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DISTRICT II

October 20, 2021

To:

Hon. Michael J. Piontek
Circuit Court Judge
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Patrick J. Hudec
Electronic Notice

Alex Trebatoski
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Chris J. Trebatoski
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Hudec Law Offices, S.C.
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You are hereby notified that the Court has entered the following opinion and order:

2020AP262

2100 Church St., LLC v. Patrick J. Hudec (L.C. #2020CV18)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Hudec Law Office, S.C. and Patrick Hudec (collectively, Hudec) appeal from the judgment of eviction in which the circuit court found that Hudec failed to vacate the premises following a twenty-eight day tenancy termination notice. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

This case arises out of an eviction action. In 2010, pursuant to a foreclosure action and subsequent sheriff's sale, 2100 Church Street, LLC, (Church Street) obtained the title to the office building owned by Hudec Law Office, S.C. and Patrick J. Hudec. On October 3, 2019, Church Street posted a twenty-eight day notice upon Hudec, terminating his tenancy at the building. When Hudec did not vacate by the deadline, Church Street filed the eviction action underlying this appeal. As relevant to this appeal, Hudec filed a jury demand.

At the initial eviction proceeding, Hudec informed the court commissioner that he had a preliminary answer and counterclaim, but had not yet filed the pleadings. The commissioner set the matter for a court trial and gave Hudec a deadline to file his answer and counterclaim. Hudec objected, telling the commissioner that his "right to a trial" was absolute.² The commissioner informed Hudec that he needed a valid defense to have a trial and reminded Hudec to file an answer so that determination could be made.

Hudec did not file an answer; rather, he filed a counterclaim alleging four causes of action against Church Street and various third-party defendants, one of whom Hudec alleged was managing the property on Church Street's behalf. The counterclaim alleged: (1) breach of contract, (2) fraud, (3) "piercing the corporate veil" and (4) "restraining order." (Some capitalization and bolding omitted.) The crux of the counterclaims was that Hudec prepaid his rent to one of the third-party defendants through the end of June, that the third-party was attempting to defraud him, and that Hudec was entitled to an injunction halting the transfer of

² Based on Hudec's arguments on appeal, we assume he was referring to his right to a jury trial.

any interest in the property until his counterclaims were resolved. In addressing the eviction action, the counterclaim stated:

To the eviction action, the Defendants reserve their right to amend pleadings but do assert the affirmative defense that any rent or fee for staying in the building through June 30, 2020 has been paid in writing and in the usual course in dealing with the parties and there is no cause for an eviction action at this time.

Church Street filed several documents in response to Hudec's counterclaims, including a motion for default judgment and dismissal. As relevant to this appeal, the motion alleged that Hudec's counterclaims fell outside of the realm of an eviction action pursuant to WIS. STAT. § 799.43. Following multiple recusal and substitution requests, the matter ultimately proceeded to a hearing on January 23, 2020.

At the hearing, the circuit court took judicial notice of the judgment of foreclosure and the sheriff's deed that were issued in this case, as well as the eviction notice. The court noted that Hudec did not challenge receipt of the eviction notice. Hudec testified on his own behalf. Ultimately, the circuit court found that Church Street lawfully owned the property at issue and served a proper twenty-eight day notice terminating Hudec's tenancy; thus, Church Street was entitled to a judgment of eviction. The court also dismissed the claims advanced by Hudec, finding that they were unrelated to the eviction action. This appeal follows.

On appeal, Hudec raises a series of due process arguments stemming from his contention that the circuit court violated his right to a jury trial and made multiple procedural errors. All of Hudec's arguments contain one fatal flaw: he did not raise valid legal grounds to contest his eviction.

Wisconsin statutes set forth a specific procedural process for eviction actions. Where, as here, a property owner provides notice terminating tenancy pursuant to WIS. STAT. § 704.19, a tenant has twenty-eight days from the posting of the notice to vacate the premises. *See* § 704.19(3). Failure to do so may result in an eviction proceeding. *See* WIS. STAT. § 704.23.

Here, following the initial return appearance, Hudec did not file an answer to the eviction notice, but rather, responded by raising multiple issues unrelated to eviction actions. *See* WIS. STAT. § 799.02(2); *Scalzo v. Anderson*, 87 Wis. 2d 834, 848, 275 N.W.2d 894 (1979) (stating that the number of issues which may be raised in an eviction action are limited to determining whether a landlord and tenant relationship exists; whether the tenant is holding over; whether notice was proper; whether the landlord has proper title; and whether the eviction action is retaliatory). Nor did Hudec challenge the validity of the notice. Instead, he argued that his agreement with a third-party manager, in which Hudec was permitted to prepay his rent, constituted valid legal grounds to challenge his eviction, thereby entitling him to a jury trial and certain due process rights. Hudec's argument, however, is not relevant under the applicable Wisconsin laws governing eviction proceedings. This eviction action resulted from Hudec's failure to move out after the tenancy was terminated—irrespective of whether Hudec prepaid rent. *See Scalzo*, 87 Wis. 2d at 846 (holding that if a landlord seeks to terminate tenancy using a twenty-eight day notice, the landlord need not provide cause for termination). It is undisputed that Church Street legally obtained the property at issue and that it properly served Hudec with a valid twenty-eight day eviction notice. It is also undisputed that Hudec failed to vacate the property within those twenty-eight days. Accordingly, there was no triable issue to present to a jury, *see* WIS. STAT. § 799.206 (3), and the circuit court did not violate Hudec's due process rights by failing to hold a jury trial.

We also conclude that Hudec did not suffer from any procedural due process violations. The crux of Hudec’s argument is that the circuit court proceeded with an eviction hearing—by taking evidence and testimony—without providing adequate notice. The record does not support Hudec’s contention. At the initial hearing on December 5, 2019, the court commissioner informed Hudec that the matter would proceed to a court trial on December 20, 2019, at which point Hudec informed the commissioner of his “absolute” “right to a trial.” The commissioner reminded Hudec that he did not have a right to a trial without a valid defense. The admonition of the commissioner alone would have put a reasonable party on notice that evidence was going to need to be presented at the next appearance in order to proceed with the action. Moreover, when the hearing ultimately took place on January 23, 2020, the relevant documents pertaining to the eviction were undisputed, the twenty-eight day notice was not challenged with any evidence, and the facts pertaining to Hudec’s counterclaims were irrelevant, as those claims were not relevant to the proceedings. Accordingly, no due process violation occurred.

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals