STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(Filed: January 7, 2013)

CLAIRE B. MARTEL TRUST	:	
	:	
v.	:	**C.A. No. ND 10-0025**
	:	
RICHARD W. AUDETTE	:	

DECISION

Nugent, J. This matter comes before the Court for decision following a motion filed by Defendant Richard W. Audette to vacate prior orders based on lack of subject matter jurisdiction. For the reasons set forth in this Decision, the Court denies Defendant's motion. Jurisdiction is pursuant to Rule 60(b) of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

Richard Audette ("Audette") is a named beneficiary under the Claire B. Martel Trust ("Trust"). Audette was given a conditional life estate under the terms of the Trust, whereby he was permitted to reside in a single family home located at 30 Anthony Way in Tiverton, Rhode Island ("Property"). Specifically, the trust instrument states that:

> "So long as the property at 30 Anthony Way, Tiverton, Rhode Island is part of the Trust property, the said Richard W. Audette shall be permitted to reside therein, rent free; but he shall bear and pay the costs of the utilities consumed by him in said residence, including without limitation water, sewer charges, telephone, electricity and heating fuel." Trust Art. III, Section B (3).[1]

In September 2009, two insurance claims filed with the Property's insurance carrier

[1] According to the Trust document, Audette's absence from the Property for ninety (90) consecutive days would also terminate his right to reside there. Trust Art. III, Section B (3).

resulted in an inspection of the Property by an insurance adjuster. The adjuster later submitted a report to the carrier, which caused the hazard insurance policy on the Property to be canceled. The reported cited "increased hazards" stemming from the lack of electrical service to the Property, due to the electricity being turned off following Audette's failure to pay. The lack of electricity to the Property resulted in no running water and inoperable sanitary facilities.

The Successor Trustee to the Trust, Jerry Ims, Esq. ("Trustee" or "Ims"), filed a miscellaneous petition in the Tiverton Probate Court on November 6, 2009, outlining the above mentioned facts. The Trustee stated that he was unable to secure alternate hazard insurance on the Property due to the continuing lack of electricity and Audette's "failure to cooperate with the repeated, documented attempts of Trustee to inspect, arrange contractor inspections/ appointments and protect Martel Trust property." The Trustee petitioned the probate court to order that Audette (1) take all steps required to have electricity restored to the Property; (2) comply with all minimum housing regulations; and (3) cooperate to provide access to any and all inspections by governmental officials and the Trustee. The petition was heard and granted by the probate court on November 13, 2009.

On December 29, 2009, the Trustee filed a complaint for eviction pursuant to G.L. 1956 § 34-18.1 in Newport District Court, followed by a "Motion for Emergency Relief" requesting that Audette be ordered to vacate the Property unless he restored utility services therein.[2] On January 15, 2010, the District Court determined that the complaint for eviction pursuant to § 34-18.1 was scheduled in error; however, the Court heard and granted the motion for emergency relief and ordered Audette to permit the Trustee to inspect the Property within forty-eight (48) hours and restore utilities within 30 days, or vacate the premises. On January 19, 2010, Audette

[2] The District Court case is docketed 2CA-2009-01293.

filed an appeal of the District Court order to the Superior Court.

The matter proceeded to a bench trial before this Court on April 9, 2010. On that date, both parties presented evidence and witness testimony concerning the deplorable and extensively damaged condition of the Property, resulting from Audette's continued failure to maintain utility services. Upon conclusion of the trial, this Court issued a bench decision based upon findings of fact and conclusions of law, terminating Audette's tenancy in the Property based on waste, pursuant to G.L. 1956 § 34-14-1.

In September 2012, Audette filed a motion to vacate this Court's prior orders, claiming that the District Court lacked jurisdiction to hear the case ab initio, since the matter concerns rights pursuant to a Trust, and is not a landlord-tenant action. Audette thus claims that the matter could not properly be heard on appeal by the Superior Court, and asks this Court to vacate all prior orders of the Superior and District Courts and dismiss the matter for lack of jurisdiction.[3]

II

Standard of Review

"It is well settled that "subject-matter jurisdiction is 'an indispensable requisite in any judicial proceeding.'" Long v. Dell, Inc., 984 A.2d 1074, 1079 (R.I. 2009) (quoting Zarrella v.

