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Landlord and Tenant

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LANDLORD AND TENANT

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Smith v. Traxler[1] involves litigation arising out of a lease provision giving the tenant a first option to purchase the leased premises should lessor decide to sell for a sum offered by a third party. Lessor had received an offer of $18,000 for the leased premises and another lot, as well as a subsequent offer of $12,000 for the leased premises. Lessee exercised his option and purchased the leased premises for $12,000. Thereafter lessee sued lessor, alleging that lessor had breached his contract to sell lessee both lots for $18,000, and further alleging that lessor had falsely represented that he had received an offer of $12,000 for the leased premises. A prior appeal[2] permitted lessor to amend his answer to set up the defense of the Statute of Frauds as to any alleged contract to sell any lot other than the leased premises.

Upon the trial the plaintiff lessee was nonsuited at the conclusion of his testimony, but thereafter the trial judge concluded that the case should have been submitted to a jury and ordered a new trial. On appeal the Supreme Court reinstated the nonsuit and dismissed the case. The court found the evidence to establish no cause of action for fraud and deceit since it was not shown that defendant had not received an offer of $12,000 for the leased premises. Furthermore, assuming that the complaint stated a cause of action for breach of contract independent of proof of fraud, lessee could not recover. Lessor could not be compelled to sell the leased premises for a pro rata portion of the amount offered for both the leased premises and another lot, and, therefore, lessee could not purchase for one-half of the $18,000 offer. Furthermore, in accordance with the lease agreement, lessor did sell and convey to lessee for $12,000; consequently, the court found, lessor in no way had broken the contract.

In *Wheeler v. Hyler*[3] the court, in accord with earlier authority,[4] held compliance with the statute[5] which provides for the filing by the tenant of an appeal bond within five days after service of notice of intention to appeal, to be a condition precedent to the tenant's

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1. 228 S.C. 418, 90 S.E. 2d 482 (1955). A detailed consideration of this case will be found in 8 S.C.L.Q. 394 (1956).
2. 224 S.C. 290, 78 S.E. 2d 630 (1953).
3. 228 S.C. 584, 91 S.E. 2d 265 (1956).
4. Horn v. Blackwell, 212 S.C. 480, 48 S.E. 2d 322 (1948).
5. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-113.

right of appeal from an order of ejectment. The tenant's failure to file such bond having been conceded, his appeal therefore was dismissed as not properly before the court. The court expressly found it unnecessary to consider a question raised by the tenant as to the jurisdiction of the circuit judge sitting as a magistrate in the ejectment action[6] to try issues of title raised by the tenant, as well as a question as to the jurisdiction of a subsequent presiding judge to dismiss the tenant's appeal for failure to file an appeal bond.[7]

Legislation

No landlord and tenant legislation was enacted during the survey period.

6. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-5.
7. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-113.