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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-397

Filed 19 November 2024

Richmond County, No. 22CVD638

SUNRISE RENTALS, LLC, Plaintiff,

v.

JOHN POPOWICH, Defendant.

Appeal by defendant from order entered 11 September 2023 by Judge Chevonne Wallace in Richmond County District Court. Heard in the Court of Appeals 23 October 2024.

Cedar Grove Law, by Jonathan Williams, for the plaintiff-appellant.

No brief for the defendant-appellee.

TYSON, Judge.

Sunrise Rentals, LLC (“Sunrise”) appeals the trial court’s order dismissing their claim to recover possession of personal property. We affirm.

I. Background

Sunrise sells rent-to-own portable storage buildings. Sunrise rented a portable twelve by twenty-foot (12 x 20) storage building to John Popowich (“Popowich”). A

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Rental Agreement with Purchase Option and a Repossession Agreement prepared by Sunrise were executed by the parties on 3 July 2018.

The Rental Agreement outlines the value of the unit and Popowich's agreed-upon monthly payments. The Rental Agreement listed the price of the unit as \$5,533.26, plus sales tax. It also established the monthly rental payment was \$273.46, including sales tax, for thirty-three months.

The Rental Agreement provided two options for Popowich to purchase and own the utility shed. If Popowich waited until the end of his lease to purchase the unit, he would be responsible for all thirty-three months' payments plus a lump sum of \$9,844.56 and sales tax. If Popowich decided to exercise his early purchase option, he would be responsible for the \$5,533.26 plus sales tax, minus sixty percent of all the rental payments paid towards purchase of the unit.

Late payment fees were also addressed by the Rental Agreement. A \$15 fee would be assessed if Popowich failed to make timely monthly payments. The Rental Agreement also provided:

If Consumer fails to make a timely rental payment, which otherwise would effectuate a termination of this agreement, Consumer shall have the right to reinstate the agreement without losing any rights or options by payment of all past-due rental charges, the reasonable cost of pick-up, redelivery, and refurbishing, and any applicable late fees within five (5) days of the renewal date.

The Repossession Agreement provides Sunrise Rentals retains "outright ownership of the portable storage building . . . until all necessary rental payments" are made,

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including “late fees, taxes, and/or retrieval fees[.]”

The unit was delivered on 27 July 2018, and the first payment was due 15 September 2018. The last payment Popowich made to Sunrise was on 19 November 2021, which is thirty-eight months after Popowich had begun making payments towards the storage unit.

At some point, Popowich fell behind in making his payments. Sunrise attempted to repossess the storage unit. Sunrise filed a complaint to recover possession of personal property in small claims court on 25 March 2022. Sunrise sought \$1,367.25 for loss of use and \$705.87 in attorney’s fees, totaling \$2,073.12. The small claims court found Popowich had breached his contractual duty to Sunrise and awarded Sunrise \$2,073.12 in damages on 15 June 2022. Popowich was not present or otherwise represented at the hearing.

Popowich timely appealed the small claims magistrate’s order on 21 June 2022. A hearing was held in Richmond County Civil District Court on 11 September 2023. Both Popowich and Sunrise were present at the hearing.

Michelle Anderson (“Anderson”), the Collections Manager for Sunrise, testified to several varying payoff amounts Popowich purportedly owed to Sunrise. In contrast to the \$1,367.25 for loss of use damages and \$705.87 in attorney’s fees sought in Sunrise’s initial complaint, Anderson testified Popowich owed \$1,897.28 to Sunrise at the time the hearing was held on 11 September 2023. She also testified Popowich had decreased the payoff amount from \$4,362.89 on 25 January 2020 to \$1,951.95 by

25 May 2021. Between those two dates, 25 January 2020 to 25 May 2021, Popowich made payments totaling \$4,504.52, including the \$10 “fee” he was assessed for each payment made.