[3] In the current motion, Audette also attempts to revisit the argument that the Trustee's failure to provide notice to the Attorney General of this case's proceedings, pursuant to G.L. 1956 § 18-9-5, renders this Court's prior orders null and void. On May 5, 2010, Audette filed a motion to vacate prior orders based on this claim, which was heard and decided by this Court on May 24, 2010. At that hearing, this Court determined that § 18-9-5 was inapplicable to the proceedings since the charitable interest of the trust had not yet vested. The issue was appealed to the Supreme Court, where it was declined to be heard. This Court now declines to entertain this claim again, as it was previously determined to be a valid judgment on a prior motion to vacate. See DeCiantis v. State, 666 A.2d 410, 412 (R.I. 1995) (collateral estoppel "bars litigation of an issue when that issue has been determined by a valid and final judgment."). Nor will this Court sanction or facilitate an attempt to circumvent the judicial process. See Pari v. Pari, 558 A.2d 632 (R.I. 1989) ("A motion to vacate judgment is not a substitute for appeal, and its use to circumvent time limits on appeal has been disproved.").

Minnesota Mutual Life Insurance Co., 824 A.2d 1249, 1256 (R.I. 2003)). Since subject-matter jurisdiction "is the very essence of the court's power to hear and decide a case," "a claim of lack of subject matter jurisdiction may be raised at any time." Id. at 1078.

A motion to vacate an allegedly void judgment based on lack of subject matter jurisdiction is not subject to the one-year period set forth in Rule 60(b) of the Rhode Island Superior Court Rules of Civil Procedure. Flynn v. Al-Amir, 811 A.2d 1146, 1150 (R.I. 2002); Sup. Ct. R. Civ. Pro. 60(b). Moreover, the burden of proof on a motion to vacate rests on the moving party. Iddings v. McBurney, 657 A.2d 550, 553 (R.I. 1995) (quoting Forcier v. Forcier, 558 A.2d 212, 214 (R.I. 1989)). The denial of a motion to vacate a judgment "is within the sound discretion of a trial justice, and will not be reversed on appeal absent a showing of abuse of discretion or other error of law." Flynn, 811 A.2d at 1150 (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)). However, "a judgment is either valid or it is not, and discretion plays no part in resolving the issue [of whether a judgment is void] on motion to vacate." Kildeer Realty v. Brewster Realty Corp., 826 A.2d 961 (R.I. 2003); Sec. 9-21-2.

III

Analysis

Pursuant to Rhode Island General Laws 1956 § 8-8-3, the District Court "has exclusive original jurisdiction over all civil actions at law, but not causes in equity or those following the course of equity," except in specifically enumerated circumstances. Sec. 8-8-3(a). In one such circumstance, the District Court is authorized, "in furtherance of its jurisdiction under § 8-8-3(a)(4)"—concerning violations of minimum housing standards, whether enacted by the General Assembly or a municipality—"to grant such orders, including temporary restraining orders, and preliminary and permanent injunctions as justice and equity may require." Sec. 8-8-3.1.

Additionally, the District Court is vested with original exclusive jurisdiction over "all actions between landlords and tenants pursuant to chapter 18 of title 34 and all other actions for possession of premises and estates." Sec. 8-8-3.

The Superior Court, on the other hand, "has exclusive original jurisdiction, except as otherwise provided by law, of suits and proceedings in equity, and it is within the power of that court to advise and direct trustees as to the management of trust estates and to enter decrees for that purpose." Concannon v. Concannon, 116 R.I. 323, 356 A.2d 487 (1976); Sec. 8-2-13; see also Hunter v. United States, 30 U.S. 173, 174, 8 L. Ed. 86 (1831) (interpreting Rhode Island law) ("It is the peculiar province of equity to compel the execution of trusts."). Indeed, Rhode Island case law is clear that other courts within the state may not conduct the interpretation of an express trust, "the jurisdiction of which has been exclusively in the Superior Court." Concannon, 116 R.I. at 330, 356 A.2d 487; see also Gardner v. Sisson, 49 R.I. 504, 144 A. 669 (1929) (the Rhode Island Supreme Court refused to answer certain trust questions and remanded the case to the Superior Court, because the Superior Court has exclusive original jurisdiction conferred by statute "to advise and direct trustees as to the management of trust estates").

