No. 06-CV-930

DISTRICT OF COLUMBIA COURT OF APPEALS

UHURA WILLIAMS,

Appellant

v.

NICOLE PAUL,

Appellee.

ON APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA,
CIVIL DIVISION, LANDLORD AND TENANT BRANCH

REPLY BRIEF OF APPELLANT

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INTRODUCTION

It cannot seriously be disputed in this case that the pleadings in the trial court, including both the notice to quit and the complaint for possession, alleged nonpayment of rent and sought a judgment for rent in arrears. The landlord does not contend that she ever withdrew the request for back rent, nor does she point to anything in the record reflecting such a withdrawal. Further, the landlord does not dispute that Judge Fisher's order, denying her motion to dismiss the tenant's counterclaim, was a dispositive legal ruling on the viability of that counterclaim. The landlord also fails to point to any "new evidence" justifying Judge Weisberg's reversal of that earlier ruling.

Instead, the landlord's position on the merits reduces to two essential points: 1) that her counsel's statements at the March 15, 2006, initial return date constituted a withdrawal of her claims for nonpayment and for rent in arrears; and 2) that the trial court's characterization of the case on that date, reading verbatim from the complaint, somehow constituted a "ruling" concerning the tenant's ability to raise counterclaims. Neither argument finds support in the record of this action.

Nor is there any authority for the landlord's contention that, because the parties subsequently settled their possessory dispute, Ms. Williams's monetary claim is now moot. To the contrary, the parties' settlement agreement expressly preserved that claim.

ARGUMENT

I. THE LANDLORD NEVER WITHDREW HER CLAIMS FOR NONPAYMENT OF RENT AND FOR A JUDGMENT FOR RENT IN ARREARS.

The pleadings in this case plainly allege nonpayment of rent and seek a judgment for the unpaid amount. First, as the landlord herself acknowledges, the November 7, 2005, Notice to

Quit ("November 7 Notice") alleges "non-payment of rent for the months of October and November." Brief of Appellee, at 11; see App. 1.

Second, the complaint for possession asks the court "for judgment for rent, late fees, other fees, and costs in the amount of $550.00," or one month's rent. See App. 2. The landlord's brief – which focuses solely on whether the landlord claimed nonpayment of rent as the basis for a judgment for possession – does not address, much less dispute, that the complaint also sought a monetary judgment for unpaid rent. Nor does the landlord dispute that, according to the plain language of Landlord and Tenant Rule 5(b), a landlord's claim either for eviction based on nonpayment of rent, or for a judgment for rent in arrears, permits the tenant to raise a counterclaim based on the overpayment of rent. See Super. Ct. L&T R. 5(b); Brief of Appellant, at 15-16.

Instead, the landlord contends that because the complaint for possession did not check "box A," relating to nonpayment of rent, the case did not include a nonpayment claim. On their face, the pleadings belie this contention. The complaint attached and incorporated the November 7 Notice, which plainly alleges nonpayment of rent. See App. 1. "A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." Super. Ct. R. Civ. Pro. 10(c).[1] Because the complaint was based on the expiration of this notice, there was no need also to fill out the "A" section relating to nonpayment of rent. The landlord has pointed to no authority suggesting that checking "box A" is required to assert a claim for nonpayment; nor has she offered any basis for concluding that a notice to quit, alleging nonpayment and attached to a complaint for possession, is insufficient on its own to state a claim for nonpayment of rent.

[1] Incorporated into the Landlord and Tenant Branch by Super. Ct. L&T R. 2.

Alternatively, the landlord contends that, regardless of the claims contained in her pleadings, the proceedings on the initial return date "clarified that there was no rent due and owing" and thus deprived the court of jurisdiction over Ms. Williams's counterclaim. Brief of Appellee, at 11. Nothing in the record supports this contention. Aside from the protective order discussion, the only mention of rent at the initial return date was the landlord's counsel's statement that "the March rent was sent in on March the 9th and the February rent was sent in on February 22nd." 3/15/06 Tr. at 3 (quoted in Brief of Appellee, at 12). The landlord did not address the issue of rent for October and November 2005, the months claimed to have been unpaid in the November 7 Notice. See 3/15/06 Tr. She did not indicate that Ms. Williams was fully current in her payments. Nor did she indicate an intention to withdraw her claim for a monetary judgment of $550.00 in unpaid rent.[2]

Nonetheless, the landlord now contends that this colloquy between her counsel and the judge was sufficient to inform both the tenant, who was then unrepresented, and the court that the case no longer contained a claim for unpaid rent. The record, which lacks anything memorializing the "outcome" of this colloquy, offers no support for this conclusion. At the end of the initial return date proceeding, the record reflected that the case included the same causes of action it had alleged at the outset: a claim for possession based on nonpayment of rent, consistent late payment, overoccupancy, and subletting; and a claim for a monetary judgment for rent in arrears. Ms. Williams was thus entitled to bring her counterclaim under Rule 5(b). And, as noted in our main brief, the landlord's ultimate withdrawal of the nonpayment claim had no effect on Ms. Williams's ability to maintain her counterclaim. See Brief of Appellant, at 18-19.

