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Feb 16 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers,Appellant

v.

Rizan Properties, LLC, Anthony Pearson and Tiesha Dash.....Defendants

Of which Rizan Properties, LLC is the Respondent

REPLY BRIEF OF APPELLANT

February 16, 2022

SOUTH CAROLINA LEGAL SERVICES

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ARGUMENTS IN REPLY

I. THE LAW OF THE CASE DOES NOT AFFECT THIS APPEAL

Respondent asserts that Appellant did not appeal the trial Court's finding that he breached his lease and therefore it is the law of the case. (Resp't Br. p. 4). Appellant did not appeal the rent judgment but did appeal the judgment for damages stemming from negligent repairs. Respondent does not explain why or how a judgment for unpaid rent and late fees bars or affects Appellant's appeal as to a different part of the judgment based on a different contractual provision. (R. p. ____ (8/6/2021 Order). Moreover, Respondent cites no authority for this legal proposition and has abandoned it. *Hunt v. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) ("Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.").

Respondent later asserts that a failure to appeal the finding of a rent default prevents him from arguing that "his lease terms were not valid and binding upon him." (Resp't Br. p. 10). Respondent does not make this sweeping argument. Appellant asserts that Article VII of the lease, the provision on which the trial Court relied, was ineffective under S.C. Code Ann. § 27-40-440(c) to transfer to the tenant the landlord's duty to make the roof repair under S.C. Code Ann. § 27-40-440(a). He does not claim that the entire lease was invalid.

II. THERE IS NO INCONSISTENCY BETWEEN THIS APPEAL AND APPELLANT'S OTHER APPEAL

Respondent makes no direct response to Appellant's legal argument regarding the meaning and operation of S.C. Code Ann. §27-40-440(c). Instead, Respondent decries what it deems to be an inconsistency with Appellant seeking to enforce an option contract

that was executed at the same time as the lease¹ while asserting that he is not liable under Article VII of the lease on Respondent's counterclaim for damages on the repair issue. (Resp't Br. pp. 4-5, 6-7). There is no inconsistency.² Appellant agrees that general contract principals apply to those provisions of the lease and the option to purchase that are not displaced by or in conflict with the S.C. Residential Landlord Tenant Act (the "Act"). However, where a lease provision conflicts with the Act, as Article VII does, the Legislature elected to override the parties' right to contract and to exercise its police powers to regulate for the public good regardless of the parties' agreement. *Burbach v. Investors Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997). It is not inconsistent to argue that provisions of the option contract are enforceable according to their plain terms where the Act does not prohibit them while also arguing that the provision of the lease underpinning Respondent's counterclaim for faulty repairs is unenforceable because it violates the Act.

Respondent also asserts that Appellant understood that "it was his responsibility to repair the house because he had an option to purchase it." (Resp't Br. p. 7). A residential lease with an option to purchase is still a residential lease subject to the Act. *Bowers v. Thomas*, 373 S.C. 240, 242-243, 644 S.E.2d 751, 752 (Ct. App. 2007) (applying the Act to a lease with an option to purchase). Adopting an interpretation of S.C. Code Ann. § 27-40-440(c) that affirms Article VII's effectiveness just because Respondent gave Appellant a

¹ The enforceability of this contract is at issue in Appellate Case No. 2021-000218.

² Respondent asserts that the inconsistency can be seen in an argument Appellant does not make, that his poor vision absolved him of compliance with lease. (Resp't Br. pp. 4-5, 6). Respondent does not argue that he had no legal duty to comply with those provisions of the lease that comply with the Act.

separate option agreement would create an exception from the Act that the Legislature did not make. The Legislature made no distinction between residential leases accompanied by purchase options and those without options even though it did exclude certain other contractual arrangements. S.C. Code Ann. § 27-40-120 (excluding occupancy under a contract of sale and other arrangements, but not excluding occupancy under a lease coupled with an option). The Act applies uniformly to all residential leases that fall within its reach and are not excepted. S.C. Code Ann. § 27-40-110. The lease at issue is not excepted.

