

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 2017-CV-000120-A-O  
LOWER CASE NO.: 2017-CC-009703-O

PAMELA GARCIA,

Appellant,

v.

GEORGE SHALABY,

Appellee.

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Appeal from the County Court for Orange County, Florida,  
Faye L. Allen, County Court Judge

Jamie Billotte Moses, B.C.S.,  
Michael L. Resnick, Esq., for Appellant

Justin R. Clark, Esq., for Appellee

Before Rodriguez, H., Blackwell, Whitehead, J.J.

Appellant, Pamela Garcia (“Garcia”), appeals the final judgment of eviction, with costs, entered against her on September 17, 2017. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

On February 15, 2017, Garcia and Appellee, George Shalaby (“Shalaby”), entered into a month-to-month rental agreement whereby Garcia agreed to pay Shalaby \$800 per month. Garcia paid her monthly rent until she received a letter from Alliance C.A.S., on behalf of Semoran Recreation Association, Inc., stating:

*Effective July 1, 2010 Florida Senate Bill 1196, signed by Gov. Charlie Crist, also known as the **Distressed Condominium Relief Act (DCRA) became law.** This law provides Homeowners Association the ability to **collect rent directly from the tenants***

**and apply these monies to the balance owed by the Home Owners who are behind in their monthly maintenance fees.** Pursuant to section 720.3085(8), Florida Statutes, the Association demands that you pay your rent directly to the Homeowners Association and continue doing so until the Association notifies you otherwise.

\* \* \*

Pursuant to section 720.3085(8), Florida Statutes, your payment of rent to the Association give you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the Association. ***All late payments will be assessed according to the terms of your lease.*** If in the event the rent payments are not made to the Association, ***the Association does reserve the right to evict all violators.*** Once the total amount owed to the Association has been paid in full you will receive a release letter instructing you to begin forwarding your rent back to the owner/landlord.

In response to the letter, Garcia paid July's rent to the Association.

On August 11, 2017, Shalaby filed an eviction action against Garcia, claiming that Garcia failed to pay the rent due on July 15, 2017. On August 16, 2017, Garcia filed a handwritten prose response to the complaint in which she stated that she should not be evicted because she paid the rent due to the Association as directed. On August 22, 2017, the court entered a Mediation Referral Notice. On August 24, 2017, the court set the matter for mediation on September 7, 2017, and ordered Garcia to deposit \$1,600 into the court registry by 1:00 p.m. on Monday, September 4, 2017. Garcia moved the court for an extension of time, attaching a letter from the Association acknowledging receipt of the rent and stating that the funds were "applied to the homeowner's balance with the Association."

On September 1, 2017, the trial court entered an Order Granting Time to Deposit Money. The order extended the time for Garcia to deposit the money until after a "Status Hearing Regarding Rent Determination Hearing" was conducted. That hearing was held on September 7, 2017. At the hearing, the trial court entered a Final Judgment of Eviction in favor of Shalaby and against Garcia, and awarded costs in the amount of \$235. The court also entered a Writ of

Possession. Per the court's minutes, the hearing lasted 20 minutes. The order does not reflect that the parties were sworn in and there is no transcript to determine if they were, or what testimony and evidence, if any, was presented at the hearing.

Garcia filed a pro se Motion to Stay at 4:03 p.m. on September 13, 2017, which was immediately denied by the court. On September 14, 2017, through counsel provided by the Legal Aid Society of the Orange County Bar Association, Garcia filed a verified emergency motion titled "Tenant's Motion to Stay Enforcement of Writ of Possession and Tenant's Motion to Set Aside and Vacate Final Judgment and Writ of Possession." A copy of the demand letter from the Association pursuant to section 720.3085(8), Florida Statutes was attached to the motion, as was an acknowledgement from the Association that it had received the rent payment. Proof of liens assessed by the Association, but not yet satisfied was also provided. The emergency motion was denied the same day it was filed. A Notice of Appeal was timely filed on October 4, 2017.

The review of a trial court's interpretation of a statute is de novo. *Continental Cas. Co. v. A.W. Baylor Versapanel-Plastering, Inc.*, 97 So. 3d 937 (Fla. 5th DCA 2012). The review of a trial court's failure to conduct an evidentiary hearing is abuse of discretion. *Tribeca Aesthetic Med. Solutions, LLC. V. Edge Pilates Corp.*, 82 So. 3d 899 (Fla. 4th DCA 2011).