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[2] Indeed, the transcript of the initial return date reflects extensive discussion about both housing code violations and the level of rent, issues relevant only to a nonpayment claim and not to claims of other lease violations. See 3/15/06 Tr. at 5-6.

Indeed, it is common in landlord-tenant cases, as in other types of civil actions, for a defendant's counterclaim to remain long after the plaintiff's claim has dropped from the case.[3]

II. JUDGE FISHER'S RULING ON THE TENANT'S COUNTERCLAIM PROPERLY ESTABLISHED THE LAW OF THE CASE.

The landlord does not seriously dispute that Judge Fisher's order, permitting Ms. Williams's counterclaim to proceed, was the law of the case on that issue. Nor does she offer any new law or evidence that would have justified Judge Weisberg's reversal of that order. See, e.g., Kritsidimas v. Sheskin, 411 A.2d 370, 372 (D.C. 1980) (noting that law of the case may not apply if the party seeking reversal can show "newly-presented facts or a change in substantive law").

Rather, the landlord appears to contend that on the initial return date, Judge Retchin – by reading aloud the statement in the complaint regarding "consistently late payment, occupancy, and subletting" – herself established the "law of the case" regarding the existence of a claim for

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[3] The landlord attempts to distinguish Anderson v. Abidoye, in which the tenant was entitled to pursue her counterclaim even after the landlord's possessory claim was dismissed, on the ground that "Ms. Anderson had filed her counterclaim prior to the initial return date and Mr. Abidoye's claim was never 'moot.'" Brief of Appellee, at 12-13 (citing Anderson v. Abidoye, 824 A.2d 42, 43 (D.C. 2003)). This claim is as inaccurate as it is irrelevant. The trial docket in Anderson reflects that the tenant's counterclaim was filed on September 21, 2001, eleven days after the initial return date of September 10, 2001. See Docket Entries, 2001 LTB 034994 (available at www.dccourts.gov/pa). The trial court retained jurisdiction over that counterclaim even after the landlord's claim for possession based on nonpayment – the claim giving rise to jurisdiction under Rule 5(b) – dropped from the case. See 824 A.2d at 43.

Moreover, the Court's subsequent ruling in the Anderson case, awarding to the D.C. Housing Authority the entire counterclaim recovery save the $234 that the tenant herself had paid in rent, further supports the proposition that the continued viability of a landlord's claim is immaterial to the tenant's right to pursue a counterclaim. See Anderson v. D.C. Hous. Auth., No. 05-CV-275 (May 3, 2007). For the past five and a half years, since the dismissal of the landlord's possessory claim, the Anderson litigation has proceeded solely on the issue of the tenant's counterclaim. At no point, in either of its two decisions in the case, has this Court suggested that the trial court lost jurisdiction over the counterclaim when it dismissed the landlord's original claim for possession.

nonpayment of rent. Brief of Appellee, at 13. The landlord does not, however, offer any basis for concluding that Judge Retchin's characterization of the case constituted a "final ruling" for law-of-the-case purposes. See, e.g., P.P.P. Productions, Inc., v. W&L, Inc., 418 A.2d 151, 152 (D.C. 1980) (law of the case applies only to a "ruling" of the court that is "final"). Indeed, the landlord herself concedes that Judge Retchin was "not ruling on a motion," and describes the proceedings before Judge Retchin as nothing more than an "initial assessment." Brief of Appellee, at 14 & n.1.

Because Judge Retchin made no legal ruling, Judge Fisher did not "reverse" her, or violate the law of the case, in permitting Ms. Williams's counterclaim to go forward. Id. at 13 n.1; see Kritsidimas, 411 A.2d at 373 (noting that decisions qualifying as law of the case typically "demand detailed judicial consideration of specific facts" and "often require hearings and findings of fact"). Moreover, even if the landlord could demonstrate that Judge Retchin established some "law of the case" that was binding on Judge Fisher, the landlord waived that argument by failing to raise it before Judge Fisher in the court below. See, e.g., TV Capital Corp. v. Paxson Communs. Corp., 894 A.2d 461, 470 (D.C. 2006) (citations omitted).

