NO. COA14-212

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

EASTERN CAROLINA REGIONAL HOUSING AUTHORITY,
Plaintiff

v.

Wayne County
No. 13 CVD 1197

SHERBREDA LOFTON,
Defendant

Appeal by plaintiff from order and judgment entered 29 August 2013 by Judge David B. Brantley in Wayne County District Court. Heard in the Court of Appeals 11 August 2014.

Ward and Smith, P.A., by Thomas E. Stroud, Jr., E. Bradley Evans, and Cheryl A. Marteney, for Plaintiff.

Legal Aid of North Carolina, Inc., by John R. Keller, Theodore O. Fillette, III, and Andrew Cogdell, for Defendant.

ERVIN, Judge.

Plaintiff Eastern Carolina Regional Housing Authority appeals from a judgment denying its motion for summary judgment and its request to summarily eject Defendant Sherbreda Lofton from an apartment that she occupied under a lease agreement between herself and Plaintiff. On appeal, Plaintiff argues that the trial court erred by denying its request to summarily eject Defendant from the premises in question and by refusing to order that Plaintiff be put into possession of the premises instead.

After careful consideration of Plaintiff's challenges to the trial court's judgment in light of the record and the applicable law, we conclude that the trial court's judgment should be affirmed.

I. Factual Background

A. Substantive Facts

Defendant is a resident of Brookside Manor, which is owned and operated by Plaintiff. Defendant began renting an apartment located in Brookside Manor, in which she lived with her three minor children, from Plaintiff in November 2011. Defendant regularly relied upon her friend, Corey Smith, to babysit for her children while she was at work.

On 26 April 2013, Defendant was scheduled to begin work at 11:00 p.m. As a result, Defendant asked Mr. Smith to babysit for her children. Mr. Smith arrived at Defendant's apartment several hours before 11:00 p.m. in order to permit Defendant to get some sleep before going to work. After his arrival, Defendant went to sleep in her bedroom while Mr. Smith and her children remained in the living room.

At approximately 8:30 p.m., Defendant was awakened by her daughter, who informed her that officers from the Goldsboro Police Department had arrested Mr. Smith. The officers in question had come to Defendant's apartment for the purpose of

serving outstanding child support warrants upon Mr. Smith. In the course of serving these warrants, the police officers searched Mr. Smith and found marijuana on his person.

After the officers discovered marijuana on Mr. Smith's person, Defendant authorized the officers to search her apartment. During the ensuing search, the police officers found marijuana and several plastic baggies with torn corners of a type regularly used in drug transactions in the kitchen. According to Mr. Smith, the marijuana and other drug-related materials found in Defendant's apartment belonged to him. In light of Mr. Smith's admission, the officers charged him with possession of marijuana with the intent to sell and deliver.

At trial, Defendant testified that she did not know that Mr. Smith had brought marijuana into her apartment or that Mr. Smith was involved in any drug-related activity. In view of the fact that the officers believed that Defendant had no involvement in Mr. Smith's marijuana-related activities, she was not charged with having committed any crime.

The rental payments that Defendant made in order to occupy her apartment were federally subsidized. Paragraph 16(a) of the lease that governed the circumstances under which the lease could be terminated provided that Plaintiff had the right to terminate Defendant's lease in the event that "any drug-related

criminal activity[1] [occurred] on or off the premises by Tenant . . . or another person under Tenant's control."[2] In addition, the lease provided that "Tenant will be obligated to Management . . . [t]o assure that person(s) under Tenant's control will not engage in . . . [a]ny drug-related criminal activity on the premises."

Yolanda Bell, a housing manager employed by Plaintiff, received a police report stemming from the discovery of marijuana and other drug-related items in Defendant's apartment and talked with law enforcement officers about the incident. After concluding that drug-related criminal activity by a person under Defendant's control had occurred in Defendant's apartment, Plaintiff notified Defendant on 22 May 2013 that her lease would be terminated. According to the termination notice, Defendant was required to either vacate her apartment by 1 June 2013 or be subject to an eviction proceeding. After Defendant failed to vacate her apartment on or before the date specified in the

[1]The lease defined "[d]rug-related criminal activity" as "the illegal manufacture, sale, distribution, or use of a drug, or possession of a drug with intent to manufacture, sell, distribute, or use" the drug.

