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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Sr., Circuit Court Judge

Bethany Aloha Rich, ... Appellant,

v.

New Heights Property Management, ... Respondent.

APPELLATE CASE NO. 2020-001684

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err by affirming the Magistrate's decision to deny the dismissal of the matter despite the parties' purported agreement to dismiss?
2. Did the Circuit Court err by affirming the Magistrate's finding that the Plaintiff provided proper notice prior to filing for ejectment/eviction?

STATEMENT OF THE CASE

Respondent agrees with the statement of the case by Appellant, but adds the following per Rule 208(b)(C), SCACR. The magistrate heard the matter on March 11, 2020. Appellant filed notice of the appeal on March 13, 2020. The circuit court heard the matter on October 20, 2020. The circuit court entered the order affirming on both issues on November 16, 2020. The appellant served notice of the appeal on December 16, 2020.

On the first issue, the circuit court found that the communications between the parties did not create a binding contract to dismiss the action because there was no meeting of the minds regarding the actual paperwork which Appellant was to provide as a condition precedent to a purported agreement to dismiss the action.

On the second issue, the circuit court found that the lease was a tenancy for a term under S.C. Code Sec. 27–35–110. The court concluded that Respondent thus had the right to bring an action for possession once the tenant became a holdover tenant at the end of the lease term, as allowed by S.C. Code Sec. 27–40–770(c).

STATEMENT OF THE FACTS

Respondent agrees with Appellant‘s statement of the facts with the exception of the following.

Although the original lease is said to contain a provision that either party can terminate the lease at the end of the initial term with 30 days’ written notice, Appellant. Br. at 6 para. 3, the record at the cited page only contains one page of the original lease, and that page does not contain the provision described. R. at 15. Nowhere else in the written record is this notice provision found.

Regarding the lease addendum, contrary to Appellant’s statement that it incorporated the lease term about the 30 days‘ written notice requirement, Appellant. Br. at 6 para. 3, the addendum in its entirety simply states (after its irrelevant front matter), “this addendum shall be attached and considered a part of the lease and supersede any portions of the lease terms contained herein: TERMS: owner agrees to December rent rate and January rent rate with $100 additional rent, tenant is to vacate by 1/31/2020 and keys turned in by 5 PM 1/31/20. December rent is to be current by close of business 12/20/19.” R. at 14.

The one page of the original lease in the record actually includes several provisions that pertain to the parties’ rights at the end of the lease term. R. at 15. In paragraph three, titled “TERMS,” the lease states, “This rental agreement shall commence on the [sic]12/10/2018, and end on 12/9/2019 at 12:00 midnight. Tenant covenants that upon the termination of this rental agreement, or any extension thereof that the Tenant will quietly and peaceably deliver possession of the premises in good order and condition, reasonable wear and tear expected, free of tenant’s personal property, garbage and other waste, and return all keys to the Landlord. Should any

extension of the lease or previous renewal be negotiated, the Tenant will be charged a $50 lease renewal fee. If the Tenant remains in possession without the Landlord's consent after the expiration of the term of the rental agreement, or its termination, the Tenant will be responsible to pay two (2) times the daily rate listed in paragraph 4 for each day until possession is relinquished to the Landlord." Id.

ARGUMENT

I. The circuit court did not err when finding that the magistrate correctly refrained from dismissing the action, because there was no agreement between the parties to dismiss it—Rich had merely talked about it with the owners' selling agent.

The magistrate's notes indicate she found that the eviction was filed before negotiations ensued about dismissing it; and that no agreement had occurred and that the text messages between the parties did not consummate a contract either for the purchase of the home or a dismissal of the eviction action, as they were mere negotiations and no signed agreement existed. R. at 10.

The text messages show Rich asking the owners' realtor Barbara Daniels where in the eviction process Rich and the owners were; Daniels stated, "I don't know anything about the eviction. Seller said as soon as we have paperwork we will stop it;" Rich answered, "What paperwork are they looking for. Last we spoke it was a preapproval letter;" Daniels replied, "Yes. That's what I need;" finally, Rich said, "Ok." R. at 24-26. No pre-approval letter for a specified amount was ever obtained by Rich, let alone provided to the owners, as indicated by the absence of any evidence of the same in the record. Although Rich's attorney stated Rich obtained a pre-approval letter and gave one to the owners, Tr. at 11:41:16-11:42:06, and that he had a copy

of it in court, id. at 11:42:50-11:43:41, 11:45:38-11:45:45, he did not admit it into evidence, so it is not in the record, id. At no point during direct examination does Rich testify about the agreement or the pre-approval letter, id. at 11:41:16-11:51:40; on cross-examination, Rich merely states her belief that the pre-qualification letter she got—which, she acknowledged, did not state any amount for which she had been pre-qualified, but stating that the letter came from "a reputable company" who "didn't put the price on there"—satisfied what she thought was her end of the deal to dismiss the eviction. Id. at 11:52:40-11:53:02.