III. THIS CASE IS NOT MOOT.

The parties' November 6, 2006, Consent Order has no impact on this appeal. Ms. Williams's decision to relinquish possession does not affect her ability to pursue monetary claims for overpayment of rent. See Thorn v. Walker, 912 A.2d 1192, 1196 (D.C. 2006) (noting, in a case involving the sale of property, that claims for money damages may prevent appeal from becoming moot even where ownership has been resolved); Pleites v. Serafin, 627 A.2d 509, 511 (D.C. 1993) (finding that tenants were entitled to a trial on their counterclaim even after possessory issue was resolved); Davis v. Rental Associates, Inc., 456 A.2d 820, 829 (D.C. 1983)

(noting that depriving the tenant of possession, based on failure to pay the protective order, does not bar any future claim "for back rent paid that she may have based upon alleged violations of the Housing Code extant on the premises during the time she occupied the premises as tenant"); Mahdi v. Poretsky Management, Inc., 433 A.2d 1085, 1090 (D.C. 1981) (same). Furthermore, the consent order specifically reserves all claims raised by Ms. Williams in this case, including the landlord-tenant action and this appeal. See Brief of Appellee, App. 2, ¶ 10 ("Defendant reserves any and all rights . . . to claims for overpayment of rent asserted in LT 006413-06 and the pending appeal thereof."). Cf. Nuyen v. Luna, 884 A.2d 650, 658 (D.C. 2005) (ruling that the tenant's settlement of a personal injury action against the landlord did not bar the tenant's counterclaim to recover rent in her landlord-tenant action, where the settlement provided that the parties' claims in the landlord-tenant case would continue).

Nor does the agreement to limit Ms. Williams's recovery in this action to $5,000 affect the trial court's jurisdiction on remand. While the landlord correctly asserts that jurisdiction in the Civil Actions Branch rather than the Small Claims Branch requires a claim exceeding $5,000, this case was brought, and will remain, in the Landlord and Tenant Branch, which retains the power to adjudicate Ms. Williams's claim. See Millman, Broder & Curtis v. Antonelli, 489 A.2d 481, 483 (D.C. 1985) (discussed in Brief of Appellant, at 19-20). Accordingly, there is no basis for the landlord's assertion that Ms. Williams's claim "would now be barred" on remand. Brief of Appellee, at 9.

Furthermore, that Ms. Williams would have the option of starting over in Small Claims Court – at additional expense and with additional effort – does not affect the interests at stake in this appeal. To sustain an appeal, a party must have a "legally cognizable interest in the outcome" of the case. Thorn, 912 A.2d at 1195 (citations omitted). As the landlord recognizes,

the tenant maintains a claim for damages based on overpaid rent between August 2004 and September 2006. See Brief of Appellee, at 9; Consent Order, Brief of Appellee, App. 2, ¶ 10. This claim is more than sufficient to satisfy the "legally cognizable interest" requirement discussed in Thorn and relied on by the landlord here. That Ms. Williams could pursue that interest in another forum is irrelevant to her right to resolve it in this case. See Giles v. Crawford Edgewood Trenton Terrace, 911 A.2d 1223, 1225 (D.C. 2006) (reversing the denial of a motion to hold landlord in contempt for failure to make repairs, and finding that – despite the availability of relief via a separate civil action – the tenant was nonetheless entitled to pursue her claim for compensation in the existing landlord-tenant case).

Finally, in detailing the inefficiency for both parties of a new trial on Ms. Williams's claim, the landlord only underscores why it is fairer and more efficient to adjudicate such claims as part of the existing landlord-tenant case. As the landlord acknowledges, if Ms. Williams can pursue her claim only by filing a new suit, "both parties will have to prepare again for trial and the actual trial will be several months or years away." Brief of Appellee, at 10. While that will also be the case on remand if Ms. Williams prevails here, it is so only because of the trial court's erroneous dismissal of her claim. Such delay and duplication of effort would have been unnecessary had the trial court properly heard Ms. Williams's counterclaim in June 2006, at the original trial in this matter. See Brief of Appellant, at 23-24.

CONCLUSION

For the reasons stated above and in Ms. Williams's principal brief, the trial court's judgment dismissing Ms. Williams's counterclaim should be reversed, and the case should be remanded for trial on her counterclaim.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Reply Brief of Appellant to be delivered by first-class mail, postage prepaid, the 22nd day of June, to:

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