IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

SOUNDBAR, LLC,

Appellant,

v.

Case No. 5D21-176
LT Case No. 2020-CC-08600

BYM COMMERCIAL, JARED TAWASHA AND CARLOS ALVARADO,

Appellees.
_____/

Opinion filed October 15, 2021

Appeal from the County Court for Orange County,
Evellen Jewett, Judge.

Teresa N. Phillips, of Forster Boughman Lefkowitz & Lowe, Maitland, for Appellant.

Brian Chase, of Atlas Law, Tampa, for Appellee, BYM Commercial, LLC.

No Appearance for Other Appellees.

COHEN, J.

In this commercial eviction case, Soundbar, LLC ("Soundbar") appeals the trial court's final judgment for possession entered in favor of BYM

Commercial ("BYM"). Soundbar contends that the trial court erred by conducting an insufficient hearing on its motion to determine rent, wherein the trial court refused to address certain factual questions before ordering Soundbar and two individual defendants to deposit unpaid rent into the court registry. Specifically, Soundbar argues that the trial court should have resolved which of two conflicting leases governed so that certain defenses could be raised and tenants to the lease determined. For the reasons discussed below, we affirm.

BYM filed a complaint for eviction based on six months of unpaid rent under an alleged oral month-to-month lease binding Soundbar and two individuals whom BYM joined as defendants, Jared Tawasha and Carlos Alvarado (collectively, "Defendants"). Defendants filed an answer denying the oral lease; they attached a written lease, signed and executed, between only BYM and Soundbar. They admitted that Soundbar and Tawasha had possession of the premises but maintained that Tawasha and Alvarado were not tenants under either lease.

The conflicting leases both reflected a monthly rent of $8000 and Defendants did not dispute that this amount had not been paid; instead, Defendants asserted that provisions in the written lease delayed or excused the non-payment of rent during the six-month period. Defendants alleged that a force majeure clause allowed for abatement of rent during the forced

closing of their establishment (a bar) during the pandemic. They also contended that BYM was estopped from denying the existence of the written lease when it had relied upon another provision to deny reimbursement for $80,000 in repairs and maintenance that Defendants had incurred. To resolve the dispute, Defendants filed a motion to determine rent.

Following a hearing at which the trial court did not determine the governing lease and declined to address the affirmative defenses, the court found the amount of rent owed was not in dispute at this stage because it was uncontested that the monthly rent was $8000 under both leases, an amount that remained unpaid. The trial court ordered Defendants to deposit $72,000 into the court registry immediately, and $8000 per month thereafter, to avoid default. When that amount was not forthcoming, the trial court entered the final judgment, finding that the default entitled BYM to a writ of possession.

The final judgment for possession included the following language:

> 2. Defendants dispute that Jared Tawasha and Carlos Alvarado are tenants subject to eviction and have filed a Motion for Reconsideration seeking removal of Mr. Tawasha and Mr. Alvarado from this Final Judgment.
>
> 3. Plaintiff has agreed to remove Mr. Tawasha and Mr. Alvarado as Defendants in this action, upon gaining a separate stipulation that neither Mr. Tawasha nor Mr. Alvarado are occupying or intend to occupy the premises that are the subject of this eviction . . . .

However, no stipulation was filed, and Tawasha and Alvarado have not been removed as defendants. The trial court subsequently entered an amended order granting Defendants' motion to stay issuance of the writ of possession pending deposit of $24,000 into the court registry and subsequent monthly rent. Defendants complied, and the trial court stayed execution of the writ until further order. This appeal followed.

Soundbar raises a number of issues on appeal. Restated, it argues the trial court erred by failing to determine at the hearing: which lease governed, whether the force majeure provision reduced the amount owed, and whether Tawasha and Alvarado were tenants under the lease and liable for payment of rent.

Section 83.232, Florida Statutes (2020), provides the statutory scheme governing hearings on a motion to determine rent. The statute provides, in relevant part:

> 83.232 Rent paid into registry of court.—
>
> (1) In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, . . . unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid . . . . If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court

> registry on the day that the court makes its determination . . . .
>
> (2) If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:
>
> (a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and
>
> (b) What properly constitutes rent under the provisions of the lease.
>
> . . . .
>
> (5) Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

§ 83.232(1)-(2), (5), Fla. Stat. (emphasis added).

Based on the plain language of the statute, the trial court is constrained at the rent determination hearing to consider only the limited defenses constituting "payment or satisfaction of the rent," an inquiry that requires consideration of two narrow questions: payments not properly credited and what constitutes rent. § 83.232(1)-(2), Fla. Stat. When a defendant disputes the unpaid rent amount alleged in the complaint, deposit of that amount into the court registry is still required" if the tenant chooses to assert <u>any defense other than payment</u> . . . ." <u>Stanley v. Quest Intern. Inv., Inc.</u>, 50 So. 3d 672,

674 (Fla. 4th DCA 2010) (emphasis added); see also Minalla v. Equinamics Corp., 954 So. 2d 645, 648–49 (Fla. 3d DCA 2007).[1] As a result, a full evidentiary hearing is not warranted at this stage, and Soundbar's defenses other than payment—such as the force majeure clause—should be addressed later in the proceedings. We recognize the harshness of this result, particularly in the context of the ongoing pandemic, but it is not our role to judicially craft a scheme which might yield a different outcome.

However, we agree with Soundbar that the inclusion of Tawasha and Alvarado in the order to deposit funds into the court registry was error. A trial court may not require occupants to deposit rent into the court registry in a tenant eviction action without first holding an evidentiary hearing to determine whether they are tenants under the governing contract. See Grimm v. Huckabee, 891 So. 2d 608 (Fla. 1st DCA 2005); Frey v. Livecchi, 852 So. 2d 896 (Fla. 4th DCA 2003). If the trial court concluded that the written lease governed, and that Tawasha and Alvarado were merely occupants and not tenants under that lease, the relevant statute would not apply to them. The trial court should have resolved this question at the evidentiary hearing.

[1] Both Soundbar and BYM rely upon cases concerning residential leases, which are governed by section 83.60(2), Florida Statutes (2020), rather than section 83.232. However, the two statutes contain parallel language and can be similarly construed, rendering the cases applicable here.

But that does not end our analysis. Soundbar, Tawasha, and Alvarado were all represented by the same counsel below. Perhaps for strategic reasons, counsel elected to file a notice of appeal only as to Soundbar, instead naming Tawasha and Alvarado as appellees along with BYM. Thus, Tawasha and Alvarado have not appealed the order entered by the trial court holding them liable for the rent. Soundbar is not permitted to raise grounds for reversal on behalf of non-appealing parties. See Lynn v. City of Fort Lauderdale, 81 So. 2d 511, 513 (Fla. 1955) (noting that it is not duty of appellate court to address grounds for reversal that adversely affect only non-appealing defendants); Day v. Norman, 42 So. 2d 273, 274 (Fla. 1949) ("No appeal has been taken by any other of the several defendants. Consequently, we should not and do not consider the position taken in the court below by any one of them, nor can this appellant assert their rights to a reversal if any should exist." (citations omitted)). Finding no error as to Soundbar's interests pertaining to the amount of rent currently due, we affirm.

AFFIRMED.

HARRIS, J., concurs.
SASSO, J., concurring in result only.

SASSO, J., concurring in result.

I agree that the final judgment should be affirmed. I also agree that Soundbar, LLC lacks standing to challenge portions of the judgment which only effect non-appealing parties. As a result, I would not address the merits of Soundbar's argument that the trial court erred in including Jared Tawasha and Carlos Alvarado in the order without conducting an evidentiary hearing and thus do not join that narrow portion of the opinion.