Here, the Complaint for Eviction filed in District Court was entitled "Complaint for Eviction G.L. (1956) Ch 34-18.1." Chapter 18.1 of title 34, entitled "Commercial Leasing and Other Estates" has a stated purpose as applying "to all commercial properties and other estates, excluding residential properties governed by the Residential Landlord and Tenant Act," found at § 34-18-1. An examination of § 34-18.1-1 et seq., and the Rhode Island cases that cite to it, make clear that this chapter controls the terms and construction of commercial leases and other estates that are commercial in nature. See e.g., Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063 (R.I. 2008) (action for rents owed on a commercial lease entered

into between plaintiff and the defendant brought pursuant to § 34-18.1-1, et seq.); Downtown Group, LLC v. Tine, 769 A.2d 621 (R.I. 2001) (mem.) (Superior Court jurisdiction over trespass and ejectment action for non-payment of rent between owner/lessor of commercial property and lessee pursuant to § 34-18.1); Gooding Realty Corp. v. Bristol Bay CVS, Inc., 763 A.2d 650 (R.I. 2000) (Superior Court jurisdiction pursuant to § 34-18.1 over action seeking eviction, back rent, and possession of leased commercial property). In fact, there is no suggestion that § 34-18.1 applies to properties or estates which are not commercial in nature.

However, although the initial Complaint is so entitled in this manner, the facts set out therein do not suggest that the Property is owned or operated in a commercial manner, but instead refer to the Property as a "Trust asset" with "person[s] residing at the premises." As a result, while the District Court would have jurisdiction pursuant to § 34-18.1 to effectuate a tenant's eviction from a commercial premises, this was not the set of facts outlined in the Complaint, nor was the commercial leasing statute the basis for the District Court's ruling.

Moreover, despite the Complaint's heading, an eviction hearing never took place in District Court. Instead, Plaintiff's Motion for Emergency Relief was heard—including details regarding the lack of electric, water, and sewer service to the Property for over six months—and granted, ordering Audette to restore utility services to the Property, and permit the owner of the Property—the Trust—access to inspect the property within a reasonable time. The District Court did not interpret the provisions of the express trust in rendering this decision, but instead invoked the established authority "in furtherance of its jurisdiction under § 8-8-3(a)(4)"—to grant such orders, including temporary restraining orders, and preliminary and permanent injunctions as justice and equity may require,"—when faced with evidence of violations of minimum housing standards. Sec. 8-8-3.1.; Borelli v. Conklin Limestone Co., Inc., 569 A.2d 8, 9 (R.I. 1990) ("The

Legislature, by its enactment of G.L. 1956 § 8-8-3.1 and chapter 8.1 of title 8, endowed the District Court with equitable powers to handle controversies concerning housing matters.").

Nevertheless, G.L. 1956 § 9–12–10 provides in pertinent part that "in all civil cases in the [D]istrict [C]ourt, any party may cause the case to be removed for trial on all questions of law and fact to the [S]uperior [C]ourt for the county in which division the suit is pending, by claiming an appeal from the judgment of the [D]istrict [C]ourt." Sec. 9-12-10; see also Sec. 9-12-10.1 (identical provision for appeal of District Court ruling to Superior Court in landlord tenant actions). Our case law is clear that this statutory right of appeal "entitles the appealing party to a de novo hearing by the Superior Court, whereby the Superior Court justice may make credibility determinations and should use 'his [or her] independent judgment in ruling on the merits of the case.'" Val-Gioia Properties, LLC v. Blamires, 18 A.3d 545, 549 (R.I. 2011) (quoting Downtown Group, LLC, 769 A.2d at 622). It is further settled that "a Superior Court justice conducting a de novo appeal may not rely on the District Court's judgment because 'when a judgment entered in the District Court has been appealed by an aggrieved party, the judgment is vacated.'" Id. (quoting Harris v. Turchetta, 622 A.2d 487, 490 (R.I. 1993)). "Indeed, the mere filing of the appeal vacates the District Court's judgment." Id. (quoting Bernier v. Lombardi, 793 A.2d 201, 202 (R.I. 2002); see also State v. Howard, 706 A.2d 1355, 1356 (R.I. 1998) (mem.) (absent a withdrawal of the appeal to Superior Court, the District Court judgment no longer exists).

