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NO. COA12-86
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

EDITH RAETHER,
Plaintiff,

v.

Wake County
No. 11 CVD 7064

GCO ENERGY CORP and MARK SCHWEDEL,
Defendants.

Appeal by Defendants from order entered 11 July 2011 by Judge Christine Walczyk in Wake County District Court. Heard in the Court of Appeals 8 May 2012.

Michael A. Jones & Associates, PLLC, by Michael A. Jones, for Plaintiff-appellee.

Graebe, Hanna & Welborn, PLLC, by Christopher T. Graebe and Mark R. Sigmon, for Defendants-appellants.

HUNTER, JR., Robert N., Judge.

GCO Energy Corp ("GCO") and Mark Schwedel (collectively, "Defendants") appeal from an order granting to Edith Raether ("Plaintiff") possession of the property Defendants were allegedly leasing. Defendants argue the trial court erred by entering an order of summary ejectment when it concluded there

was no valid lease between the parties. We disagree and affirm the order of the trial court.

I. Factual & Procedural Background

Plaintiff owns rental property at 4717 Ridge Water Court in Holly Springs. In 2009, Mr. Schwedel, owner of GCO, purportedly prepared a 24 month term lease agreement on behalf of GCO concerning the proposed rental of such property. GCO is listed as the tenant in the lease agreement. GCO is not a domestic corporation incorporated in North Carolina and failed to register as a foreign corporation authorized to do business in North Carolina.

On 31 December 2009, Plaintiff received the draft lease from Mr. Schwedel. On that day or on 1 January 2010, Plaintiff made handwritten additions to the lease, signed the lease, and returned it to Mr. Schwedel. On 1 January 2010, Mr. Schwedel added a paragraph captioned "16(a)" below the signature lines, signed the lease, and returned it to Plaintiff. Mr. Schwedel backdated his signature to 31 December 2009. Neither party initialed the handwritten changes to the lease nor was there an acknowledgement of or consent to the handwritten modifications by either party. Neither Plaintiff nor Defendants regularly engaged in the business of leasing or renting real property.

On or about February 2010, Defendants took possession of the property, and Plaintiff accepted rent in the amount of \$3,995.00. Defendants paid and Plaintiff accepted rent until 1 April 2011. In April 2011, Defendants withheld rent on the grounds that mold had been confirmed on the premises and that paragraph 16(a) of the lease authorized them to withhold rent from Plaintiff.

On or about 19 April 2011, Plaintiff filed a complaint for summary ejectment. On or about 3 May 2011, the matter was heard by the magistrate in small claims court. Following the hearing, an order for summary ejectment was entered. On or about 6 May 2011, Defendants filed a Bond to Stay Appeal and Notice of Appeal to the district court. On 11 July 2011, the Honorable Christine Walczyk held that neither Plaintiff nor Defendants were merchants with respect to the lease and that GCO did not have the authority to contract in North Carolina. She also held that the acceptance of rent by Plaintiff did not indicate acceptance of the terms of paragraph 16(a), added by Defendants after Plaintiff had signed the agreement. Accordingly, Judge Walczyk held that there was no meeting of the minds between Plaintiff and Defendants to form a valid contract/lease. Judge Walczyk ordered Plaintiff to receive possession of the property

at issue. Defendants entered timely notice of appeal to this Court on 5 August 2011.

II. Jurisdiction & Standard of Review

As Defendants appeal from the final order of a district court, appeal lies as of right with this Court pursuant to N.C. Gen. Stat. § 7A-27(c) (2011).

"In reviewing a trial judge's findings of fact, we are 'strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.'" *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (quoting *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)); see also *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) ("[F]indings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if . . . there is evidence to the contrary." (alterations in original) (citations and quotation marks omitted)).

III. Analysis

Defendants do not take issue with the trial court's findings of fact but argue the trial court's conclusion of law

"[t]hat there was no meeting of the minds between the parties to constitute the formation of a valid lease agreement" dictated that the remedy of summary ejectment ordered by the court was inappropriate. We disagree.

N.C. Gen. Stat. § 42-26 provides:

Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

N.C. Gen. Stat. § 42-26(a) (2011). Before summary ejectment may be ordered as a remedy for any of the three scenarios described above, it must be shown that a landlord-tenant relationship

exists between the parties. *Jones v. Swain*, 89 N.C. App. 663, 668, 367 S.E.2d 136, 139 (1988); *see also Hayes v. Turner*, 98 N.C. App. 451, 454, 391 S.E.2d 513, 515 (1990).

Furthermore, [N.C. Gen. Stat. §] 42-26 was only intended to apply to a case in which the tenant entered into possession under some contract or lease, either actual or implied, with the supposed landlord, or with some person under whom the landlord claimed in privity, or where the tenant himself is in privity with some person who had so entered.

Id. at 668-69, 367 S.E.2d at 139.

Here, although the trial court ruled that there was no meeting of the minds between the parties as required for the formation of a valid lease, there is ample evidence of a landlord-tenant relationship between the parties. A detailed review of the trial transcript shows that both parties viewed their relationship as that of a landlord and tenant, regardless of their knowledge of the validity of the lease agreement. The record shows Defendants moved into the property on or about February 2010 and paid Plaintiff rent in the amount of \$3,995.00. Defendants continued to pay and Plaintiff continued to accept rent for over one year until 1 April 2011 when mold had been confirmed on the premises, and Defendants asserted that paragraph 16(a) of the lease authorized them to withhold rent

from Plaintiff. Defense counsel even told the court that after the parties signed the lease,

In [sic] February 13th of 2010, *the tenants* [took] possession of the house. They show[ed] up. They pa[id] rent. They're given keys and possession.

. . . .

From February 2010 until really April of 2011, everything goes according to a tenant-landlord association. Okay. They're paying rent. The landlord's receiving rent. They're dealing with matters concerning the home, dealing with each other's particularities, dealing with particularities of the home. Nothing really happens.

Taken together, this evidence indicates there was a landlord-tenant relationship between the parties, and therefore, we hold the trial court did not err in affirming and entering an order of summary ejectment. *Cf. Jones*, 89 N.C. App at 669, 367 S.E.2d at 139 (where this Court reversed the trial court's grant of summary ejectment when there was no actual or implied lease between the parties *nor* was there evidence of a landlord-tenant relationship).

IV. Conclusion

For the foregoing reasons, the order of the district court is

Affirmed.

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Judges MCGEE and STEPHENS concur.

Report per Rule 30(e).