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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

Appellate Case No. 2021-001058
Case No. 2020-CP-23-02076

Jerry Powers, Appellant,

v.

Rizan Properties, LLC, Anthony Pearson and Iesha Dash, Defendants,
of which Rizan Properties, LLC is the Respondent

FINAL BRIEF OF RESPONDENT

March 15, 2022

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STATEMENT OF ISSUES ON APPEAL

- I. Is Jerry Powers barred from challenging the decision of the trial court due to his failure to appeal the decision rendered on January 27, 2021 that he breached his lease?**

- II. Did the Trial Court correctly rule that Jerry Powers was responsible for the damage he caused/allowed to be caused to the dwelling?**

STATEMENT OF THE CASE

Jerry Powers filed suit against Rizan Properties seeking enforcement of an alleged option contract to purchase a house. Rizan denied the material allegations of plaintiff's complaint relative to the alleged option and counterclaimed for damages. On January 27, 2021 the master-in-equity for Greenville County issued his Order dealing with parts of the underlying case. Jerry Powers timely appealed the decision against him regarding the option and that matter remains on appeal at present. However, significantly Mr. Powers never appealed the finding that he breached his lease. On July 28, 2021, the master-in-equity conducted a trial on the issue of the damages caused by Mr. Powers. After a full trial wherein testimony and evidence was presented by both sides, the master-in-equity ruled that Mr. Powers was liable for \$31,960.00 in damages to the house and an additional \$6,351.00 in unpaid rent and late fees.

STATEMENT OF FACTS

Lukas Rigdon was the sole member of Rizan Properties, LLC, the record owner of a house located at 39 Second Avenue in Greenville, South Carolina. On or about May 1, 2013, Jackie Pearson and Appellant Jerry Powers executed two documents regarding the property. Both documents were prepared, reviewed and executed with and in the offices of attorney Jack Heckman who sat at the table and went over the documents with Mr. Powers and Ms. Pearson.

The Lease executed by Mr. Powers provided at Article VII that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee and general cleanliness of the yard and interior of the house shall also be the responsibility of the Lessee. The Lease provided at Article VIII, that at expiration or termination of the Lease, Lessee shall remove all property belonging to them and repair all damage caused by such removal and restore the premises to the condition they were in prior to the removal of said property. The Lease specifically noted that the premises were in good repair at the time of signing. The Lease provided via Article XVI that if Lessee continued in default the payment of any rent for a period of ten days following notice of such default or if Lessee defaulted in the performance of any other terms, conditions or covenants of the Lease which were not remedied within ten days, or in the event the premises were vacated before the expiration of the lease, then in such event the Lessor shall have the right to terminate the Lease. The Lease provided at Article XVIII that time was of the essence for each provision and covenant contained within it.

The Lease provided at Article XXII that Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises.

STANDARD OF REVIEW

An action to construe a contract is an action at law. *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Assn.*, 343 S.C. 335, 339, 540 S.E. 2d 843, 845 (2001). In an action at law, tried without a jury, the trial court's findings of fact will not be disturbed unless found to be without evidence which reasonably supports the Court's findings. *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 409, 661 S.E. 2d 62, 64 (2008).

ARGUMENTS

I. Powers' breach of his lease is the law of the case.

In its Order dated January 27, 2021 the trial court found that Mr. Powers breached his lease. In his motion to alter or amend pursuant to Rule 59(e) filed February 4, 2021, Powers asked the court to reconsider its holding that "plaintiff had no further rights regarding the property located at 39 Second Avenue, Greenville, South Carolina". Powers went on to request the court reconsider its order and alter its conclusion that "without one, the other cannot stand." What neither the motion to reconsider nor the appeal did was take issue with the affirmative finding of a breach of the lease. Because Powers did not appeal this ruling, it is the law of the case. See *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (recognizing an unappealed finding of the master, right or wrong, is the law of the case and should not be considered by this court). *Arcadian Shores Homeowners Ass'n v. Cromer*, 644 S.E.2d 778, 373 S.C. 292 (S.C. App. 2007) "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957)."

II. Powers is responsible for the damage he allowed to occur.

Jerry Powers instituted this action against Rizan Properties seeking specific performance of an alleged option requiring Rizan to sell a house to him. In connection with those claims, Mr. Powers' deposition was taken. While Mr. Powers cites two excerpts from his deposition in connection with his appeal of the adverse decision against him relative to the option contract, (related appeal) he makes no reference to his deposition in the present appeal. The reason Mr. Powers makes no reference to his deposition in this case is he never discussed at all any assertion that he did not understand the Lease he signed which contained the obligations he violated resulting

in the judgment against him. In fact, Mr. Powers went to great lengths in his related appeal to argue for a strict interpretation of the documents and he never intimated that any documents associated with the option he sought to enforce, were difficult to read or misunderstood. However, in this appeal Mr. Powers claims he is nearly blind, has difficulty reading and understanding, and has had vision problems since the time he entered into the Lease.

