

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg

JUDGMENT IN A CIVIL CASE

Common Pleas COURT

CASE NO. 94-CP-42-832

Housing Authority of the City of
Spartanburg

VS

Betty F. Elmore 1016540

Plaintiff(s)

Defendant(s)

- Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- Action Dismissed. Rule 12(b), SCRPC Rule 40(c)(3), SCRPC
 Rule 41(a), SCRPC (Vol. Nonsuit) Settled
 Other, Explain: _____

IT IS ORDERED AND ADJUDGED: See attached order
 Statement of Judgment by Court

Order that the eviction action is dismissed, with leave to refile an appropriate action in the Court of Common Pleas to seek foreclosure and a declaration of the respective interests of the parties to that action in real estate and any accumulated funds.

Dated at Spartanburg, South Carolina, this 30 day of November, 1994.

Dianne Remington
Deputy Clerk Judge

This judgment was entered on the 13 day of December, 1994, and a copy mailed first class this 13 day of December, 1994, to attorneys of record or to parties (when appearing pro se) as follows:

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Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Dianne Remington

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Housing Authority of the)
City of Spartanburg,)

Petitioner,)

Vs.)

Ernestine Nesbitt,)

Respondent.)

ORDER OF DISMISSAL
Case Number: 94-CP-42-833

CLERK OF COURT
SPARTANBURG, S.C.
DEC 13 PM 3:20

The Housing Authority of the City of Spartanburg (Housing Authority) sought to evict Ernestine Nesbitt (Nesbitt) from housing administered under the Low Rent Housing Home Ownership Opportunities Plan. The Magistrate decided that Nesbitt's rights were greater than that of a tenant and that the Spartanburg Magistrates Court did not have jurisdiction. No appeal was taken from that Order. Instead, the Housing Authority filed a Petition for ejectment in the Court of Common Pleas, and obtained a Rule to Show Cause. The Magistrate was correct. The ejectment action is improper, and the Common Pleas ejectment action is dismissed, with permission to refile an action in compliance with this order.

Nesbitt entered an agreement many years ago under a federal program designed to allow low income persons to purchase a home. The agreement is a combination between a rental agreement and a purchase arrangement. Under the agreement, as payments are made and adjustments entered, a fund accumulates which can be applied toward the purchase of the property, or used for maintenance.

The Housing Authority maintains that Nesbitt is a tenant who

WAL
#1

The Home Buyer Ownership Opportunity Agreement says that Nesbitt has accumulated equity in an Earned Home Payments Account, which could be applied toward a purchase. There are many references in the agreement showing that Nesbitt has acquired an equity interest in the property and has equitable rights that would require foreclosure.

The only case cited as construing this type of agreement is Cuyahoga Metropolitan Housing Authority vs. Watkins, 491 N.E. 2nd 701 (Ohio App. 1984). The Ohio court interpreted the agreement in the context of a specific Ohio statute and decided that the contract was an installment purchase contract, not a lease. While no similar state statute has been cited for South Carolina, the Ohio interpretation makes sense.

WAL #3
It is undisputed that Nesbitt did not draw the agreement, which is long and uses conflicting terminology. The agreement was obviously intended to be used with low income, usually undereducated persons. Nesbitt resided on the property and made payments for over a decade. Equity dictates, under these circumstances, that ambiguities are to be construed against the governmental authorities that drafted the agreement.

The eviction action is dismissed, with leave to refile an appropriate action in the Court of Common Pleas to seek foreclosure and a declaration of the respective interests of the parties to

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Housing Authority of the)
City of Spartanburg,)
)
Petitioner,)
)
Vs.)
)
Betty F. Elmore,)
)
Respondent.)

ORDER OF DISMISSAL
Case Number: 94-CP-42-832

CLERK OF COURT
SPARTANBURG COUNTY
DEC 13 PM 3:18

The Housing Authority of the City of Spartanburg (Housing Authority) sought to evict Betty F. Elmore (Elmore) from housing administered under the Low Rent Housing Home Ownership Opportunities Plan. The Magistrate decided that Elmore's rights were greater than that of a tenant and that the Spartanburg Magistrates Court did not have jurisdiction. No appeal was taken from that Order. Instead, the Housing Authority filed a Petition for ejectment in the Court of Common Pleas, and obtained a Rule to Show Cause. The Magistrate was correct. The ejectment action is improper, and the Common Pleas ejectment action is dismissed, with permission to refile an action in compliance with this order.

WPK
#1

Elmore entered an agreement many years ago under a federal program designed to allow low income persons to purchase a home. The agreement is a combination between a rental agreement and a purchase arrangement. Under the agreement, as payments are made and adjustments entered, a fund accumulates which can be applied toward the purchase of the property, or used for maintenance.

Elmore and the various parties, and mandate appropriate remedies.

The Home Buyer Ownership Opportunity Agreement says that Elmore has accumulated equity in an Earned Home Payments Account, which could be applied toward a purchase. There are many references in the agreement showing that Elmore has acquired an equity interest in the property and has equitable rights that would require foreclosure.

The only case cited as construing this type of agreement is Cuyahoga Metropolitan Housing Authority vs. Watkins, 491 N.E. 2nd 701 (Ohio App. 1984). The Ohio court interpreted the agreement in the context of a specific Ohio statute and decided that the contract was an installment purchase contract, not a lease. While no similar state statute has been cited for South Carolina, the Ohio interpretation makes sense.

WPA #3
It is undisputed that Elmore did not draw the agreement, which is long and uses conflicting terminology. The agreement was obviously intended to be used with low income, usually undereducated persons. Elmore resided on the property and made payments for over a decade. Equity dictates, under these circumstances, that ambiguities are to be construed against the governmental authorities that drafted the agreement.

The eviction action is dismissed, with leave to refile an appropriate action in the Court of Common Pleas to seek foreclosure and a declaration of the respective interests of the parties to