The exact date Sunrise attempted to reclaim the unit is absent from the record on appeal. Anderson testified Sunrise had sent a vehicle to pick up the storage unit, pursuant to the Rental and Repossession Agreements, although Anderson was not present when the repossession attempt had occurred. Anderson does not participate in physically collecting the units, but she does coordinate all recovery attempts.

Sunrise’s attempt to repossess the storage building was unsuccessful. Popowich testified he “had to pay a bunch of money” to prevent the unit from being repossessed and removed. He could not recall to who he had paid the money, but he remembered paying several payments greater than \$800.

Anderson testified, despite Defendant’s payments totaling more than the required payoff amount, his payoff amount continued to increase because of his failure to make consistent payments. Popowich’s attorney asked Anderson the following questions during cross-examination:

Q. And you said – if I understand, your testimony earlier was typically the party’s going to pay 40 percent more than what the cost of the item is, correct?

A. The cash price, correct.

Q. And so in this situation, if he’s paid – the cost of the item was \$5,536 – I’m just going to – 40 percent would be what, \$2,200, roughly. And so he would have needed to pay

somewhere around \$7,700-plus/minus a little bit, here and there?

A. Over a certain period of time; I'd have to run the math on that.

Q. Okay. But nonetheless, he did pay \$8,125?

Popowich's attorney moved to dismiss at the close of Sunrise's evidence. He argued: "We would contend to[,] Your Honor[,] they have not met that standard; that, in fact, they have not clarified as to what is owed, the amount owed, and how it is they got that number, whatever number they got." The trial court denied Popowich's motion.

Popowich testified, offered evidence, and renewed his motion to dismiss at the close of all the evidence. The trial court noted the lack of evidence presented by Sunrise tending to show Popowich had unlawfully kept the property. Popowich's counsel argued, "the burden of proof is on the plaintiff to prove by the greater weight of the evidence the amount owed and the unlawful possession to the detriment of the plaintiff of the property." Popowich further asserted Sunrise had failed to prove what amount they deserved to be paid:

[T]hey collect 40 percent above the amount owed, which would be roughly \$7,700. Their – their testimony, they collected \$8,125. Also their testimony on cross was that since January 25th of 2020, when they were – a current payoff was showing of \$4,362.89; they collected over \$4,500. So the idea that somehow the plaintiff has been deprived of profits or money in this matter, Your Honor, just is not there.

Sunrise requested an additional \$3,828.44 for loss of use damages at the close of the evidence.

The trial court granted Popowich's motion to dismiss, denied Sunrise's claim for relief, and dismissed the claim with prejudice on 2 October 2023. The trial court made the following findings of fact:

5. The Plaintiff was unable to show by the greater w[eight] of the evidence the amount owed on the account.

6. At no time did the Plaintiff present a document, letter, or testimony that the Defendant was put on notice or requested to return said shed to Plaintiff.

7. There was testimony that a repo person came to the house, but then monies were paid to settle that issue.

8. Defendant paid over \$800.00 to someone in Locust, North Carolina on that issue.

9. The Defendant received an invoice from the Plaintiffs on January 25th, 2020, showing an outstanding amount of \$4,362.89.

10. Since that date, the uncontested testimony shows that the Defendant paid a total of \$4,504.52.

Sunrise filed a motion to reconsider on 18 September 2023, which was denied on 21 November 2023. Sunrise filed notice of appeal on 14 December 2023.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

III. Issues

Sunrise argues the trial court failed to resolve all issues raised in the pleadings, because the trial court's order failed to address Sunrise's breach of contract claim. Sunrise also asserts several of the trial court's findings of fact were unsupported, and the trial court's conclusion of law were not supported by the findings of fact.