Garcia asserts two claims of error in her appeal: (1) that the court erred in entering judgment against her when she had immunity pursuant to statute because she had paid her rent to the Association as required by law, and (2) that her due process rights were violated when the court entered judgment against her at a status/determination of rent hearing rather than conducting an evidentiary hearing.

There is no doubt that Garcia paid the rent to the Association as directed by the letter sent to her pursuant to section 720.3085, Florida Statutes. That section governs a Homeowners'

Association's right to lien property when an owner of the property fails to pay assessments. It further provides for the right of the association to demand that rent be paid directly to the association in the event that a tenant is occupying the property. If the tenant complies, he or she is immune from liability to the landlord.

Section 720.30785(8)(a) provides:

If the parcel is occupied by a tenant and the parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all the monetary obligations of the parcel owner related to the parcel have been paid in full to the association and the association releases the tenant or until the tenant discontinues tenancy in the parcel.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 720.3085(8), Florida Statutes, we demand that you make your rent payments directly to the homeowners' association and continue doing so until the association notifies you otherwise.

Payment due the homeowners' association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to (full address), payable to (name). Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 720.3085(8), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

2. A tenant is immune from any claim by the parcel owner related to the rent timely paid to the association after the association has made written demand.

Shalaby agrees that section 720.3085(8)(a)(2), Florida Statutes provides a tenant with absolute immunity from an eviction action by his/her landlord if the Homeowners Association demands payment of unpaid rent for the landlord's unpaid assessments, pursuant to the statute. However, Shalaby argues that because the letter actually came from Alliance C.A.S.

("Alliance"), a collection agency working on behalf of the homeowners association, Semoran Receptions Association, Inc. ("Association"), and because Garcia wrote the rent check to Alliance and Alliance deposited the check into its own bank account, then the rent was not directly paid to the Association and thus Garcia could not benefit from the immunity provision of the statute. This argument is spurious. Regardless of the fact that the Association contracted with Alliance to act as its agent in collecting the rent, Garcia was nonetheless entitled to immunity pursuant to the statute.


Garcia argues that this issue was not raised in the trial court; indeed nothing was raised in the trial court because there was no evidentiary hearing and no record of any testimony or argument. Garcia also claims, correctly, that the statute should not be read to mean that a homeowners association cannot contract with management or collection companies to receive funds on its behalf. Garcia filed a copy of the contract between the Association and Alliance in which Alliance is expressly authorized to act as the Association's agent for the purpose of collecting unpaid assessments and maintenance fees from owners. Thus, under agency law, payments made to Alliance on behalf of the Association are payments to the Association itself. Shalaby further argues that the status/determination of rent hearing was in fact an evidentiary hearing at which the parties were sworn and testimony taken. However, nothing in the record reflects that. In fact, Shalaby's claims regarding this were stricken upon motion by Garcia because of the lack of record evidence. The court noticed the hearing as a status of determination of rent hearing. There was no notice to Garcia that this was an evidentiary hearing and no record evidence that the parties were sworn or testimony and evidence elicited.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment is **REVERSED** and **REMANDED** to the trial court to conduct an evidentiary hearing.

If, at that hearing, Garcia can show that she made payment to the Association, via the collection agency hired by the Association, then judgment shall be entered in Garcia's favor.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this

27 day of June, 2019




Heather Pinder Rodriguez  
Circuit Court Judge

**Blackwell and Whitehead, J.J. concur.**

**Certificate of Service**

I HEREBY CERTIFY that a copy of the foregoing Order has been provided to **Michael L. Resnick, Esquire**, [MResnick@legalaidocba.org](mailto:MResnick@legalaidocba.org), Legal Aid Society of the Orange County Bar Association, 100 East Robinson Street, Orlando, FL 32801, to **Jamie Billotte Moses, B.C.S.**, [jamie.moses@hklaw.com](mailto:jamie.moses@hklaw.com), , to Justin R. Clark, Esquire, [jclark@youhavepower.com](mailto:jclark@youhavepower.com), 500 Winderley Place, Suite 100, Maitland, FL 32751, and to **The Honorable Faye L. Allen**, 425 North Orange Avenue, Orlando, FL 32801 this 27 day of June, 2019.



Judicial Assistant