The realtor, Mrs. Daniels, testified that she had a different understanding of what the owners' requirement was before they'd dismiss the eviction. She testified that her understanding was that the eviction would continue until the parties had a signed, ratified contract to sell; that the pre-approval letter was the necessary but merely first step in that process, and that negotiations to purchase the home fell apart when Rich's ex-husband signed the ratification, but Rich did not because she wanted 30 days to move out, in the event she wasn't finally approved for the loan, rather than 10 days, thus clouding the entire deal—in the eyes of the owners—by bringing into question Rich's good faith to purchase the home. Id. at 11:53:33-11:57:43. Mrs. Daniels testified that she never meant her statement of requiring a pre-approval letter to mean that once Rich got one, then she could "stay there forever" due to a dismissed eviction filing, because, having been in the real-estate business for over forty years, "that just doesn't make good sense." Id. at 11:59:29-11:59:43. Rather, she specified the pre-approval letter because that was the next "paperwork" in the process that owners needed. Id.

The property manager Nickie Bennett testified that the eviction was filed after Rich failed to move-out by 1/31/20 and failed to answer Bennett's phone calls, email, and knock on the door;

that the PODS moving containers on Rich's lawn demonstrated that Rich hadn't moved out yet, and that Bennett regarded Rich as a holdover tenant at that point, id. at 12:00:27-12:01:17; and that she didn't recall requesting that Rich give New Heights 30 days' notice before her move-out, id. at 12:03:30-12:03:41. No emails between the parties were entered into evidence or made part of the record.

The court found that Rich was a holdover tenant, and that the eviction would be upheld. 12:04:54-12:05:07. The court did not state any other findings of fact or conclusions of law.

There was no meeting of the parties' minds on what paperwork was to be provided before the eviction would be dismissed. Rich thought the requirement was just a pre-approval letter that did not contain a specific pre-approved amount. The owners' selling agent, Mrs. Daniels, thought that the requirement was not only a pre-approval letter but also a signed contract to sell the property. She also told Rich that she didn't know anything about the eviction, making it dubious at best whether Rich had any right to rely on Daniels' statements about what she thought the owners' requirement actually was for dismissing the eviction. After all, Daniels was merely the owners' agent for selling the home, whereas New Heights had always been the owners' agent for purposes of Rich's tenancy, which of course Rich knew. The magistrate heard testimony from Rich, Daniels, and Bennett regarding the circumstances of the eviction and the "paperwork requirement," and she was within her power to consider the accuracy and honesty of each witness. The circuit court's affirmation was proper because testimony and evidence exists in the record to support the judgment. The magistrate did not err by finding that no agreement to dismiss the eviction was reached; by deeming Rich a holdover tenant; and by upholding the eviction. The circuit court did not err when affirming the same.

The circuit court's decision was not affected by an error of law. The most that Appellant argues in support of such an error is that the facts show that there was a meeting of the minds, even if through an agent of the Respondent. Appellant Br. at 9-10. Appellant thus agrees that the only relevant law is that there's no contract where there's no meeting of the minds. There is thus no dispute as to what the controlling law is; merely the application of it to the facts. Under the applicable standard of review, then, the circuit court did not err.

II. The circuit court did not err when affirming the magistrate's finding that notice was improper—such a finding was not material to the outcome as a matter of law, and, even if it was, the Lease and Extension's clear terms provided sufficient notice.

A. The Lease and Extension's terms did not require 30 days' notice.

As stated above in the statement of facts, the record in this case only includes one page of the original written lease. R. at 15. That page contains no requirement to provide 30 days' notice. Id. This court is confined by the record for its ruling. Appellant's argument is thus unavailing where it requires this Court to consider other pages of the original lease that were merely filed at the circuit court level as part of Appellant's brief to that court on the first appeal. See Appellant Br. at 7-9. Because the circuit court, in its order, restricted its citations of these facts to the record as it was presented by the magistrate, without including any of Appellant's exhibits--such as the full original lease filed for the first time at the circuit court level--this Court must refrain from finding new facts, i.e., that the lease extension required 30 days' written notice. Order on Appeal dated Nov. 16, 2020 at 2-3.

