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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-409

Filed: 19 December 2017

Jackson County, No. 16 CVD 413

DUANE JAY BALL and IRENE BALL, Plaintiffs

v.

CRYSTAL COGDILL and JACKSON'S GENERAL STORE, INC., Defendants

Appeal by plaintiffs from judgment entered 17 October 2016 by Judge Tessa Sellers in Jackson County District Court. Heard in the Court of Appeals 20 September 2017.

Monteith Law, PLLC, by Shelli Henderson Buckner, for plaintiff-appellants.

The Law Firm of Diane E. Sherrill, PLLC, by Diane E. Sherrill, for defendant-appellees.

CALABRIA, Judge.

Where defendants remained in tenancy after the expiration of their lease, the lease became a year-to-year tenancy. Because plaintiffs failed to provide the necessary 30 days' notice, the trial court did not err in denying plaintiffs' summary ejectment complaint.

I. Factual and Procedural Background

On 19 May 1999, Sylva Supply Company, Inc. ("Sylva"), executed a lease agreement ("the lease") with respect to a certain piece of property in Jackson County ("the property"). The property was leased to Crystal Cogdill, (then Crystal Cogdill Jones) ("Cogdill") for a five-year period, which could be renewed for additional five-year periods. Rent would be paid on a monthly basis. Although the lease itself was not registered, a memorandum of lease was registered on 1 June 1999, which provided that a lease had been executed between Sylva and Cogdill dated 19 May 1999, that the lease included a right of first refusal, and that the lease and all future amendments would be kept in Sylva's offices, located on the property itself. On 1 July 1999, Cogdill assigned her rights under the lease to Jackson's General Store, Inc. ("Jackson's"). On 7 June 2001, the lease was amended, replacing the five-year periods of the lease with seven-year periods. This amendment also modified the rent to be paid.

On 7 May 2015, Sylva executed a deed conveying the property to Duane Jay Ball and his wife, Irene Ball ("plaintiffs"). On 31 May 2016, plaintiffs sent an eviction notice to Cogdill and Jackson's ("defendants"), giving defendants until 8 June 2016 to vacate the premises. In response, defendants' representative informed plaintiffs that defendants leased the property from Sylva, and that the lease was "in the second year of the 4th five year term of the lease Agreement." Pursuant to the lease agreement,

the representative alleged, defendants were not in default and plaintiffs were not entitled to evict defendants.

On 29 June 2016, plaintiffs filed a summary ejectment complaint in small claims court, alleging that defendants were month-to-month tenants, and that after receiving title to the property, plaintiffs had refused to accept rent. On 6 July 2016, the court entered its judgment, finding that plaintiffs had "failed to prove the case by the greater weight of the evidence[,]" and dismissing the matter with prejudice. On 12 July 2016, plaintiffs appealed to Jackson County District Court.

On 17 October 2016, after a bench trial, the trial court entered its written judgment. The trial court found, *inter alia*, that Cogdill had leased the property from Sylva, that Sylva had sold the property to plaintiffs, that plaintiffs had accepted rent from defendants until the filing of the action in small claims court, and that since the filing of the action defendants have provided payment but plaintiffs have not accepted it. The trial court concluded that Cogdill "is under a presently existing lease[,]" that the lease was assigned to Jackson's, and that "[t]here has been no breach of the lease agreement to support summary ejectment." The trial court therefore denied summary ejectment.

Plaintiffs appeal.

II. Summary Ejectment

In two arguments, plaintiffs contend that the trial court erred in denying their complaint for summary ejectment. We disagree.

A. Standard of Review

"The standard of review on appeal from a judgment entered after a non-jury trial is 'whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment.' " *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163 (2001)), *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002).

B. Presently Existing Lease

Plaintiffs first contend that the trial court erred in concluding that defendants are under a presently existing lease. We disagree.

The lease between Sylva and defendants was executed in 1999. It initially contemplated a five-year term, but was modified in 2001 to include a seven-year term. There is no evidence in the record that the lease was renewed, despite provisions in the lease allowing for renewal. Indeed, defendants concede in their brief that "[n]o written notice was given to renew the 1999 Lease and the 2001 Amendment after the expiration of the initial term."

However, failure to renew a lease does not automatically result in ejectment of a tenant. Our Supreme Court has held that:

> Nothing else appearing, when a tenant for a fixed term of one year or more holds over after the expiration of such term, the lessor has an election. He may treat him as a trespasser and bring an action to evict him and to recover reasonable compensation for the use of the property, or he may recognize him as still a tenant, having the same rights and duties as under the original lease, except that the tenancy is one from year to year and is terminable by either party upon giving to the other 30 days' notice directed to the end of any year of such new tenancy.

Coulter v. Capitol Fin. Co., 266 N.C. 214, 217, 146 S.E.2d 97, 100 (1966).

> [I]t is generally held that the acceptance of rent by the landlord, with full knowledge of a breach in the conditions of the lease, will ordinarily be treated as an affirmation by him that the contract of lease is still in force, and he is thereby estopped from setting up a breach in any of the conditions of the lease and demanding a forfeiture thereof.

Winder v. Martin, 183 N.C. 410, 411, 111 S.E. 708, 709 (1922).

As the lease between Sylva and defendants was not properly renewed, but defendants continuously remained in tenancy, the lease became a year-to-year lease, which could be terminated with 30 days' notice prior to the end of the year. At trial, Irene Ball testified that, after plaintiffs took ownership, defendants had paid rent every month, and that plaintiffs "just held onto the checks to see what happened." It is clear that defendants paid rent and plaintiffs, rather than rejecting it outright, accepted it. Pursuant to *Winder*, this constitutes "an affirmation" by plaintiffs "that the contract or lease is still in force[.]" Plaintiffs were bound by the requirement that they offer 30 days' written notice prior to the end of the year.

The record plainly demonstrates that plaintiffs did not provide defendants with 30 days' notice. Plaintiffs gave notice on 31 May 2016 that defendants had until 8 June 2016 to vacate, or roughly one week's notice. It is clear, then, that plaintiffs did not comply with the necessary notice requirement to evict defendants. We hold that plaintiffs' failure precluded summary ejectment, and that the trial court did not err in denying plaintiffs' complaint for summary ejectment.

C. Findings of Fact

Plaintiffs next contend that the trial court entered multiple erroneous factual findings, in that those findings "are in fact erroneous conclusions of law unsupported by any competent evidence." However, this argument is essentially a repetition of plaintiffs' argument above. Plaintiffs' assertions with respect to these purported "erroneous conclusions of law" all concern plaintiffs' insistence that there was no evidence to support the existence of a lease, which we have held there was, or concern the existence of a right of first refusal, which is not relevant to the appeal at issue. As such, we reaffirm our holding above, that the trial court did not err in determining that a lease existed, and that summary ejectment was not appropriate.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).