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NO. COA01-1545

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

JOYCE HALL-ALSTON,  
Plaintiff-appellant,

v.

Wilson County  
No. 00-CVS-854

RICHARD T. SMITH, III,  
Defendant-appellee.

Appeal by plaintiff from order entered 26 September 2001 by Judge Frank R. Brown in Wilson County Superior Court. Heard in the Court of Appeals 11 September 2002.

*Charles Everett Robinson, for plaintiff-appellant.*

*Rose, Rand, Orcutt, Cauley, Blake & Ellis, PA, by T. Slade Rand, Jr., for defendant-appellee.*

BRYANT, Judge.

Plaintiff appeals from the trial court's order granting defendant's motion to dismiss for failure to state a claim upon which relief can be granted. In her complaint, plaintiff alleged the following:

Plaintiff, Joyce Hall-Alston, owned a mobile home in Wilson, North Carolina. On 3 May 1995, she executed a "rent-to-own" contract in favor of Anthony Edwards and Janice Leveston whereby Edwards and Leveston would pay plaintiff \$250 per month for ninety-six months. Edwards took possession of the mobile home the same

day. Edwards rented a lot at Carver Mobile Home Park in Wilson through Bissette Realty, Inc., which plaintiff alleged acted as defendant Richard T. Smith's agent. Plaintiff was not a party to this rental agreement. Edwards and Leveston rented the mobile home to Derrice Edwards, who failed to pay rent.

On 4 June 1999, defendant had the mobile home removed from the mobile home park to Wayne County. Plaintiff demanded that Smith return the mobile home and its contents, some of which belonged to plaintiff. When the mobile home was not returned, plaintiff sought a court order in Wayne County to recover possession. Plaintiff regained possession on or about 15 October 1999.

On 1 June 2000, plaintiff filed this action for conversion and punitive damages. On 29 August 2001, defendant filed a motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure on the grounds that plaintiff was not a party to the contract between defendant and Edwards, and that plaintiff did not reside in the mobile home. On 26 September 2001, the trial court granted defendant's motion and dismissed plaintiff's claim with prejudice. Plaintiff appealed.

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Plaintiff presents two questions for review: 1) whether her complaint stated a cognizable claim for conversion; and 2) whether the trial court erred in dismissing the complaint for failure to state a claim for the tort of conversion. When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, this Court determines

"whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory...." *Harris v. N.C.N.B. National Bank*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987). "In ruling upon such a motion, the complaint is to be liberally construed, and the court should not dismiss the complaint 'unless it appears beyond doubt that [the] plaintiff could prove no set of facts in support of his claim which would entitle him to relief.'" *Sinning v. Clark*, 119 N.C. App. 515, 517, 459 S.E.2d 71, 73 (quoting *Dixon v. Stuart*, 85 N.C. App. 338, 340, 354 S.E.2d 757, 758 (1987)), *disc. review denied*, 342 N.C. 194, 463 S.E.2d 242 (1995).

*Sharp v. Miller*, 121 N.C. App. 616, 617, 468 S.E.2d 799, 801 (alteration in original), *review denied*, 343 N.C. 309, 471 S.E.2d 76, *cert. denied*, 519 U.S. 871, 136 L. Ed. 2d 125 (1996).

Conversion is "'an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights.'" *Peed v. Burleson's, Inc.*, 244 N.C. 437, 439, 94 S.E.2d 351, 353 (1956) (quoting 89 C.J.S., *Trover & Conversion* § 1); *Lake Mary Ltd. P'ship v. Johnston*, 145 N.C. App. 525, 551 S.E.2d 546, *review denied*, 354 N.C. 363, 557 S.E.2d 539 (2001) (quoting *Peed, supra*). To state a claim for conversion, the plaintiff must show: 1) ownership in the plaintiff; and 2) wrongful conversion by the defendant. *Lake Mary*, 145 N.C. App. at 532, 551 S.E.2d at 552.

Here, plaintiff alleged in her complaint that she purchased the mobile home on or about 25 September 1987. Plaintiff further alleged that she is the registered title owner, and that the North

Carolina Department of Transportation Division of Motor Vehicles issued in her name a Certificate of Title of a Motor Vehicle. Finally, plaintiff alleged that she executed a rent-to-own contract with Anthony Edwards and Janice Leveston. Liberally construing the allegations in plaintiff's complaint and treating the facts as true, we conclude that plaintiff has shown that she is the owner of the mobile home in question.

We next turn to the question of whether defendant wrongfully converted the mobile home. Specifically, plaintiff argues that "'removal' of the mobile home was not done in accord with any statutorily mandated procedures." Plaintiff, however, fails to state what statutorily mandated procedures were violated by defendant in the instant case. Plaintiff cites to cases involving warehouseman's and materialmen's liens, as well as trade fixtures, but fails to identify a statutory provision the violation of which made defendant's removal of the mobile home wrongful. In her claim for punitive damages, plaintiff alleges that defendant's actions were wrongful in that defendant "knew he had no, and could not present any, writ of possession, or judgment, or permit, or other documents or papers showing he had legal authority to have the mobile home removed to Wayne County." This claim, however, assumes the existence of a landlord-tenant relationship between plaintiff and defendant. N.C.G.S. § 44A-2(e2) (2001), states:

Any lessor of a space for a manufactured home . . . has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days

after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage.

The ejectment of residential tenants is governed by N.C.G.S. § 42-25.9(g) (2001), which states:

Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises, except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home with a current value in excess of five hundred dollars (\$500.00) and its contents by a landlord after being placed in lawful possession by execution of a writ of possession.

In the case *sub judice*, plaintiff alleges in her complaint that *Edwards* rented lot space at a mobile home park through *Bissette Realty, Inc.*, defendant's agent. Plaintiff further alleged that she "is not now and has never been, in regards to all matters referred to herein, a party to any lot fee, or rental[] agreement between Defendant Smith or *Bissette Realty, Inc.* and Anthony Edwards for lot space for the mobile home." Finally, plaintiff argues that defendant wrongfully removed her mobile home because defendant "could not present any, writ of possession, or judgment, or permit, or other documents or papers showing he had legal authority to have the mobile home removed . . . ."

Defendant points out that, according to the complaint, Edwards and Leveston held a leasehold interest in the mobile home pursuant to the rent-to-own contract, and that plaintiff was not a party to the lease for lot space at the mobile home park. Taking plaintiff's facts as true and liberally construing her complaint, we conclude that as to plaintiff, defendant did not convert the mobile home by wrongfully evicting *Edwards* for failure to pay rent. We therefore conclude that plaintiff's complaint failed to state a cognizable claim. Based on our conclusion, we hold that the trial court did not err in dismissing plaintiff's complaint for failure to state a legal claim.

AFFIRMED.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).