IV. Incomplete Order

A. Standard of Review

"In a trial without a jury, it is the duty of the trial judge to resolve all issues raised by the pleadings and the evidence by making findings of fact and drawing therefrom conclusions of law upon which to base a final order or judgment." *Small v. Small*, 107 N.C. App. 474, 477, 420 S.E.2d 678, 681 (1992) (citing N.C. Gen. Stat. § 1A-1, Rule 52; *Rosenthal's Bootery, Inc. v. Shavitz*, 48 N.C. App. 170, 268 S.E.2d 250 (1980); *Heating & Air Conditioning Associates, Inc. v. Myerly*, 29 N.C. App. 85, 223 S.E.2d 545 (1976)).

"When all issues are not so resolved by the trial court, this Court has no option other than to vacate the order and remand the cause to the trial court for completion." *Id.* (citations omitted).

B. Analysis

1. Breach of Contract Claim

Sunrise argues the trial court failed to resolve Plaintiff's breach of contract claim in violation of N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2023). Rule 52(a)(1)

requires a trial “[i]n all actions tried upon the facts without a jury or with an advisory jury, . . . [to] find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” *Id.*

Sunrise argues their initial complaint asserted a breach of contract claim. Sunrise’s initial complaint to recover possession of personal property included an attached exhibit, which mentioned Sunrise and Popowich had entered into a contract. Sunrise argues evidence tending to show the existence of a contract was presented at trial.

The trial court’s third finding of fact found Popowich and Sunrise had “entered into a contract” and it listed the cost of the storage unit and the monthly rental payments Defendant was contractually required to make. The trial court’s fourth finding of fact acknowledged “[t]he contract did allow for cause shown, for the Plaintiff if and should the Defendant breach the contract to repossess the storage unit” and that “Defendant fell behind in payments.” The trial court’s seventh finding of fact noted testimony was presented indicating a person seeking to repossess the unit had confronted Popowich, but Popowich had paid money to settle that issue.

The trial court’s findings and conclusions adequately addressed Sunrise’s breach of contract claim, in accordance with N.C. Gen. Stat. § 1A-1, Rule 52(a)(1). Sunrise’s argument is overruled.

2. Sufficiency of the Order

Sunrise also argues the trial court’s order was insufficient, citing *Hinson v.*

Jefferson, 287 N.C. 422, 215 S.E.2d 102 (1975). In *Hinson*, the order appealed from adopted all of the stipulated findings of fact and concluded “plaintiff is not entitled to the relief prayed for by her.” *Hinson*, 287 N.C. at 429, 215 S.E.2d at 107 (quoting the trial court’s order). Our Supreme Court explained such a “mere assertion” had left our appellate courts unable to “know what law or legal theory the trial court applied to the facts.” *Id.* On appeal, our Supreme Court could “only assume that the trial court found none of plaintiff’s legal theories to be persuasive.” *Id.*

Here, the trial court complied with N.C. Gen. Stat. § 1A-1, Rule 52(a)(1). The trial court did not state a “mere assertion” for a non-specific form of relief. *See Hinson*, 287 N.C. at 429, 215 S.E.2d at 107. The trial court concluded Sunrise had “failed to show by greater w[eight] of [the] evidence that they are entitled to a repossession of that item or that the Defendant frustrated and/or prevented the repossession of the item.” Sunrise’s argument is without merit.

V. Unsupported Findings of Fact and Conclusions of Law

A. Standard of Review

“In general, we are bound by the findings of fact unless such facts are not supported by any competent evidence.” *Hinson*, 287 N.C. at 429, 215 S.E.2d at 107 (citations omitted).

“In reviewing a trial judge’s findings of fact, we are ‘strictly limited to determin[e] 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)).

Unchallenged findings of fact are “presumed to be supported by [sufficient] evidence and [are] binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted).

B. Analysis

Sunrise disputes the following findings of fact:

3. The Plaintiff and Defendant entered into a contract on or about the 3rd day of July 2018 for the Defendant to purchase a storage building from the Plaintiff for the amount of \$5,536.25. The Defendant was to make rental payments at the rate of \$273.46 per month until paid in full.

...