[2]The lease defined a "[p]erson under Tenant's control" as "a person not staying as a guest in the dwelling unit, but [who] is or was present on the premises at the time of the activity in question because of an invitation from Tenant or other member of the household with authority to consent on behalf of Tenant."

termination notice, Plaintiff initiated the present summary ejectment proceeding.

B. Procedural History

On 3 June 2013, Plaintiff filed a complaint seeking to have Defendant summarily ejected from her apartment. On 13 June 2013, Magistrate C.R. Howard entered a judgment ordering that Defendant be summarily ejected from the apartment. Defendant noted an appeal from the Magistrate's judgment to the District Court on 21 June 2013.

On 12 July 2013, Defendant filed a responsive pleading in which she denied the material allegations of Plaintiff's complaint, asserted a number of affirmative defenses stemming from Defendant's lack of control over Mr. Smith and lack of knowledge of his activities, and sought an award of damages from Plaintiff based upon an alleged failure on Plaintiff's part to adjust her rent after Defendant lost her job. On 22 July 2013, Plaintiff filed a reply to Defendant's counterclaim in which it denied the material allegations of Defendant's counterclaim and asserted as an affirmative defense that it had properly adjusted Defendant's rent following her loss of employment. On 20 August 2013, Defendant voluntarily dismissed her counterclaim with prejudice.

On 6 August 2013, Plaintiff filed a motion seeking the entry of summary judgment in its favor. Plaintiff's summary judgment motion came on for hearing before the trial court at the 20 August 2013 civil session of the Wayne County District Court. Following the conclusion of the summary judgment hearing, a trial on the merits of the remaining issues raised by the pleadings was conducted before the trial court. On 29 August 2013, the trial court entered a judgment denying Plaintiff's motion for summary judgment and rejecting Plaintiff's request that Defendant be summarily ejected from her apartment. Plaintiff noted an appeal to this Court from the trial court's judgment.

II. Substantive Legal Analysis

In its brief, Plaintiff argues that the trial court erred by denying Plaintiff's request that Defendant be summarily ejected from her apartment on the grounds that this result was sanctioned by federal law and the United States Supreme Court's decision in *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002). Defendant, on the other hand, argues that Plaintiff failed to meet the requirements established in N.C. Gen. Stat. § 42-26(a)(2) that must be met as a prerequisite for the termination of Defendant's

lease. We find Defendant's argument to be the more persuasive of the two.

A. Standard of Review

"In federally subsidized housing cases, the court decides whether applicable rules and regulations have been followed, and whether termination of the lease is permissible." *Charlotte Hous. Auth. v. Patterson*, 120 N.C. App. 552, 555, 464 S.E.2d 68, 71 (1995). "A trial court's findings of fact are binding on appeal if supported by competent evidence." *Durham Hosiery Mill Ltd. P'ship v. Morris*, 217 N.C. App. 590, 592, 720 S.E.2d 426, 427 (2011). A trial court's conclusions of law, on the other hand, are subject to *de novo* review. *Id.* at 592, 720 S.E.2d 427. "'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quoting *In re Appeal of The Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

B. Controlling Law

42 U.S.C. § 1437d(l)(6) provides that each "public housing agency shall utilize leases . . . provid[ing] that . . . any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing

tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination[3] of tenancy."[4] In *Rucker*, the Oakland Housing Authority threatened to evict the plaintiffs from their federally subsidized housing unit as a result of the fact that household members or guests engaged in drug-related criminal activity. *Rucker*, 535 U.S. at 128, 122 S. Ct. at 1232, 152 L. Ed. 2d at 265. In response, the plaintiffs argued that 42 U.S.C. § 1437d(l)(6) did not permit evictions based on drug-related criminal activity engaged in by a tenant's household members, guests or other persons under the tenant's control in the absence of a showing that the tenant knew that such activity was occurring. The United States Supreme Court rejected the plaintiffs' argument, holding that "42 U.S.C. § 1437d(l)(6) unambiguously requires lease terms that vest local public

[3]In its brief, Plaintiff repeatedly asserts that the language to the effect that activities of the nature described in the relevant lease provision "shall be grounds for termination" indicates that termination would be mandatory in the event that such conduct occurred. The fact that a particular development constitutes "grounds for termination" does not, however, mean that termination becomes obligatory in the event that the specified development actually occurs. Instead, the fact that something is a "grounds for termination" simply means that the landlord is empowered, if it otherwise chooses to do so, in the event that development in question takes place.

[4]Plaintiff and Defendant agree that Mr. Smith was a "person under [Defendant]'s control" who engaged in "drug-related criminal activity" on the premises.

housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." *Rucker*, 535 U.S. at 130, 122 S. Ct. at 1233, 152 L. Ed. 2d at 266. In spite of its admission that Defendant had no knowledge of or involvement in Mr. Smith's drug-related activity, Plaintiff argues that 42 U.S.C. § 1437d(l)(6) as construed in *Rucker* authorized, and in fact required, Defendant's eviction.

Defendant, on the other hand, asserts that the trial court's decision to reject Plaintiff's request that Defendant be summarily ejected from her apartment was correct on the basis of principles of North Carolina law, which provides that the basis for and scope of summary ejectment proceedings is established and governed by N.C. Gen. Stat. § 42-26. *Morris v. Austraw*, 269 N.C. 218, 221, 152 S.E.2d 155, 158 (1967). According to N.C. Gen. Stat. § 42-26(a)(2), a tenant may be summarily ejected from a particular premises when the tenant has "done or omitted any act by which, according to the stipulations of the lease, his estate has ceased." "In order to evict a tenant in North Carolina, a landlord must prove: (1) That it distinctly reserved in the lease a right to declare a forfeiture for the alleged act or event; (2) that there is clear proof of the happening of an act or event for which the landlord reserved the

right to declare a forfeiture; (3) that the landlord promptly exercised its right to declare a forfeiture, and (4) that the result of enforcing the forfeiture is not unconscionable." *Charlotte Hous. Auth. v. Fleming*, 123 N.C. App. 511, 513, 473 S.E.2d 373, 375 (1996) (citing *Morris*, 269 N.C. at 223, 152 S.E.2d at 159). In view of the fact that "[o]ur courts do not look with favor on lease forfeitures," *Stanley v. Harvey*, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988), this Court has required public housing authorities to comply with the requirements of N.C. Gen. Stat. § 42-26(a)(2) in order to summarily eject a tenant. *Lincoln Terrace Associates, Ltd. v. Kelly*, 179 N.C. App. 621, 623, 635 S.E.2d 434, 436 (2006); *Fleming*, 123 N.C. App. at 513, 473 S.E.2d at 375.

In its judgment, the trial court concluded that Plaintiff had failed to prove by a preponderance of the evidence that it was entitled to summarily eject Defendant pursuant to N.C. Gen. Stat. § 42-26(a)(2). Although the lease between the parties gave Plaintiff the right to evict Defendant based upon the undisputed evidence that Mr. Smith was a "person under [Defendant]'s control" who engaged in "drug-related criminal activity" on the premises, Defendant argues that Plaintiff has failed to show that summarily ejecting Defendant would not be unconscionable.

Neither this Court nor the Supreme Court have defined the circumstances under which it would or would not be unconscionable for a landlord to summarily eject a tenant who was otherwise subject to eviction. In fact, we have not been able to identify any case in which the extent to which a landlord did or did not satisfy the fourth criteria set out in *Morris* and its progeny has been directly addressed by either of North Carolina's appellate courts. Under such circumstances, we are entitled to look to a reputable dictionary in order to understand the reference to "unconscionability" as it appears in our summary ejectment jurisprudence. *Guyther v. Nationwide Mut. Fire Ins. Co.*, 109 N.C. App. 506, 512, 428 S.E.2d 238, 241 (1993) (stating that "[c]ourts may use the dictionary to determine the definition of words"). As a result, after consulting such a reference, we conclude that the term "unconscionable" as used in *Morris* and similar decisions means "excessive, unreasonable" or "shocklingly unfair or unjust." *Merriam-Webster Online Dictionary* 2014[5].

