence in the record as it deemed fit, and rightfully concluded that Respondent had not breached any agreement with the Appellants.

CONCLUSION

For the reasons stated herein, the Trial Court's Order should be confirmed.

Respectfully submitted,

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