Mr. Powers seems to be arguing that as a matter of law, repair and maintenance obligations, notwithstanding the Lease and the parties' understanding, remained solely with the landlord. If that in fact is the case, then one wonders why Mr. Powers did not assert a claim for actual damages, including attorney's fees against the landlord for breach of such. The answer of course is that Mr. Powers knew and accepted his responsibility under the lease.

S.C. Code Ann. §27-40-30 specifically notes that unless displaced by its provisions, the principals of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement the provisions of this Chapter. Further, §27-40-520 specifically allows a landlord to adopt rules and regulations, however described, concerning the tenants use an occupancy of the premises. The rules and regulations however described with regard to this dwelling were that among other responsibilities, Mr. Powers would be responsible for maintenance and repairs of certain things and further provided at Article XXII that he would indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises.

Appellant's arguments fly in the face of the reality that existed regarding the house. It is perfectly allowable pursuant to S.C. Code §27-40-520 for a landlord to adopt and enforce rules

and regulations regarding the tenant's use and occupancy as long as they are applied in a fair manner, are not for purposes of evading the obligations of the landlord, etc. Further, pursuant to S.C. Code Ann. §27-40-510, it was Mr. Powers' obligation to not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission. In this case, Mr. Powers testified that he and "some white guy who lived up the street" conducted repairs on the house. (R. p. 241, lines 14-17) The result of their repairs may be found in Defendant's Exhibits.

It seems the recurring theme of Mr. Powers' appeals are that what is good for the goose, is NOT good for the gander. Mr. Powers claims he has an absolutely unambiguous completely enforceable option to purchase the home in which he was living yet at the same time, he denies any affirmative obligations owed by him pursuant to the lease, the common law or the course of dealings between the parties.

Mr. Powers's sworn testimony is all over the board in this appeal as well as the related appeal. For instance, in his brief at page 3, Mr. Powers tries to gloss over his inconsistent testimony by stating "It is unclear whether Ms. Pearson read the Lease to Appellant prior to the closing." In fact, Mr. Powers testified that Ms. Pearson read the lease to him. (R. p. 178, lines 12-15) Mr. Powers contends that he is nearly blind and has difficulty reading yet in his related appeal, he clearly denotes specific provisions of the option agreement which he read, suggesting his being nearly blind is a flexible concept.

Mr. Powers seems to have forgotten the testimony of witnesses from the trial as well as and his own testimony. For instance, contrary to the assertion in Appellant's brief at Page 4 regarding B decking, the testimony was not that B decking is used to support the roof. Rather, B Deck is used for front porches and concrete is laid over it. (R. p. 112, lines 15-21). B decking is

used underneath concrete decking and has no application for a roof repair. Why Mr. Powers claimed the testimony was otherwise is unknown. Further, Mr. Powers contends that he was blind, ignorant and did not know what he was signing or the importance of the language with regard to his lease. Of course, in the related appeal involving Mr. Powers alleged option, he seemed to have read and understood clearly what he contends the option provided. With regard to the lease at issue, Mr. Powers affirmatively testified that he knew what it said before he signed it because Jackie Patterson had read it and explained it to him. (R. p. 178, lines 15-25)

Mr. Powers argues that the Residential Landlord and Tenant Act is designed to protect him from entering into the very agreement that he initiated litigation over. Mr. Powers claims the Act prevents his knowing waiver of alleged protections provided by it. However, Mr. Powers disregards his own testimony and the factual background of the parties' relationships. According to Mr. Powers, it was his responsibility to repair the house since he had an option to purchase it. (R. p. 152, lines 4-5) Mr. Powers read the first lease he signed with Rizan. (R. p. 172, line 3)

The lease agreement entered into in writing by Mr. Powers specifically provides for the parties respective duties and obligations. As testified to by Mr. Powers, he was responsible for repairing the roof of the dwelling as well as other areas. These duties were agreed to in the lease.

The South Carolina Residential Landlord and Tenant Act is in degradation of common law and, therefore, the statute should be strictly construed. *Watson v. Sellers*, 299 S.C. 426, 385, 369 (SC. App. 1989). In this case Mr. Powers seeks to broadly construe the statute and suggest it provides both a sword and a shield for Mr. Powers relative to the matters at issue concerning the dwelling. While Mr. Powers now argues that certain duties are prohibited from being transferred to him, he nonetheless never, ever, ever sought to claim that the landlord had violated any obligations provided by the South Carolina RLTA. Clearly then, from the time he abandoned the

dwelling in 2018, through the time he sued Rizan via summons and complaint filed April 10, 2020, up until his defense to the damages claim, Mr. Powers never contended that the statute had been violated or that any non-delegable duties had been transferred to him.

