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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case Number 2021-000973

Starbella, LLC.....Appellant,

v.

Lillie Rovira and Roberto Rovira.....Respondents,

FINAL REPLY BRIEF OF APPELLANT

Brian S. McCoy
S.C. Bar No.: 002155
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
Phone: (803) 366-2280
bmccoy@mccoylawfirm.com

Attorney for Appellant

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INTRODUCTION

Appellant was denied its day in court without explanation by the dismissal of its lawsuit by the lower court. In their initial brief, Respondents fail to provide any legal basis for the dismissal. In fact, Respondents concede that the previous case between the parties (the "Rent Lawsuit") had been fully settled before the events underlying the second lawsuit (the "Sewage Lawsuit") [See Respondents' Brief at p. 6 (conceding that by January 13, 2021 "all payments and required actions of the Mediated resolution had been complied with.")]. Compare this with the earliest date that the underlying sewage issues commenced -- January 15, 2021 -- [Complaint in Sewage Lawsuit ¶11; R. p. 050] and it is obvious that the sewage issues were not and could not have been litigated in the prior Rent Lawsuit. In addition to this fatal concession, Respondents attempt to argue the merits of the underlying Sewage Lawsuit, which also demonstrates the error of the dismissal below.

ARGUMENT

I. RESPONDENTS' ARGUMENTS REGARDING THE LEASE PROVISIONS DEMONSTRATE THAT THE ORDER BELOW GRANTING A MOTION TO DISMISS WAS NOT APPROPRIATE BECAUSE THOSE ISSUES INVOLVE FACTUAL DISPUTES IN THE UNDERLYING CASE.

Respondents' argument appears to be based on the parties' underlying Lease, and whether the premises were accepted as-is, and whether or not the business could operate under Covid restrictions. [Respondents' Brief pp. 8-9]. Respondents want to argue the factual disputes and merits of the underlying Sewage Lawsuit, which is not appropriate on appeal of a Motion to Dismiss. *See, Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999) (when considering a motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon the allegations made on the face of the complaint and not consider or resolve the

factual disputes in the case).

Respondents attempt to argue the legal and factual disputes that will be litigated in the Sewage Lawsuit. They contend that "Appellant accepted in its as-is condition the property." [Respondents' Brief p. 8]. They further argue "Appellant had held occupancy and possession since June 5, 2020 irrespective of the effect of the Coronavirus pandemic effect on its business operations." [Respondents' Brief p.9]. Tellingly, these factual and legal issues involving interpretation of provisions of the Lease, status of Covid restrictions at the pertinent time periods, and whether the latent defects in the premises could have been discovered sooner, all go to factual disputes that will be involved in the litigation of the merits of the case. Because the arguments upon which Respondents rely are not limited to the allegations of the pleading, dismissal was improper. *See, e.g.*, *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

II. RESPONDENTS' ARGUMENTS THAT BECAUSE THE LEASE WAS INVOLVED IN THE FIRST "RENT LAWSUIT" THEREFORE ALL SUBSEQUENT LEASE DISPUTES ARE BARRED UNDER RES JUDICATA IS CLEARLY INCORRECT.

Respondents appear to argue that because the parties' Lease was involved in the first Rent Lawsuit, therefore all subsequent litigation involving the Lease is barred by res judicata. [Respondents' Brief p. 13 ("The same transaction or occurrence at issue in the case at bar would arise out of the lease litigated in the first suit.")]. Of course, this misconstrues the law of res judicata, and this absurd logic must fail.

First, it is undisputed that the Rent Lawsuit involved whether Appellants were required to pay rent during a period of Covid restrictions on business operations. [See Rent Lawsuit Complaint; R. pp.009-013]. The subsequent Sewage Lawsuit has nothing to do with payment of rent, but involves Respondents' conduct and representations involving a latent and illegal sewage

setup on the leased premises that occurred after the Rent Lawsuit had settled. [See Sewage Lawsuit Complaint; R. pp. 048-054]. Thus, although the parties' Lease continued after the settlement of the Rent Lawsuit, it is disingenuous and simply wrong to contend that the issues were resolved by the mediation settlement of the rent issues. *See, Carolina Renewal, Inc. v. S.C. Dep't of Tranp.*, 385 S.C. 550, 554, 684 S.E. 2d 779 (Ct. App. 2009) (party asserting res judicata or issue preclusion must show that the issue of fact or law in the present lawsuit was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment").

Moreover, under the illogic of Respondents' argument, *all* subsequent disputes between the parties involving the Lease are barred because the Rent lawsuit involved the Lease, and presumably the Appellants tenant and Respondents landlords would have immunity to ignore all requirements under the Lease going forward. Obviously, this is a flawed interpretation of the requirements of res judicata. *See, Carolina Renewal, Inc., id.*

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville Cty.* , 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2013) (*quoting Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). "[T]he fundamental purpose of res judicata ... is to ensure that 'no one should be twice sued for the same cause of action.' " Judy , 393 S.C. at 173, 712 S.E.2d at 414 (*quoting First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)).[1] Here, Respondents

[1] Even when a defendant meets all of the required elements, res judicata will not be applied where it will contravene other important public policies; the courts must weigh the competing public policies. *Johns v. Johns*, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992).

completely failed to demonstrate that the subsequent sewage claims in the "Sewage Lawsuit" "arise out of the same transaction or occurrence" as the previous Rent Lawsuit. In fact, it was factually impossible for the issues to have been litigated in the Rent Lawsuit because the sewer problems did not occur until *after* the Rent Lawsuit had been finally settled, as conceded by the Respondents.[2]

The subject matters of the Rent Lawsuit and the Sewage Lawsuit were completely different. The word "sewage" does not appear in any document in the Rent Lawsuit, and it settled before the sewage problems occurred. Clearly, in these circumstances there is nothing to bar the second lawsuit involving completely different facts that occurred after the first case had settled. *Sealy v. Dodge*, 289 S.C. 543, 347 S.E. 2d 504 (1986) (reversing summary judgment because the issue was not adjudicated in the prior suit).

CONCLUSION

The trial court committed error by dismissing Appellant's complaint. The ruling should be reversed.

This the 116h day of March, 2022.

s/ Brian S. McCoy
Brian S. McCoy
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
bmccoy@mccoylawfirm.com

[2] Respondents' argument that Appellant should have moved to reopen the Settlement Agreement is absurd because settlement had been fully completed - there was no basis to reopen the completed settlement or to amend the complaint.

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CERTIFICATE OF COUNSEL – FINAL REPLY BRIEF OF APPELLANT

The undersigned certifies that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Submitted March 16, 2022.

s/ Brian S. McCoy
Brian S. McCoy
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
(803) 366-2280
bmccoy@mccoylawfirm.com