THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-06486

Kevin Schumacher,..... Appellant,

v.

Lance Hoover, ... Respondent.

REPLY BRIEF

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ARGUMENT

I. THIS IS NOT A PERSONAL INJURY CASE.

Respondent Lance Hoover erroneously relies on *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989) in support of his position. In *Watson*, this Court recognized that when it passed the Residential Landlord Tenant Act ("RLTA"), the General Assembly created a cause of action as between a tenant and a landlord for personal injuries resulting from a landlord's failure to repair a condition on the leased premises that causes injury to the tenant after the landlord receives notice of the condition. *Id.* at 299 S.C. 433, 385 S.E.2d 373; *see* S.C. Code Ann § 27-40-610(b) (Rev. ed. 2007). That proposition has no application to this case whatsoever, as it is not an action for personal injuries.

Demonstrating that a landlord has actual notice of a condition materially affecting a tenant's health or safety is a requirement for making a recovery for personal injuries, but it is not relevant in this context unless it is coupled with a notice from the tenant that he seeks to terminate the tenancy. *See* S.C. Code Ann. § 27-40-610(a) (Rev. ed. 2007). In his brief, just as he did at trial, Hoover attempts to shift the Court's attention away from the point at which notice of termination occurred to when Appellant was first given notice of the mold condition. (Brief of Respondent, p. 3-6, 12 ("Mr. Schumacher saw the mold on or about August 13, 2010.), 13, 16, 17.) That point in time has no legal significance in a residential lease dispute that merely involves the parties' contractual rights.

II. SCHUMACHER IS NOT INSISTING UPON "MAGIC WORDS."

Hoover attempts to muddy the otherwise clear and unambiguous wording of the RLTA by arguing that Schumacher is demanding "notice written in specific statutory language," or that Schumacher is demanding "magic words" in order to terminate the lease. Schumacher would agree that there is no requirement that a tenant use "magic words" to terminate a residential lease agreement; however, the RLTA clearly states that certain requirements must be met for a tenant to terminate an otherwise enforceable residential lease agreement. These include: (1) written language specifying the acts and omissions constituting the landlord's breach, (2) written language indicating that the tenant intends to terminate the rental agreement because of the breach, and (3) written language clearly notifying the landlord that the lease agreement will terminate if the breach is not remedied within fourteen days. *See* S.C. Code Ann. § 27-40-610(a). Without question, that did not occur here until September 3, 2010.[1]

Hoover asserts that he should be allowed the option to terminate a lease if a landlord does not remedy a particular problem within 14 days of learning that it exists. That is not consistent with the RLTA, and if taken to its logical extreme, Hoover's position would lead to the erosion of contracting parties' reliance interests. The "[p]rime objectives of contract law are to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract." Restatement (Second) *Conflict of Laws* § 187 cmt. e; *Erwin v. Cotter Health Centers*, 167 P.3d 1112, 1124 (Wash. 2007). "Since the right of private contract

[1] Schumacher has never taken the position that the notice he received on this date via email from Hoover's real estate agent was somehow defective because it did not strictly conform to the notice clause in the parties' lease. Were that the case, perhaps Hoover's citation to *Watson v. Sellers* and other authorities concerning the form of notice a party receives would have some application here.

is no small part of the liberty of the citizen, the usual and most important function of courts of justice is to maintain and enforce contracts rather than to enable parties thereto to escape from their obligations on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare." *Almers v. South Carolina Nat. Bank of Charleston*, 265 S.C. 48, 60, 217 S.E.2d 135, 141 (1975).

By its inclusion of § 27-40-610(a) within the RLTA, the General Assembly recognized several practical truths about residential property. First, it is unreasonable for a tenant to expect a dwelling to remain problem-free throughout a tenancy. Second, not every burned-out light bulb or leaky faucet provides grounds to terminate a lease. Third, a landlord should be given a reasonable opportunity to fix a problem that may develop during the course of a tenancy, even one that materially affects health and safety. Section 27-40-610(a) is the General Assembly's attempt to balance the reliance interests of landlords seeking to produce rental income against tenants' interests in having a habitable dwelling.

Hoover's reference to other contexts in which courts have refused to elevate form over substance by insisting that litigants use precise terms to preserve an issue for appeal or indict a criminal suspect is misplaced. Schumacher merely submits that the termination of a residential lease is not to be allowed at the tenant's whim. This notion is clearly reflected in § 27-40-610(a), which sets forth basic requirements for what should be a rare occurrence.

Hoover likewise mischaracterizes Schumacher's argument when he states that "Schumacher argues that because he did not receive notice written in specific statutory language, *he was not required to comply with the Residential Landlord Tenant Act*

(RLTA) and provide a safe, habitable home." (Brief of Respondent, p. 10) (emphasis added). Schumacher does not pretend that he had no duty to provide a habitable home in the absence of some technical triggering mechanism. Nor does he equate the mold problem encountered by Hoover with a burned out bulb or a leaky faucet. It was a condition materially affecting health and safety that required action. Schumacher merely asserts that he should have been given fourteen days following receipt of Hoover's written notice of termination of the lease to fix the problem, as allowed under the RLTA. He was not.

CONCLUSION

Schumacher respectfully requests that the result below be reversed, that judgment be entered for Schumacher, and that a new trial as to the issue of Schumacher's damages be ordered.

Respectfully submitted,

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April 26, 2013.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Brief and Reply Brief of Appellant comply with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the Brief of Appellant, Reply Brief and Appellant's Certificate of Compliance by depositing a copy in the United States Mail, postage prepaid, on April 29, 2013, addressed to his attorney of record, James Edward Bradley, Esquire, of Moore, Taylor & Thomas, P.A., P.O. Box 5709, West Columbia, South Carolina 29171.

April 29, 2013.

Victoria Moody

Victoria Moody – Paralegal to Kirby D Shealy III

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