6. At no time did the Plaintiff present a document, letter, or testimony that the Defendant was put on notice or requested to return said shed to Plaintiff.

...

9. The Defendant received an invoice from the Plaintiffs on January 25th, 2020, showing an outstanding amount of \$4,362.89.

1. Finding of Fact 3

Finding of Fact 3 is supported by competent evidence, and any purportedly unsupported portions are unnecessary to support the trial court’s judgment. The

evidence showed Sunrise and Popowich had entered into a contract on 3 July 2018. The stated value of the storage building is directly taken from the contract and is accurate, and so are Popowich's required monthly payments.

While Popowich's two options for purchasing the storage unit listed in the contract were more nuanced than was set out in the last sentence of Finding of Fact 3, further specifics are unnecessary to support the trial court's conclusions of law. *City of Charlotte v. Little-McMahan Properties, Inc.*, 52 N.C. App. 464, 473, 279 S.E.2d 104, 110 (1981) (explaining this Court "need not" address whether "conclusions of law numbered 3 and 6 in the trial court's order [we]re erroneous" because "the challenged conclusions [we]re not necessary to support the judgment of the trial court" and "disregarded on appeal"). Sunrise's argument is overruled.

2. Finding of Fact 6

Finding of Fact 6 is supported by competent evidence. No testimony was presented at trial regarding any notices, documents, or letters sent to or received by Popowich regarding Sunrise's purported repossession attempt. While Anderson testified regarding her role in coordinating the repossession attempt, she did not testify to any dates repossession attempts occurred, or to any notices provided to Popowich. She also was not present during any purported repossession attempts.

Popowich's testimony was also lacking in any specificity. He only remembered paying the repossession driver more than \$800.00, which was the sum of money demanded to avoid losing the unit. Competent evidence supports Finding of Fact 6.

3. *Finding of Fact 9*

Finding of Fact 9 is supported by the evidence. Anderson was presented with a notice Popowich had received from Sunrise prior to trial. The invoice was dated January 25th, 2020, and it showed the outstanding payoff amount for the storage unit was \$4,362.89. While Sunrise asserts this total is a “payoff amount” versus an “outstanding amount,” this pedantic distinction is unnecessary to support the trial court’s conclusions of law. *Id.* Sunrise’s argument is overruled.

4. *Conclusions of Law*

Sunrise lastly argues the trial court’s conclusions of law are unsupported by the findings of fact. The trial court concluded Sunrise had “failed to show by greater w[eight] of [th]e evidence that they are entitled to a repossession of that item or that the Defendant frustrated and/or prevented the repossession of the item.”

Sunrise presented contradictory payoff amounts and damages throughout the life of this claim. In its initial complaint, Sunrise requested loss of use damages and attorney’s fees. At trial, Sunrise agreed several of the notices Popowich had presented at trial accurately reflected the payoff amount and total amount owed. Popowich presented evidence tending to show he had made payments totaling more than the required payoff amount.

Further, Sunrise presented no calculations to demonstrate what amount(s) Popowich still owed to own the unit in full, nor did they explain how Popowich’s payments, even if occasionally late, had denied him of his contractual right “to

reinstate the agreement without losing any rights or options by payment of all past-due rental charges, the reasonable cost of pick-up, redelivery, and refurbishing, and any applicable late fees.”

Plaintiff bore the burden of proving its claim. The trial court made adequate findings of fact supported by competent evidence, and those findings of fact support its conclusions of law.

VI. Conclusion

The trial court complied with the statutory requirements of N.C. Gen. Stat. § 1A-1, Rule 52(a)(1). The trial court’s findings of facts are supported by competent evidence. Those findings support the trial court’s conclusions of law. Sunrise’s arguments lack merit and are overruled. The judgment appealed from is affirmed. *It is so ordered.*

AFFIRMED.

Chief Judge DILLON and Judge HAMPSON concur.

Report per Rule 30(e).