

VERMONT SUPERIOR COURT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 580-9-12 Wrcv

Great Island Realty Trust
Plaintiff/Appellant

v.

Patricia Nugent
Defendant/Appellee

DECISION ON APPEAL

This is an appeal of a Small Claims court decision which awarded Ms. Nugent \$652.80 on her counterclaim against Great Island Realty Trust. Included within that amount was \$400 representing the security deposit Ms. Nugent had paid in connection with her rental of an apartment. Great Island claims the Small Claims decision was in error because Great Island did not have, and was not responsible for, the security deposit.

The hearing in the Small Claims action was lengthy. The evidence established that Great Island had standing to bring the action because it had been assigned the rights of the landlord to rent and to collect rents, which included utilities, from the landlord. The landlord for the premises is 825 North Kings Road, LLC. Plaintiff established the assignment to the judge's satisfaction through a letter, Plaintiff's Ex. 1. That letter specifically states that the assignment to Great Island does not include the security deposit which was to be retained by 825 North Kings Road, LLC. Ms. Nugent claimed at the hearing that she had not seen Plaintiff's Ex. 1 before the hearing, but the Court found it sufficient evidence to establish Great Island's standing as a Plaintiff to bring the action for non-payment of rent. In other words, even though the receipt of the letter itself was disputed by Ms. Nugent, the Court found the content of the letter enough to confer standing on Great Island.

No evidence was submitted to the Court to enable it to find that Great Island had some control over the security deposit. Ms. Nugent's claim that she had not received a return of the security deposit and did not sign the "estoppel agreement", Plaintiff's Ex. 12, does not make Great Island, as an assignee of certain rights from the landlord, responsible for the repayment of the security deposit.

"It is a general principle that an assignment of a contract does not cast upon the assignee liabilities imposed by the contract of the assignor, in the absence of an assumption of such liabilities. 4 Am.Jur. Assignments, § 102. *Auer & Twitchell v. Robertson Paper Co.*, 94 Vt. 473, 483, 111 A. 570. The assignee of a contract is usually not liable to the other contracting party to the contract assigned unless such liability has been expressly or impliedly assumed by the

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assignee. *Pargman v. Maguth*, 2 N.J.Super. 33, 64 A.2d 456." *Shepard v. Commercial Credit Corp.*, 123 Vt. 106, 110 (1962).

Whatever Ms. Nugent's knowledge of the assignment of right to collect rents by Great Island was, there is no evidence that it was assigned any rights or liabilities regarding the security deposit. In fact, the evidence before the Court, such as it was, was directly to the contrary.

Plaintiff also raises, without including it in its statement of basis for appeal, that the Small Claims Court was in error in awarding damages to Ms. Nugent to her property occasioned by renovations occurring within the building. There was some evidence which tended to show Great Island was involved in and directed the renovation work, although they disputed that contention.

It is not for this Court to reweigh the evidence on appeal. *Harrison v. Harrison*, 110 Vt. 254 (1939). The weight to be given to evidence is a matter for the trial court. *Jeffords v. Poor*, 115 Vt. 147 (1947). The Small Claims Court found the evidence of the assignment sufficient and a trial court's findings must stand unless they are clearly erroneous. *In re Nash*, 158 Vt. 458 (1991). But at the same time, there was no evidence to support a determination that Great Island was responsible for the security deposit and the Court's conclusion in that regard can not stand. *Hoover v. Hoover*, 171 Vt. 256 (2000). There was evidence introduced from which the Small Claims Court could have found Great Island responsible for the damages to Ms. Nugent's property due to the dust from the renovation work based upon Great Island's involvement with that work.

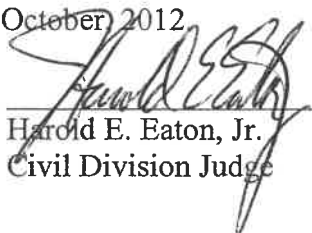
Ms. Nugent seeks dismissal of the appeal due to the failure of Great Island to file the statement of basis for appeal within the time specified in V.R.S.C.P. 10(a). However the reporter's notes to Rule 10 make it clear that the filing of such a statement is non-mandatory. As such, the Court will not dismiss this appeal.

Based upon the foregoing, the matter is affirmed in part and reversed in part. The damages awarded Defendant in her counterclaim below are affirmed except as to the \$400 included for the security deposit, which should not have been awarded to Ms. Nugent.

ORDER

Pursuant to V.R.A.P. 39, the matter is remanded to the Small Claims Court for entry of judgment as follows: On Great Island's claim: \$660.39 in damages plus costs below of \$52.50 minus damages allowed on Ms. Nugent's claim of \$252.80 plus costs of \$26.25 for a net to Great Island of \$433.84, plus costs of this appeal of \$105.

Dated at Woodstock this 31st day of October 2012.


Harold E. Eaton, Jr.
Civil Division Judge

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