As to Mr. Powers' contentions regarding a writing, as addressed with trial court, the writing given by Lukas Rigdon to Mr. Powers and referred to as the "eviction notice" advised Mr. Powers of his unpaid rent. While Mr. Powers asserts in the appeal of this action that following the written notice, he cured his default, that is not factually correct. As noted in Mr. Powers' deposition, and as found by the trial court, the rent Mr. Powers claims he paid in January was for the remainder of prior unpaid rent not curing his default. He admitted his Lease provided for late fees and he was late with his rent. (R. p. 229, lines 17-19 and 23-25) He admitted he paid no rent for November of 2018. (R. p. 234, lines 17-25) He has no record of payment for December of 2018 nor January of 2019. (R. p. 237, lines 6-11) He admitted no payments for February or March of 2019. (R. p. 237, line 21 - p. 238, line 3)

The Lease provided at Article VII that the maintenance of the structure of the house and the major systems shall be the responsibility of the Lessee and general cleanliness of the yard and interior of the house shall also be the responsibility of the Lessee. The Lease provided at Article VIII, that at expiration or termination of the Lease, Lessee shall remove all property belonging to them and repair all damage caused by such removal and restore the premises to the condition they were in prior to the removal of said property. The Lease specifically noted that the premises were in good repair at the time of signing.

The Lease provided via Article XVI that if Lessee continued in default the payment of any rent for a period of ten days following notice of such default or if Lessee defaulted in the performance of any other terms, conditions or covenants of the Lease which were not remedied

within ten days, or in the event the premises were vacated before the expiration of the lease, then in such event the Lessor shall have the right to terminate the Lease. The Lease provided at Article XVIII that time was of the essence for each provision and covenant contained within it. The Lease provided at Article XXII that Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises.

With regard to the water damage, a tree hit the roof of the house knocking a hole in it which caused the roof to leak and allowed water to enter the house. The hole allowed enough water to enter the house that it caused the ceiling to collapse. (R. p. 253, lines 6-10) Mr. Powers did not undertake any efforts to repair the hole in the roof until three to four months after rain began entering and after the ceiling had actually collapsed. (R. p. 256, line 21 - p. 257, line 4) In fact, Mr. Powers described having four five gallon buckets in different places to catch water coming into the interior of the house. (R. p. 152, lines 17-24)

All of the damage discussed by Mr. Powers took place before Mr. Powers and Ms. Pearson vacated the property. As such, based upon Article XXII of the Lease, they are indebted to Rizan for all losses, liability or expenses that may be incurred in any way growing out of the negligent use, misuse or willful abuse of the premises.

Under the statute, specially §27-40-440, a landlord is to maintain the premises. Pursuant to S.C. Code Ann. §27-40-440(c) “the landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord’s duties specified in Paragraph (5) of subsection (a) and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into good faith and not for the purposes of evading the obligations of the landlord.”

It is undisputed in this case that Mr. Powers operated under lease terms assigning him certain responsibilities for repair and maintenance. From the time Mr. Powers began leasing from Rizan until the filing of his Amended Reply on April 13, 2021, Mr. Powers had never, ever taken the position that any of the provisions of his Lease were not entered into in good faith but were for the purpose of evading the obligations of his landlord. Beyond equitable principals of waiver and estoppel, by not appealing this Court's findings of default under the lease, Rizan submits that Mr. Powers cannot now argue his lease terms were not valid and binding upon him.

Given Mr. Powers' assertion that the Act applies, the Act provides certain obligations upon Mr. Powers. Specifically, S.C. Code Ann. §27-40-510, relates to the "tenant's obligations" to maintain the dwelling. Subsection (6) provides that the tenant shall "not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who is allowed to access the premises by the tenant." Clearly Mr. Powers negligently destroyed portions of the premises. In fact, Mr. Powers confirmed he did not hire a roofing contractor. (R. p. 186, lines 1-4) nor did he ever have anyone inspect the repairs to determine whether they had been done properly. (R. p. 186, lines 6-11) According to Mr. Powers "some white guy helped me. He was living up the street from me, he kind of help. He knew a little bit of stuff." (R. p. 241, lines 14-17) Mr. Powers did not undertake any efforts to repair the hole in the roof until three to four months after rain began entering and after the ceiling had actually collapsed.

CONCLUSION

Respondent respectfully submits this Court should decline to address aspects of appellant's appeal for his failure to raise the same before the lower court and his related appeal. Respondent

further submits that the trial court's decisions relative to the matters tried therein in favor of Rizan and against Mr. Powers should be affirmed. Further, Respondent submits this Court should affirm the rulings in favor of Rizan for any ground appearing on the record as provided for in Rule 222(c)

Respectfully submitted,

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Jerry Powers,Appellant

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

Of which Rizan Properties, LLC is the Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully Submitted,

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