As we have already noted, the undisputed record developed at trial tends to show that Defendant was not aware that Mr. Smith was involved in any drug-related criminal activity in her apartment, with the police having accepted her denials of

[5]http://www.merriam-webster.com/dictionary/

involvement in Mr. Smith's conduct in the course of deciding not to charge her with the commission of any criminal offense. Instead of attempting to conceal any evidence relating to the drug-related activities in which Mr. Smith engaged in her apartment, Defendant cooperated with the investigating officers by consenting to a search of her residence, an action that led to the discovery of additional evidence upon which the charge subsequently brought against Mr. Smith was, at least in part, predicated. As the trial court found, the undisputed evidence tends to show that Defendant had not been accused of any criminal conduct, much less convicted of any criminal charges, while she occupied her apartment in Brookside Manor or of violating any lease provision during the term of the lease agreement between the parties. In fact, Defendant had never even been the subject of any complaints from the occupants of nearby units during the time that she resided in the Brookside Manor complex. Since the date of Mr. Smith's arrest, Defendant has not had any contact with Mr. Smith or invited him to enter her apartment. Finally, Defendant was unemployed on the date that Plaintiff initiated this action, having lost her job due to the inability to obtain care for her children, has three small children who live with her, and has no ability to move in with

relatives in the area in the event that she and her children are evicted.

Ms. Bell testified that, given the fact that Mr. Smith had engaged in criminal activity in Defendant's apartment, she had no alternative except to seek Defendant's removal from the apartment regardless of other surrounding facts and circumstances.[6] As a result, the trial court found as a fact that Plaintiff decided to evict Defendant based solely on the fact that Mr. Smith had engaged in criminal activity in the apartment without giving any consideration to any of the surrounding facts and circumstances that tended to mitigate, if not completely excuse, her conduct in allowing Mr. Smith to enter the premises. After analyzing the totality of the surrounding facts and circumstances, we have no hesitation in concluding that evicting Defendant based solely upon the actions of Mr. Smith, of which Defendant had no knowledge and which she had done nothing to encourage or even tolerate when doing so would put Defendant and her three small children "on the street," would be "excessive" and "shockingly unfair or unjust"

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[6]Although Plaintiff repeatedly asserts that Ms. Bell did, in fact, make a discretionary decision concerning whether to evict Defendant based upon a consideration of all relevant factors, the trial court found that Ms. Bell treated the fact that Mr. Smith had engaged in drug-related activity in Defendant's apartment as rendering Defendant's eviction mandatory and the record contains evidence that supports this determination.

and that Plaintiff has not, for that reason, established that summarily ejecting Defendant from the apartment would not produce an unconscionable result.

C. Preemption

Although Plaintiff does not dispute the fact that it must establish that summarily ejecting Defendant from her apartment pursuant to N.C. Gen. Stat. § 42-26(a)(2) requires a showing that the proposed eviction is not unconscionable,[7] it does argue that the necessity for a showing that the eviction would not be

[7]Plaintiff does, however, argue that N.C. Gen. Stat. § 42-63(a) (providing that "the court shall order the immediate eviction of a tenant and all other residents of the tenant's individual unit" where "[c]riminal activity has occurred on or within the individual rental unit leased to the tenant"; "[t]he individual rental unit leased to the tenant was used in any way in furtherance of or to promote criminal activity"; or "[t]he tenant, any member of the tenant's household, or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises") indicates that North Carolina mandates the eviction of tenants in or near whose apartments drug-related activity occurs. The force of Plaintiff's argument as applied to situations like the one at issue here is, however, completely undercut by N.C. Gen. Stat. § 42-64(a)(1), which provides that "[t]he court shall refrain from ordering the complete eviction of a tenant" where "[t]he tenant did not know or have reason to know that criminal activity was occurring or would likely occur on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote criminal activity, or that any member of the tenant's household or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises."

unconscionable has been preempted by the applicable provisions of federal law.[8] We do not find this argument persuasive.