III. ADDITIONAL SUSTAINING GROUNDS ARE NOT SUPPORTED

S.C. Code sections 27-40-520 and 510(6) and Articles VIII and XXII of the lease do not create liability independently of Article VII. Respondent asserts that S.C. Code Ann. § 27-40-520 allows it to shift onto Appellant the landlord's obligation to maintain and repair the dwelling structure and that S.C. Code Ann. § 27-40-510(6) creates liability for a tenant's destruction of premises. (Resp't Br. pp. 5-6, 10). Respondent did not argue either code section to the trial Court. (R. p. ____ (Resp't. Pre Tr Br. 2-4)). The trial Court made no finding based on section 520. The trial Court found that Section 510 required Appellant to make the roof repair non-negligently, but the trial Court cited this section only after concluding that Article VII of the lease alone formed the contractual basis³ for Appellant's duty to repair the roof in the first place. (R. p. ____ (Order)).

Section 27-40-440(c), not Section 520, specifically establishes criteria for written agreements that seek to transfer a landlord's obligations under Section 440(a) onto a tenant.

³ Respondent pled a breach of the lease. (R. p. ____ (Amended Ans)). Respondent did not plead statutory liability under the Act.

Section 440(c), not Section 520, is the specific statute, and therefore it controls. *See Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 433, 716 S.E.2d 443, 445 (2011) (concluding that a more specific statute controlled over a general one). Additionally, Section 520 requires rules adopted thereunder to “promote the convenience, safety, or welfare of the tenants in the premises.” S.C. Code Ann. §§ 27-40-520(a)(1) and (a)(4). Respondent makes no argument that the lease provision making Appellant responsible for maintaining the structure of the property was for Appellant’s “convenience, safety, or welfare.” S.C. Code Ann. § 27-40-520(a)(1) (R. p. ____). Section 520 does not apply.

Section 27-40-510(6) is not an independent source of liability either. The trial Court found that “improper and ineffective repairs” caused the damages. (R. p. ____ (Order)). There is no evidence in the record or legal argument from Respondent that the phrase “A tenant shall: . . . not deliberately or negligently destroy . . . the premises” contemplates a scenario where repairs turn out to be ineffective. S.C. Code Ann. § 27-40-510(6) Additionally, Section 510(6) never comes into play if the duty to make the roof repair never transferred to the Appellant and therefore remained with the Respondent pursuant to Section 27-40-440(a). Because the lease did not transfer this duty, Section 510 is not an independent basis for imposing liability.

Finally, to the extent that Respondent cites two other lease provisions, Articles VIII and XXII, they also do not create liability where Article VII does not. (Resp’t Br. pp. 8-9). The trial Court did not predicate liability on either provision. (R. p. ____ (Order)). If Article VII was ineffective to transfer the Respondent’s roof repair obligation to Appellant, then neither were Articles VIII and XXII because neither of them come close to complying with S.C. Code Ann. §27-40-440(c), and Respondent makes no argument that they do.

Furthermore, as to Article XXII, if Article VII did not transfer Respondent's duty under Section 440(a) onto Appellant, then Article XXII could not create liability for Appellant doing Respondent's job because it is illegal for a rental agreement to provide for the "exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith." S.C. Code Ann. § 27-40-330(a)(3). Conversely, if Article VII did transfer Respondent's duty under Section 440(a) onto Appellant, then it matters not whether other lease provisions effected the same transference. These statutory and lease provisions are not additional sustaining grounds.

CONCLUSION

For these reasons and those stated in Appellant's Brief, this Court should reverse the finding of the trial Court that Appellant had the duty to repair the roof and the part of the judgment assessing damages for negligent repairs.

Respectfully submitted,

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Greenville, South Carolina

February 16, 2022

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CERTIFICATE OF SERVICE

I certify that on February 16, 2022, I served the *Appellant's Reply Brief* on Respondent Rizan Properties, LLC by emailing the documents to knoxhaynsworth@bmemhlaw.com, which is the email address that is the lawyer's primary e-mail address listed in the Attorney Information System (AIS). A copy of the email is attached to this Certificate of Service.

s/ Mark Fessler

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Subject: Powers v. Rizan Properties, LLC (Appellate Case No. 2021-001058)
Date: Wednesday, February 16, 2022 12:19:00 PM
Attachments: [2022-2-16--Reply Brief \(Powers\).pdf](#)

Dear Knox,

Attached for service pursuant to Order No. 2021-08-25-02 is a copy of Mr. Powers' Reply Brief.

Sincerely,

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