

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE ) CASE NO.: 2020-CP-23-02076

Jerry Powers, )  
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 Plaintiff, )  
 )  
 vs. )  
 )  
 Rizan Properties LLC, Anthony Pearson, )  
 and Tiesha Dash, )  
 )  
 Defendants. )  
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**RECEIVED**

**Sep 22 2021**

**SC Court of Appeals**

ORDER

This action involves a lease and a separate option relating to real property located in Greenville County, South Carolina. An Order granting Rizan Properties, LLC's (hereinafter 'Rizan') motion for summary judgment was filed on January 27, 2021. An Order denying Plaintiff's motion to reconsider was filed on February 11, 2021. Those Orders are currently on appeal.

The remaining issue before the Court is the claim by Rizan against Plaintiff for breach of contract relative to unpaid rent, damages allegedly the responsibility of Plaintiff and attorneys' fees.

The parties entered into the pertinent lease and option in 2013, with an end date of May 1, 2021. As relates to Plaintiff, he moved out of the house after discussions with the principal of Rizan and receiving an Eviction Notice from Rizan dated December 3, 2018. The house has remained empty and vacant since that time.

It appears that the most significant event arising out of the parties' contractual agreements involve a large tree limb falling on the back portion of the house in 2015. Plaintiff

testified that he called Mr. Rigdon, at that point the principal of Rizan, and advised him of the damage. Plaintiff testified that Mr. Rigdon told him that under the lease Plaintiff was responsible for the damages and that Plaintiff would need to repair the same. Plaintiff testified that he did not have sufficient monies at that time, so he waited until weeks later when he saw water “gushing in” through the roof area that was damaged by the tree before he began making repairs. This water damage led to a partial collapse of an interior ceiling. Plaintiff testified that he spent around three thousand (\$3,000.00) dollars on the repairs and saw no more leaks, except for occasional leaks in the bedroom area. Plaintiff testified that he put a blue tarp in the attic area to stop these water leaks from dripping onto his bed.

Meredith Rigdon, the widow of Lukas Rigdon, testified on behalf of Rizan. She testified, as Plaintiff has agreed, that the house had been completely renovated before Plaintiff moved there in 2011. Ms. Rigdon also testified that the first time she was in the house was May of 2019 and that the house was vacant and in significant disrepair, with much water damage.

After moving out of the house in January of 2019, Plaintiff, some ten (10) months later and through his attorney, emailed Ms. Rigdon’s probate attorney in October of 2019 advising that Plaintiff would like to exercise his option to purchase the house. Based upon several communications between the attorneys thereafter, the parties were unable to come to an agreement. The matter remained at an impasse until Plaintiff filed the present lawsuit on April 10, 2020, some fifteen (15) months after vacating the house.

Both parties filed motions for summary judgment. As noted above, pursuant to an Order filed January 27, 2021, the Court granted Rizan Properties’ motion, finding that both agreements, the lease and the option, must necessarily be read together and that Plaintiff had breached the agreements by not paying rent, vacating the premises, and causing and/or allowing the damages

to the house. In an Order filed February 11, 2021, the Court denied Plaintiff's motion to reconsider.

The remaining issues before the Court arise out of Rizan's counterclaim wherein it seeks back rent, damages allegedly caused by Plaintiff, and attorneys' fees.

Plaintiff and a friend moved into the house in 2011. Thereafter, Plaintiff and his friend, Jackie Pearson, entered into a lease and an option that commenced May 1, 2013 and ended May 1, 2021. Plaintiff and Ms. Pearson were consistently late with rent payments. Then, in 2015, the limb fell on the back of the house. Thereafter, things rapidly deteriorated between the parties. Rizan sent an Eviction Notice to Plaintiff and Ms. Pearson dated December 3, 2018. In this Notice, Rizan stated eviction was being pursued based upon, among other things, non-payment of rent and damages to the house. Soon thereafter, Ms. Pearson vacated the premises and moved into a new house. Then, sometime in January 2019, Plaintiff vacated the house involved herein and started paying rent where he was then living with Ms. Pearson. Admittedly, Plaintiff did some amount of yard work at the house for a short time after he vacated. Pursuant to the Eviction Notice, Rizan contended Plaintiff owed back rent in the amount of one thousand four hundred and one (\$1,401.00) dollars, and two thousand seven hundred and fifty (\$2,750.00) dollars for late fees and for damages to the house. The non-payment of rent was uncontested by Plaintiff. Plaintiff has argued that even with his non-payment, he was entitled to exercise the option to purchase. In the Orders referred to above, the Court ruled against Plaintiff on that issue.

As noted above, Plaintiff undertook some degree of repair to the house following the limb damage. This was done after Mr. Rigdon advised Plaintiff he was responsible for "maintenance of the structure of the house" under Article VII of the Lease Agreement.

Jason Osteen, a licensed contractor called as a witness by Rizan, testified that he had inspected the premises in May of 2021 and found significant water damage. In his opinion, the water damage came from the area where the limb had damaged the roof back in 2015, and that the roof repairs were done improperly and using improper materials. Mr. Osteen took numerous pictures, which were introduced into evidence. Mr. Osteen noted Plaintiff's deposition testimony that Plaintiff had used multiple five-gallon buckets inside the house to catch rain from the roof damage and that an interior ceiling had collapsed, and that indicated to him that the most significant damage was done while Plaintiff was still living in the house. Mr. Osteen testified the large piece of metal sheeting used by Plaintiff to patch the roof was not for roof use. Mr. Osteen also testified that the blue tarp Plaintiff had placed in the attic, which was placed in order to eliminate water leaking from the roof onto the bedroom where Plaintiff slept, was another improper attempt at a repair. Osteen testified that the repairs would cost thirty-nine thousand nine hundred and fifty (\$39,950.00) at minimum. He testified it would likely be more since there were several areas that he was unable to access during his inspections.

Rizan contends that Plaintiff is liable for these damages under Article VII, Article VIII and Article XXII of the Lease Agreement.

Plaintiff initially argues that under 27-40-440 of the South Carolina Residential Landlord and Tenant Act, general responsibility for maintenance of a roof in a residential dwelling is the responsibility of the owner, or in this case, Rizan. Plaintiff further argues that even under 27-40-440(c), which allows contractual delegation of certain responsibilities, the language used was insufficient to place the liability upon Plaintiff.

Article VII, which is in the Lease Agreement that Plaintiff testified he had never read<sup>1</sup> but yet signed, states that “maintenance of the structure of the house” is the responsibility of the Lessee. And, after Rizan put Plaintiff on notice that the limb damage was his responsibility, Plaintiff never contested or objected to this interpretation of Article VII. Rather, he undertook to make repairs that proved improper and ineffective. Further, he had stopped paying rent and then voluntarily vacated the premises in January of 2019. As such, the Court finds that Article VII, as interpreted by the actions and dealings of the parties, establishes that the duty of the roof repair was undertaken by Plaintiff. Further, the Court finds that Article VII was executed in good faith and not for the purposes of evading any obligations of Rizan. And, in this regard, 27-40-510 sets forth that tenant repairs, as were done in this situation, are not to be done in a negligent manner. Clearly, the repairs done by Plaintiff were done in a negligent manner.

Plaintiff also argues that Rizan did not provide proper notice under Article XII of the Lease Agreement. Thus, Plaintiff argues, Rizan cannot now recover damages. The Court notes that Rizan sent the Eviction Notice dated December 3, 2018 and specifically mentioned past due rent and failure to maintain the premises. This Notice specifically mentions roof damage, water damage and mold damage. While the Notice was not given in strict compliance with Article XII, in that it was not sent registered or certified mail, this was never raised by Plaintiff and Plaintiff was obviously aware of the issues when he vacated the premises in January of 2019. Thus, the Court finds that the Notice sent December 3, 2018 is sufficient.

Plaintiff next argues that the applicable Statute of Limitations bars Rizan’s counterclaim. Plaintiff argues that the limb damage was in 2015 and that Rizan’s counterclaim was not filed until August 10, 2020. However, the only evidence in the record is that Rizan’s first notice of

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<sup>1</sup> Plaintiff has poor eyesight and has difficulty reading.

damages caused by the tree limb was the Eviction Notice dated December 3, 2018. Thus, Rizan's counterclaim was filed within three years of it being made known of the damages. There is no evidence that it was or should have been discovered earlier.

Rizan also seeks attorneys' fees under 27-40-750. Neither the Lease Agreement nor the Option provide any recovery of attorneys' fees for the non-breaching party.

As relates to the attorney fee request, Plaintiff initially argues that Rizan did not effectively raise the issue of attorneys' fees until the time of trial. Plaintiff's First Amended Reply was filed April 13, 2021 and raises as a defense the S.C. Residential Landlord-Tenant Act, alleging that Plaintiff is not responsible for the damages above. Rizan's Response was filed May 11, 2021, and asserts that Rizan is entitled to past due rent, breach of contract damages and attorneys' fees under the Landlord-Tenant Act. Accordingly, the Court finds that the issue was sufficiently raised in Rizan's pleadings.

As relates to damages for rent and late fees, the Court finds that Plaintiff is entitled to four thousand one hundred fifty-one (\$4,151.00) dollars. This amount is based upon the delinquent amounts of rent and late fees set out in the Eviction Notice sent December 3, 2018. The Court allows an additional two thousand two hundred (\$2,200.00) dollars for four months' rent after Plaintiff vacated the house, for a total of six thousand three hundred fifty-one (\$6,351.00) dollars. As relates to the limitation of an additional four months' rent, Rizan had a duty to mitigate its damages, which it chose not to do. In fact, the house remained vacant as of the date of trial. As such, Rizan cannot now claim the full amount of lost rent through the end of the May 1, 2021 lease period. The court finds four months as a reasonable time to re-lease the house.

As relates to damages caused by the limb and the resulting water damages, the only evidence in the record is that of Mr. Osteen and his estimate of thirty-nine thousand nine hundred and fifty (\$39,950.00) dollars. The Court does deduct twenty percent (20%) of that amount as based upon Mr. Osteen's testimony that the damages would have been less had Rizan mitigated its losses and repaired the damages sooner. Thus, the amount of damages totals thirty-one thousand nine hundred sixty (\$31,960.00) dollars. While Plaintiff asserts homeless persons periodically lived in the house after he moved out, there is no evidence of any type damages or damage amounts that may have been caused.

As relates to attorneys' fees, Rizan has a right to claim them under 27-40-750. However, other than Ms. Rigdon's testimony that she had been billed thirty-three thousand seven hundred twelve dollars and twenty-two cents (\$33,712.22) as of July 26, 2021, none of the requisite factors set forth in Blumberg v. Nealco, Inc. (427 SE2d 659 SC 1993), were presented to the Court. As such, the Court is unable to make an award of attorneys' fees based upon the record presented.

In light of the above, the Court orders, adjudges and decrees as follows:

1. That Rizan Properties is entitled to a judgment against Jerry Powers in the amount of \$6,351.00 for past due rent and late payments;
2. That Rizan Properties is entitled to a judgment against Jerry Powers in the amount of \$31,960.00 for damages to the house;
3. That based upon the record at this point in the proceedings, there is no award of attorneys' fees to Rizan Properties.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

**Case Caption:** Jerry Powers vs. Rizan Properties LLC , defendant, et al  
**Case Number:** 2020CP2302076  
**Type:** Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)