The original lease further discussed the scenario where the tenant would be considered a holdover tenant, and that language explicitly stated that the tenant was expected to move out at the end of the term and would be considered a holdover tenant, i.e. remaining in possession

without the landlord's consent, unless a lease extension were negotiated. R. at 14. By operation of this explicit language, the Appellant became a holdover tenant when she did not move out at the end of the lease extension's term, and the Respondent had the right to file for eviction at that time.

Therefore, Respondent properly began eviction proceedings at the end of the lease extension's term, and the magistrate and circuit court did not err.

Further, even if this Court were to find that the original lease contained this notice provision, the lease extension expressly superseded that notice provision where it explicitly stated that Appellant must move out of the unit at the specified end date of the extension, and that any of the original lease's terms that conflicted with that were superseded. R. at 15. Again, therefore, Respondent properly filed the eviction when it did, and the magistrate and circuit court did not err.

B. By statute the Lease was a tenancy for a term; no notice was thus required.

Under state statute different notice requirements exist for different types of tenancies, and the presence of a written agreement for the lease's term often determines the type of tenancy. "***When there is an express agreement***, either oral or written, as to the term of the tenancy of a tenant for term or for years such tenancy ***shall end without notice*** upon the ***last day of the agreed term***." S.C. Code Ann. § 27-35-110. On the other hand, "[a] tenancy from month to month may be ended by either party giving to the other written notice of thirty days to the effect that such tenancy shall be then terminated." S.C. Code Ann. § 27-35-120. Lastly, "[a]ll tenants at will and domestic servants shall vacate the premises occupied upon twenty days' written notice."

S.C. Code Ann. § 27-35-130. The classifications of a "tenant at will" and a "tenant for a term" are mutually exclusive and hinge upon the presence of a controlling agreement: whereas "[a] person other than the owner using or occupying real estate ***under a written or oral agreement*** shall be deemed a 'tenant for a term,' " "[e]very person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate ***without an agreement***, either oral or in writing, shall be deemed a 'tenant at will.' " S.C. Code Ann. § 27-33-10(3), (4). In sum, the presence of a written agreement determines which type of tenancy exists, which, in turn, determines which type of notice is required to end the tenancy.

Similarly, the categories of "holdover tenant" and "month-to-month tenant"—along with the differing notice requirements—are mutually exclusive under the Residential Landlord Tenant Act: when a lease's term expires, a tenant for the fixed term becomes a holdover tenant if she doesn't leave, and a holdover tenant does not become a month-to-month tenant unless the landlord consents to the tenant remaining at the premises. S.C. Code Ann. § 27-40-770(c) ("If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. . . . ***If the landlord consents to the tenant's continued occupancy, Section 27-40-310(d) applies***."); S.C. Code Ann. § 27-40-310(d) ("***Unless the rental agreement fixes a definite term***, the tenancy is week to week in case of a roomer who pays weekly rent and in all other cases ***month to month***"). Where a fixed-term tenant becomes a holdover tenant by failing to move out on time, no notice is required before a landlord may file for eviction, unless the landlord has consented to the tenant's continued occupancy, in which case 30 days' notice would be required since the tenancy would have turned into a month-to-month tenancy.

Awards of Penalties, Sanctions, and Costs

In the case of a holdover tenant, "[i]f the holdover is not in good faith, the landlord may recover reasonable attorney's fees. If the tenant's holdover is a wilful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three months periodic rent or twice the actual damages sustained by him, whichever is greater and reasonable attorney's fees." S.C. Code Ann. § 27-40-770(c). "Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with [the Appellate Court] Rules, the appellate court may upon its own motion or that of a party, after ten (10) days' notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Rule 269, SCACR.

