

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-388

AUGUST TERM, 2019

Michael Bandler* v. Jason Purdy	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 271-6-18 Wrcv
		Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Tenant filed this suit against defendant landlord, alleging that landlord breached the parties' lease. The trial court indicated that the case was dismissed after the parties filed a stipulation. On appeal, tenant argues that the court erred in dismissing the case because there were pending issues that remained unresolved and asks that the case be remanded. Landlord agrees that the case should be remanded for the trial court to rule on all pending motions and requests. We agree that the trial court erred in dismissing the action and reverse and remand.

Tenant rents a condominium from landlord. He filed this suit against landlord in June 2018. Plaintiff's complaint alleges the following. Tenant's agreement included a right of first refusal to purchase the property if landlord received an offer to sell. Landlord falsely represented that he had received an offer to sell the condominium in an effort to trigger tenant's right of first refusal, and then when tenant declined, landlord refused to renew tenant's lease in violation of the terms of the lease. Landlord also unlawfully broke into the condominium when tenant was away, and fraudulently secured from tenant and cashed two rent checks for the same month. Tenant sought damages and an order compelling landlord to renew the lease.

Prior to landlord filing an answer, the parties engaged in mediation. The parties reached an agreement purportedly resolving all matters and signed a settlement agreement in August 2018. Under the settlement, tenant was required to purchase the property before December 1, 2018. Tenant had sixty days to make good-faith efforts to secure financing. If he was unable to secure financing in that time, landlord had an option to provide owner financing on specified terms. If tenant failed to pursue financing or to give timely notice of his failure to secure the financing by December 1, 2018, tenant was required to vacate the premises by December 1, 2018 and landlord was entitled to an immediate writ of possession. If landlord exercised the option to offer owner financing and tenant did not close the sale for any reason within his reasonable control, tenant was likewise required to vacate by December 1, 2018 and landlord was entitled to an immediate writ of possession. With respect to the pending lawsuit, the agreement stated:

[Tenant's] claims in this action shall be dismissed with prejudice, unless [tenant] meets all obligations set forth herein and [landlord]

elects not to provide owner financing (or closing is precluded by the condominium association), in which case this action shall be dismissed without prejudice and the parties agree that [tenant] has exercised his option to renew the Lease . . . [T]he parties otherwise retain their rights under the terms of the Lease without prejudice to their respective positions regarding the construction thereof.

Landlord filed the settlement agreement with the court on August 28, 2018. On September 4, 2018, the court issued an order indicating that the settlement agreement had been received and that the court would hold a status conference on or after December 2, 2018 to determine whether the case should be dismissed with or without prejudice. In October 2018, landlord filed a motion to quash notice of a deposition served by tenant. The court quashed the subpoena, explaining that there was no basis to conduct a deposition for a case that had settled. Tenant then filed several motions, including motions to reconsider the order quashing the subpoena, to amend the complaint, and for an injunction. Tenant alleged that landlord had fraudulently concealed information about restrictions on use of the condominium and liabilities associated with ownership of the condominium, and that tenant had accordingly voided the condominium purchase agreement.

On December 4, 2018, landlord filed a document alleging that tenant had failed to purchase the condominium or vacate the premises as required by the settlement agreement and seeking issuance of a writ of possession in accordance with the settlement agreement.

On December 7, 2018, the court issued two orders. In those orders, the court denied tenant's motion to reconsider its order quashing tenant's notice of deposition. The court stated that notwithstanding the September 4 entry order indicating that a status conference would be scheduled concerning the settlement and terms of dismissal, it considered the case dismissed as of its September 4 order. Because the court had already dismissed the case, the court explained that enforcement of the parties' settlement agreement was not before it. The court indicated that the parties were not precluded from bringing a separate action to resolve issues related to the settlement agreement. The court did not indicate whether it understood tenant's claims to be dismissed with or without prejudice—a matter that was not resolved by the settlement agreement on its face, and which turned on the course of events following the parties' execution of the settlement agreement.

Tenant filed this appeal. On appeal, tenant argues that the court erred in dismissing the case without adjudicating whether the settlement had been voided. Tenant asserts that the trial court failed to make any factual findings regarding landlord's concealment of information during settlement negotiations. Landlord agrees that the case should be remanded to the trial court to resolve motions that were pending at the time of dismissal, including landlord's request for a writ of possession.

We agree that the court erred in dismissing this case without resolving pending issues. After the settlement agreement was filed with the court, in September 2018 the court issued an entry order stating that it had received the settlement agreement and would hold a status conference to determine whether the case should be dismissed with or without prejudice after December 2, 2018. This was not a dismissal order; it did not indicate if the settlement was approved by the court and it left open the question of whether the case would be dismissed and if so under what parameters. The October order quashed the subpoena but did not resolve any other pending issues. By the time the December orders were issued, there were several motions pending with the court regarding the validity of the settlement and the rights of the parties under that settlement. The court did not address these issues. Instead, the court indicated the case was, or had at some

previous time been, dismissed and that issues related to the terms and enforcement of the settlement agreement had to be raised in a separate proceeding.

A final judgment must dispose of all matters that “should or could properly be settled at the time and in the proceeding then before the court.” State v. CNA Ins. Cos., 172 Vt. 318, 322 (2001) (quotation omitted). Although it is evident from its December 2018 order that the trial court thought there was already a final judgment dismissing tenant’s claims, the court’s prior orders had left several pending issues undecided. The court had not yet accepted the settlement and incorporated its terms into a final order, and it never determined whether any dismissal was with or without prejudice. Further, the court did not respond to landlord’s request for a writ of possession. Because several claims were left unresolved, the court’s December 7, 2018 dismissal was premature. We reverse and remand for further proceedings.

Reversed and remanded.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice