

RECEIVED

Apr 28 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2020-CP-08-00718

Bethany Aloha Rich, Appellant,

v.

New Heights Property Management, Respondent.

FINAL BRIEF OF APPELLANT

Jeffrey W. Kuykendall – Attorney at Law
S.C. Bar No. 102538
127 King St., Ste. 208
Charleston, SC 29401
Phone: (843) 790-5182
Facsimile: (866) 733-1909
Jwkuykendall@jwklegal.com
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities2

Statement of Issues on Appeal3

Statement of the Case4

Standard of Review.....4

Statement of Facts.....5

Arguments

 I. THE COURT ERRED IN DETERMINING THAT THE ADDENDUM CREATED A
 TERM OF TENANCY WHEN THE ADDENDUM EXPRESSLY INCORPORATED
 TERMS OF THE PREVIOUS LEASE CONTRACT.....6

 II. THE COURT ERRED IN CONCLUDING THAT THERE WAS NO MEETING OF
 THE MINDS ON WHAT PAPERWORK APPELLANT HAD TO PROVIDE TO
 LANDLORD AS A CONDITION PRECEDENT.....8

Conclusion.....10

TABLE OF AUTHORITIES

STATUTES

S.C. Code Ann. § 27-35-110.....7

CASES

Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984).....4

Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232 312, S.E.2d 20 (Ct. App. 1984).....5

Hadfield v. Gilchrist, 343 S.C. 88 538 S.E. 2d 268 (Ct. App. 2000).....5

Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913).....5

Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007).....5

Abel v. South Carolina Dep’t of Health and Environmental Control, 419 S.C. 434, 440, 798 S.E.2d 445 (Ct. App. 2017).....7

Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007).....7

S. Atl. Fin. Servs., Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003).....7

R&G Construction, Inc. v. Lowcountry Regional Transportation Authority, 343 S.C. 424, 433-34, 540 S.E.2d 113, 118 (2000).....8

STATEMENT OF ISSUES ON APPEAL

1. Did Lease Addendum Create a Fixed-Term Tenancy Despite Expressly Incorporating Terms of Previous Lease Contract Which Provided Lease Converted to Month-To-Month After Expiration?
2. Did Communication Between Appellant and Respondent's Agent Create Binding Settlement Agreement?

STATEMENT OF THE CASE

Appellant Bethany Rich (“Appellant”) entered into a lease (“Lease”) with Joseph and Denise Pastre (“Owners”), through their agent, New Heights Property Management (“Respondent”) to live at 169 Decatur Drive, Summerville, South Carolina (“Premises”). The Lease was subsequently extended by an addendum (“Addendum”) signed by the parties on December 23, 2019. On February 3, 2020, Respondents filed an Application for Ejectment against Appellant and Appellant requested a hearing. The Magistrate granted the Application for Ejectment and Appellant appealed to the Circuit Court. The Circuit Court affirmed the Magistrate’s ruling. Appellant contends the Circuit Court erred in concluding that the Addendum created a fixed-term lease, when it expressly incorporated the terms of the Lease, which provided that the tenancy converted to month-to-month at its conclusion, unless either party had provided a thirty-day notice of the lease termination. Appellant further contends the Circuit Court erred in concluding that there was no meeting of the minds between the parties about what home-purchase paperwork the Appellant had to provide to consummate the parties’ settlement agreement, when Owners’ agent, acting with actual or apparent authority, clearly stated the paperwork that was necessary, which Appellant provided.

STANDARD OF REVIEW

The standard of review to be applied by the Court of Appeals in reviewing factual issues in cases where the Circuit Court reviewed a Magistrate’s judgment is limited: “The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate’s judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law. *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984). Specifically, “[i]n

ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence." *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984).

The Court of Appeals still retains *de novo* review of whether the facts show the circuit court's affirmance was controlled or affected by errors of law. *Hadfield v. Gilchrist*, 343 S.C. 88, 92-93, 538 S.E. 2d 268, 270 (Ct. App. 2000). Where testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, the Court of Appeals will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. *Stanford v. Cudd*, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913). *See also, Bowers v. Thomas*, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007).