Here, the judgment of the District Court was vacated when Audette filed an appeal to the Superior Court. Val-Gioia Properties, LLC, 18 A.3d at 549; Bernier, 793 A.2d at 202; Howard, 706 A.2d at 1356; Harris, 622 A.2d at 490. Pursuant to that appeal, "all questions of law and fact [became] reviewable by [this] Court on an appeal from a District Court judgment." Val-Gioia

Properties, LLC, 18 A.3d at 549. On appeal, this Court gave no deference to the District Court's ruling, but rather afforded the parties a hearing on April 9, 2010, to deal with disputed issues. At this hearing, testimony and evidence was presented regarding issues set out in the Complaint, namely lack of electrical service to the Property for almost a year—based on Audette's failure to pay utility bills—and the deplorable condition of the Property resulting therefrom, including but not limited to frozen pipes which ruptured with such force so as to break the cast iron fixtures; extensive water damage; considerable damage to the boiler and heating system, rendered inoperable and in need of costly repairs; pervasive mold and mildew; and the discarding of human waste in the yard due to lack of sanitary facilities.

Notably, while the Complaint was not amended and retained the same heading before this Court, under Rule 8 of the Rhode Island Superior Court Rules of Civil Procedure, a plaintiff is not obligated "to set out the precise legal theory upon which his or her claim is based." Haley v. Town of Lincoln, 611 A.2d 845 (R.I. 1992); see also Sarni v. Meloccaro, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974) (explaining that our courts will treat a complaint by its "substance, not labels."). In fact, "all that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted." Haley, 611 A.2d at 845. Here, the Complaint set forth the pertinent provisions of the Trust, detailed the lack of electrical service to the Property and the deplorable conditions resulting therefrom, and alleged Audette's behavior led to such conditions. The Complaint requested possession of the Property to the exclusion of Audette, since "[t]he foregoing constitutes waste so as to terminate the life estate of Defendant Audette in the premises." (Pl.'s Comp. 2). Moreover, § 34-8.1, the commercial leasing statute, was never mentioned at trial, and the issue of waste by Audette, the life tenant, was clearly understood by both parties to be at issue:

> "THE COURT: Mr. Audette, you indicated that you want to testify in a narrative form . . . I'm going to allow it, but only—you have to confine yourself to the issues that are before the Court, that have been raised by the complaint, wherein the plaintiff alleges that you failed to pay the cost of utilities consumed by you in said residence including, without limitation, water, sewer charges, telephone, electricity and heating fuel. This is between the period of approximately June 15, 2009, to date; and further that your alleged occupancy of the premises without electric, water, or sewer service and other acts, including disposal of human waste in the yard, and that as a result of [this the] trustee is unable to obtain insurance—constitutes waste so as to determine the life estate of the Defendant Audette—so that's what's at issue here.
> MR. AUDETTE: Correct, your Honor."

(Tr. 84:14-25; 85:1-10) (punctuation added). Hence, the Complaint—despite its heading—gave Audette "fair and adequate notice of the type of claim being asserted," and the record reflects that he clearly understood what claims were at issue. Haley, 611 A.2d at 845.

Furthermore, the Superior Court—as a court of appeals and a court of exclusive original jurisdiction over the management of trust estates—unquestionably had subject matter jurisdiction over all questions of law and fact presented at the hearing. Val-Gioia Properties, LLC, 18 A.3d at 549; see also Pollard v. Acer Group, 870 A.2d 429, 433 (R.I. 2005) ("The term 'lack of jurisdiction over the subject matter' means quite simply that a given court lacks judicial power to decide a particular controversy."); Long, 984 A.2d at 1079 ("Subject-matter jurisdiction is the very essence of the court's power to hear and decide a case."); Sec. 9-12-10. It is within the power granted to this Court by our General Assembly to interpret the express provisions of the trust document and—after considering the overwhelming evidence presented—terminate Audette's tenancy in the trust Property based on waste pursuant to § 34-14-1, which states in

pertinent part that "[e]very person seised of any real estate for the term of his or her own life, . . . or as a tenant for years, who commits or suffers any waste on such estate, shall forfeit his or her estate in the place so wasted." Id.

IV

Conclusion

Accordingly, this Court denies Audette's motion to vacate prior orders based on contentions as to the lack of subject matter jurisdiction. See Trainor v. Grider, 23 A.3d 1171, 174 (R.I. 2011) (motion to vacate prior orders based lack of subject matter jurisdiction deemed "to be without merit and a vexatious attempt to further prolong the case."). Counsel shall submit the appropriate Order for entry.