A principle of state law is subject to preemption by federal law in situations in which (1) Congress explicitly provides for the preemption of state law; (2) Congress implicitly indicates the intent to occupy an entire field of regulation to the exclusion of state law; or (3) the relevant state law principle actually conflicts with federal law. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516, 112 S. Ct. 2608, 2617, 120 L. Ed. 2d 407 (1992); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299–300, 108 S. Ct. 1145, 1150–51, 99 L. Ed. 2d 316 (1988). "Whether federal law preempts state law under any of these theories is essentially a question of Congressional intent." *Guyton v. FM Lending Servs., Inc.*, 199

[8]Defendant has filed a motion in this Court seeking to have the portion of Plaintiff's brief addressing the preemption issue stricken on the grounds that Plaintiff did not raise the issue of preemption at any time prior to the filing of its reply brief and was, for that reason, precluded from advancing this argument on appeal by virtue of N.C.R. App. P. 10(a)(1) (stating that, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context"). However, given the fact that our review of the record demonstrates that the issue of whether state or federal law controlled the resolution of this case was the subject of extensive discussion before the trial court, we conclude that the preemption issue has been properly presented for our consideration. As a result, Defendant's motion is hereby denied.

N.C. App. 30, 45, 681 S.E.2d 465, 476 (2009) (citing *N.W. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493, 509, 109 S. Ct. 1262, 1273, 103 L. Ed. 2d 509, 527 (1989)).

In this case, Plaintiff argues that the North Carolina state law requirement that Plaintiff prove that summarily ejecting Defendant would not be unconscionable conflicts with 42 U.S.C. § 1437d(l)(6) as construed in *Rucker* and is, for that reason, preempted in situations like this one. "Conflict preemption exists when compliance with both state and federal requirements is impossible, or 'where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Guyton*, 199 N.C. App. at 44-45, 681 S.E.2d at 476 (quoting *English v. General Elec. Co.*, 496 U.S. 72, 79, 110 S. Ct. 2270, 2275, 110 L. Ed. 2d 65, 74 (1990)). We do not believe that the provisions of North Carolina summary ejectment law conflict with or stand as an obstacle to the achievement of the purpose and objectives sought to be achieved by 42 U.S.C. § 1437d(l)(6) as construed in *Rucker*.

Congress enacted the Anti-Drug Abuse Act of 1988 for the purpose of reducing the amount of drug-related crime in public housing projects and ensuring the availability of "public and other federally assisted low-income housing that is decent,

safe, and free from illegal drugs." *Rucker*, 535 U.S. at 134, 122 S. Ct. at 1235, 152 L. Ed. 2d at 268 (quoting 42 U.S.C. § 11901(1)). In order to achieve this objective, the Act requires public housing agencies to "utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." 42 U.S.C. § 1437d(l)(6). As we have already noted, the United States Supreme Court has interpreted this statutory language to mean that local public housing authorities have "the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." *Rucker*, 535 U.S. at 130, 122 S. Ct. at 1233, 152 L. Ed. 2d at 266. As a result, *Rucker* stands for the proposition that the relevant statutory provisions authorize public housing authorities to evict "innocent" tenants on whose premises criminal activity occurred even though those tenants were not aware that the criminal activity in question was occurring.

In seeking to persuade us that North Carolina's state law "unconscionability" requirement is subject to conflict preemption, Plaintiff argues that *Rucker* recognizes the existence of a strict liability rule that cannot be reconciled with a prohibition against "unconscionable" evictions. The fundamental problem with Plaintiff's argument is the fact that *Rucker* specifically states that "[42 U.S.C. § 1437d(l)(6)] does not *require* the eviction of any tenant who violated the lease provision" and, instead, "entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from 'rampant drug-related or violent crime,' . . . 'the seriousness of the offending action,' . . . and 'the extent to which the leaseholder has [] taken all reasonable steps to prevent or mitigate the offending action.'" *Rucker*, 535 U.S. at 133-34, 122 S. Ct. at 1235, 152 L. Ed. 2d at 268 (emphasis in original). In addition, Plaintiff has not provided any additional support for its assertion that Congress and the United States Department of Housing and Urban Development require housing authorities to evict any and all tenants whose household members or guests engage in the types of criminal activity enumerated in 42 U.S.C. § 1437d(l)(6), including

unlawful drug activity.[9] On the contrary, HUD appears to encourage local housing authorities to engage in an individualized consideration of the surrounding circumstances in each instance in which eviction is being considered and "to be guided by compassion and common sense in responding to cases involving the use of illegal drugs," with eviction being "the last option explored, after all others have been exhausted."[10]