STATEMENT OF FACTS

On or about December 10, 2018, Appellant entered into a lease with Joseph and Denise Pastre ("Owners"), through their agent, New Heights Property Management ("Respondent") to live at 169 Decatur Drive in Summerville, South Carolina (the "Premises") (R. p. 68); the lease reflected an end date of December 9, 2019 (R. p. 68), and it contained a provision that either party could terminate the lease "at the end of the initial term with thirty (30) days written notice." (R. p. 70, ¶ 14). 15. On December 23, 2019, the parties entered into an addendum to the original lease to amend the rental rate moving forward and to formally extend the initial lease term to January 31, 2020; the addendum otherwise incorporated the lease's terms including that regarding the 30 days' written notice. (R. p. 81) February 3, 2020, after having learned that appellant had not yet moved out of the Premises, Respondent filed an Application for Ejectment. (R. p. 17)

During both the addendum's term and into February of 2020, Appellant communicated by phone calls and texts with the owners' real estate agent about both purchasing the home and dismissing the eviction proceeding after the initial filing had occurred (R. p. 2, lines 14-16). In text messages to Appellant on February 14 and 15, 2020, Owners' real estate agent, Barbara Daniels, stated with regard to the eviction: "Seller said as soon as we have paperwork, she will stop it[.]" (R. p. 88) In response, Appellant asked: "What paperwork are they looking for[?] Last we spoke it was a preapproval letter." Daniels replied, "Yes. That's what I need[.]" (R. p. 88) Ms. Daniels testified that she intended "paperwork" to mean a ratified contract and not just a preapproval letter and that the preapproval letter that had been provided by Appellant was insufficient in any event because it did not include dollar amount. (R. p. 2, lines 20-22, p. 3, line 1) Appellant testified that she understood this paperwork-requirement to mean only providing a pre-approval letter. (R. p. 3, lines 2-3).

ARGUMENT

I. The Court Erred in Determining That the Addendum Created a Term of Tenancy when Addendum Expressly Incorporated Terms of Previous Lease Contract

The Court of Common Pleas erred as a matter of law in concluding that Appellant's tenancy was a fixed-term tenancy which ended on January 31, 2020. The Lease Addendum which provided the end date of January 31, 2021, expressly provided that it was "considered a part of the Lease." (R. p. 81, line 6) The Lease included a "Lease Termination" clause that required 30 days' written notice prior to termination of the lease. (R. p 70, ¶ 14) No such notice was provided to Appellant. Accordingly, at the expiration of the lease term, Appellant's tenancy converted to a month-to-month tenancy. The Court of Common Pleas therefore erred in concluding that Appellant's tenancy ended on January 31, 2020 and that Respondent had a right to file for eviction on February 3, 2020.

A lease is a contract. Contracts should “be interpreted so as to give effect to all of their provisions.” *Abel v. South Carolina Dep’t of Health and Environmental Control*, 419 S.C. 434, 440, 798 S.E.2d 445 (Ct. App. 2017) (quoting *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007)). By its own terms, the Addendum merely increased the monthly rental rate and extended the initial lease term to January 31, 2020. (R. p. 81) It did not reference Paragraph 14 of the Lease, did not say anything about providing notice of termination, and was clear that it was both intended to be, and was, part of the Lease.

The Magistrate initially ruled that the Addendum constituted 30-days’ written notice under the lease (R. p. 43, lines 6-9). That conclusion is not supported by the text of the Addendum. The Addendum clearly stated that it was part of the Lease. (R. p. 81) The inclusion of an “end date” for the Lease does not in and of itself constitute notice of termination, as the Lease itself also included an “end date.” To conclude otherwise would render the 30-day written notice requirement in Paragraph 14 of the Lease entirely meaningless, which is inconsistent with the well settled principle that contracts should be interpreted to give effect to all provisions.

The Court of Common Pleas concluded that the Addendum created an express agreement as to the term of tenancy under S.C. Code Ann. § 27-35-110. The conclusion likewise renders the 30-day written notice requirement in Paragraph 14 of the Lease meaningless. The Parties entered into the Addendum and expressly provided that it would be considered part of the Lease. The Parties had an opportunity to expressly amend or delete Paragraph 14; they chose not to do so.

At best for Respondent, reading the “Lease Termination” clause in conjunction with the Addendum results in an ambiguity as to whether a separate 30-day written notice would be required prior to termination. That ambiguity should be resolved in favor of Appellant as the nondrafting party. *See S. Atl. Fin. Servs., Inc. v. Middleton*, 356 S.C. 444, 447, 590 S.E.2d 27, 29

(2003) (Ambiguous language in a contract should be “interpreted strongly in favor of the nondrafting party.”). That is especially true in this situation, where Respondent is a sophisticated business that drafted the terms of both the original lease and the Addendum and then presented them to Appellant, an unsophisticated renter with no bargaining power. *See id.*

The Court’s conclusion that the Addendum created a fixed term of tenancy is contrary to two basic tenets of contract interpretation: it does not give effect to the “Lease Termination” clause of the contract, and it does not resolve an ambiguity in favor of Appellant, the non-drafting party. Therefore, Appellant asks this Court to reverse the Court’s decision and remand the case with instructions to dismiss it for failure to provide proper notice of termination.

II. The Court Erred in Concluding That There Was No Meeting of the Minds on What Paperwork Appellant Had to Provide to Dismiss the Appeal

The Court of Common Pleas erred in concluding that there was no meeting of the minds about what home-purchase paperwork the appellant had to provide as a condition precedent (R. p. 4, lines 4-6). The parties entered into a valid settlement agreement. Under that agreement, Respondent (via its principal, Owners) agreed to stop the eviction once Owners received Appellant’s preapproval letter to purchase the Premises (R. p. 88). Appellant provided such a preapproval letter (R. p. 90), but Respondent failed to dismiss the action. Later, Respondent contended that it meant a pre-approval letter with more information or specificity (R. p. 2, lines 20-22, p. 3, line 1).

The Court erred in concluding that there was no meeting of the minds when Respondent’s agent initially stated the terms of the settlement agreement and Appellant complied with those terms. Respondent’s agent had actual or apparent authority to conduct negotiations with Appellant regarding the eviction. “The apparent authority of an agent results from conduct or other manifestations of the principal’s consent, whereby third person are justified in believing the agent

is acting within his authority. *R&G Construction, Inc. v. Lowcountry Regional Transportation Authority*, 343 S.C. 424, 433-34, 540 S.E.2d 113, 118 (2000). Here, Respondent's agent had the ability to bind Respondent due to its apparent authority. The Court therefore erred in finding that there was no meeting of the minds between the parties. The Court should have therefore dismissed the action pursuant to Appellant's compliance with the parties' settlement agreement.

CONCLUSION

The Circuit Court erred in determining that the Lease Addendum created a Fixed Term Lease, because it expressly incorporated the terms of the previous lease. The Circuit Court should have concluded that the Lease Addendum required the same Thirty-Day notice prior to termination that was required in the original Lease and therefore the Magistrate erred in granting the Application for Ejectment to Respondents. The Circuit Court further erred by concluding that there was no meeting of the minds on what paperwork Appellant had to provide to Respondent to fulfill the terms of the parties' settlement agreement. Respondent's agent, acting with actual or apparent authority, clearly stated what paperwork was required, which Appellant provided. The Circuit Court should have concluded that this constituted a valid settlement agreement, which Appellant fully complied with, and therefore dismissed the action pursuant to the parties' agreement. This Court should reverse the Circuit Court and remand this action with instructions that the underlying action be dismissed.

Respectfully submitted,

/s/ Jeffrey W. Kuykendall _____

Jeffrey W. Kuykendall – Attorney at Law

S.C. Bar No. 102538

127 King St., Ste. 208

Charleston, SC 29401

Phone: (843) 790-5182

Facsimile: (866) 733-1909

Jwkuykendall@jwklegal.com

Attorney for Appellant

At Charleston, South Carolina
This the 28th day of April, 2022.