"Costs shall be allowed to the prevailing party in judgments rendered on appeal in all cases, with the exceptions and limitations stated in Sections 18-7-230 to 18-7-300." S.C. Code Ann. 18-7-220. "Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Rule 222(a), SCACR. "The appellant shall not recover costs unless the judgment appealed from shall be reversed on such appeal or be made more favorable to him to the amount of at least ten dollars." S.C. Code Ann. 18-7-240. "If the judgment appealed from be reversed in part and affirmed as to the residue, the amount of costs allowed to either party shall be such sum as the appellate court may award. If the judgment be reversed for an error of fact in the

proceedings not affecting the merits, costs shall be in the discretion of the court." S.C. Code Ann. 18-7-270.

The original lease ("Lease"), dated 12/10/18, and the extension ("Extension"), dated 12/23/19—both signed by Rich—each obligated Rich to surrender the unit at the end of the term's expiration. R. at 15 (original lease) ("Tenant covenants that upon the termination of this Rental Agreement, or any extension thereof that the Tenant will quietly and peaceably deliver possession of the premises . . . ."), 14 (lease extension) ("TERMS: . . . tenant is to vacate by 1/31/20 and keys turned in by 5pm 1/31/20 . . . ."). Nickie Bennett, property manager for New Heights, testified that Rich had notice of her move-out date pursuant to the Lease since August of 2019, Tr. at 12:03:20-12:03:30; that Rich understood that under the Extension she needed to move out by 1/31/20; that New Heights regarded Rich as a holdover tenant, id. at 12:00:27-12:01:17; and that she didn't recall requesting that Rich give New Heights 30 days' notice before her move-out, id. at 12:03:30-12:03:41. New Heights filed the eviction on 2/3/20.

Rich's argument seems premised on the mistaken belief that the law requires New Heights to have given her notice to leave the unit in addition to the notice already provided by the express terms of the Lease and Extension. Rich would have the law impose on a landlord the requirement either to give additional notice in the time leading up to the end of the lease term or after Rich had already violated the Lease and the Extension by failing to surrender the premises at the end of the lease term. However, as the RLTA states, "[i]f the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession." S.C. Code Ann. § 27-40-770(c). This supplements the no-notice-required provision of S.C. Code Ann. Section 27-35-110 ("***When***

there is an express agreement, either oral or written, as to the term of the tenancy of a tenant for term or for years such tenancy ***shall end without notice*** upon the ***last day of the agreed term***."). Rich never became a month-to-month tenant after the Extension's term ended on 1/31/20 because the landlord never consented to her continued occupancy, as evidenced by the eviction being filed on 2/3/20. R. at 2. There is no requirement that a landlord give a tenant notice to leave after the tenant has failed to leave at the end of the lease term as agreed to by the parties in a lease. Such a requirement only exists for week-to-week and month-to-month tenancies. See S.C. Code Ann. § 27-40-770(a)-(b); S.C. Code Ann. § 27-35-120, -130.

Here, Rich failed to move out on 1/31/20, contrary to the obligations of the Lease and Extension. This gave New Heights the right to file the Eviction. Rich acknowledged that New Heights had not consented to her continued occupancy when she testified that they had refused her February rent payment and that she understood she was being evicted. Tr. at 11:50:30-11:50:42. In this scenario the law imposes no prerequisite of notice to the tenant that she must move out or else face eviction. New Heights' eviction filing was lawful. The magistrate did not err by failing to conclude that New Heights provided Rich improper notice. Such a conclusion was not even material to the judgment, as no notice was required. Even if it was, the express terms of the Lease and Extension sufficed for notice.

CONCLUSION

There was never an agreement between the landlord and the tenant to dismiss the eviction on a condition that the tenant provide a pre-approval letter, because there was not a meeting of the minds: the tenant discussed the matter with the owners' selling agent instead of the property manager; the text messages in the record require "paperwork," not just a pre-approval letter; and

seller's agent, assuming she had authority to bind the owners in this issue, meant both a specified-sum pre-approval letter as well as a signed sales contract as being sufficient for the owners. The magistrate did not err in her finding that no agreement existed, and the circuit court did not err in affirming the same.

No notice was required once Rich became a holdover tenant 2/1/20 after violating the express term of her Lease and Extension that required her to move out at the end of the fixed term. She never became a month-to-month tenant because the landlord never consented to her continued occupancy, so thirty days' notice was not required. The magistrate and circuit court did not err in failing to conclude that New Heights had not given proper notice. The circuit court's ruling should be affirmed with costs and reasonable attorney's fees awarded for the benefit of Respondent.

Respectfully submitted,

s/Scott Riddell

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