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[9]Plaintiff does, on a number of occasions, argue that the fact that evictions for drug-related activities are exempt from the usual internal dispute resolution process available to public housing tenants indicates that drug-related lease violations are subject to a strict liability rule under which eviction is mandatory in the event that such a lease violation occurs. However, we do not find this argument persuasive given that the availability of an alternative remedy under which a tenant is entitled to contest a proposed eviction says nothing about the nature of the conduct for which eviction is an appropriate response.

[10]The statements quoted in the text of this opinion were contained in a 16 April 2002 letter from HUD Secretary Mel Martinez to local public housing authorities that was sent in the aftermath of *Rucker* in which he urged local public housing authorities to exercise the right to evict innocent tenants in a responsible manner and to avoid a rigid application of the relevant lease provision. In addition, Assistant HUD Secretary Michael Liu corresponded with local public housing authorities on 9 June 2009 for the purpose of noting that they were not required to evict an entire household every time a violation of the relevant lease provision occurs and were free to consider a wide range of factors in making eviction-related decisions, including "the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal activity, and the willingness of the head of household to remove the wrongdoing household member from the lease as a condition for continued occupancy," and "urg[ing local public housing authorities] to consider such

As a result, given this emphasis on the need for local housing authorities to make individualized eviction determinations and the absence of evidence tending to show the existence of any sort of *per se* eviction requirement in the relevant statutory provisions or administrative rules, we are unable to see how North Carolina's unconscionabilty requirement "stands as an obstacle to the accomplishment and execution," *Guyton*, 199 N.C. App. at 44-45, 681 S.E.2d at 476, of the established federal policy of ensuring the availability of "federally assisted low-income housing that is decent, safe, and free from illegal drugs." *Rucker*, 535 U.S. at 134, 122 S. Ct. at 1235, 152 L. Ed. 2d at 269.

In seeking to persuade us to reach a different result, Plaintiff argues that compliance with both state and federal law is impossible in instances like this one because there is no distinction between the innocent tenant defense rejected in *Rucker* and the unconscionability requirement that exists under North Carolina law. We do not find this argument persuasive, however, given that *Rucker* merely authorizes the eviction of an "innocent" tenant while the fact that the tenant is unaware of the criminal activity being engaged in in his or her apartment is only one aspect of a broader unconscionability analysis that

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factors and to balance them against the competing policy interests that support the eviction of the entire household."

would not, in each and every instance, preclude the eviction of an "innocent" tenant. For example, we are unable to see how it would be unconscionable for a local public housing authority to evict a tenant who, despite an initial lack of awareness of the fact that criminal activity was occurring in his or her unit, refused or failed to cooperate with any subsequent investigation into the drug-related criminal activity in question. As a result, given our determination that simultaneous compliance with both state and federal law is not impossible in this instance and that enforcement of North Carolina's unconscionability requirement does not "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Guyton*, 199 N.C. App. at 44-45, 681 S.E.2d at 476, we conclude that North Carolina's unconscionability requirement is not preempted by federal law and that the trial court did not err by concluding that Plaintiff had failed to establish the existence of a right to have Defendant summarily ejected from her apartment pursuant to N.C. Gen. Stat. § 42-26(a)(2).[11]

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[11]As a result of our determination that North Carolina law governs the resolution of this case and that Plaintiff has not established that it was entitled to have Defendant summarily ejected pursuant to N.C. Gen. Stat. § 42-26(a)(2), we need not consider the extent, if any, to which "good cause" must be shown as a matter of federal law before a tenant can be evicted from a federally subsidized housing unit or the extent to which the

III. Conclusion

Thus, for the reasons set forth above, we conclude that none of Plaintiff's challenges to the trial court's judgment have merit. As a result, the trial court's judgment should be, and hereby is, affirmed.

AFFIRMED.

Judges ELMORE and McCULLOUGH concur.

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trial court erred by determining that Plaintiff was required to consider any applicable mitigating factors prior to seeking to have Defendant evicted from her apartment.