IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR ST LUCIE COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 16-AP-19

ALFRED GRIFFIN AND
SHIRLEY BENDEZU,

Appellant,

v.

CITY OF FORT PIERCE,

Appellee.
_____/

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

Decision filed August 29, 2017.

Appeal from the City of Fort Pierce Code Enforcement Magistrate Fran Ross.

Louis Arslanian, Hollywood, for appellant.

Iola Mosley, Senior Assistant City Attorney, Fort Pierce, for appellee.

PER CURIAM.

The Appellants advertised their property at 1905 Rio Vista Drive on South Beach in Fort Pierce on the Vacation Rentals By Owner ("VRBO") website from July 2015 to May 2016. In February 2016, Charlene Adair and the Appellant exchanged emails about renting the Appellant's property; Adair used the pseudonym of "Leigh Blair" because she is the Appellant's neighbor. The Appellant confirmed via email that his property was available for a two week rental in April and advised her to call him for the terms. On February 29, 2016, the City of Fort Pierce Code Enforcement Division ("City") sent the Appellant a notice of violation stating that he violated section 22-22(C) and 9-27(B) of the City Code. Section 22-22(c) states:

> Conditional uses. Uses identified with a "C" in the Use Table are permitted in the subject zoning district, if the city commission, after a public hearing, determines that the location and development plans comply with applicable standards and will not violate basic use

> standards specified in each zoning district, other applicable use standards, additional zoning ordinance provisions and other city laws.

The notice further clarifies that to remedy the violation of this section, the Appellant must "cease all short term rentals immediately." "Renting of dwellings for less than six months is not permissible in this district without conditional use approved by the Fort Pierce City Commission." As for section 9-27(b), it states:

> Any person engaging in or managing any business, occupation or profession without first obtaining a local business tax receipt, if required hereunder, shall be subject to a penalty of twenty-five (25) per cent of the receipt tax determined to be due in addition to any other penalty provided by law or ordinance.

The notice directed them to bring the property into Code compliance by March 9, 2016.

On June 15, 2016, a code enforcement magistrate held a quasi-judicial hearing on the violations. After the hearing, the hearing officer entered an order finding in relevant part that the Appellants "continued to rent their dwelling for less than six months without a conditional use approved by the Fort Pierce City Commission and to obtain a Business Tax Receipt in violation of the Code of Ordinances…" Interestingly, she found that the violation was "irreversible and irrevocable in nature," despite the fact the notice of violation directed the Appellants to bring the property into compliance. She imposed a fine of $1,062.50 to be paid within 60 days.

The standard of review applied to an administrative decision is whether procedural due process was afforded, whether the essential requirements of the law were observed, and whether the findings and judgment were supported by competent substantial evidence. *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001) (quoting *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982)).

The Appellants make six arguments in their initial brief, but only the first merits discussion, as it is dispositive. The Appellants argue that the magistrate's finding that they continued to rent the dwelling for less than six months is not supported by competent substantial evidence. In response, the City points to the VRBO advertisement as the competent substantial evidence because it indicates that the Appellants had advertised their vacation rental from July 2015 until May 2016, which is three months after the notice of violation was sent. On the minimum stay portion of the ad, it lists 180 days (six months) in four places and quotes the rate by the month, though the City argues that is contradicted by a small asterisk and tiny print that states

"approximate monthly rates, actual rate will depend on the days of the month you stay." While the VRBO ad is evidence of advertising the property, it is not evidence of successfully renting the property.

The City also argues that the emails from "Leigh Blair" aka Charlene Adair, the Appellant's neighbor, constitute competent substantial evidence. In those emails, the Appellant states "please give a call to 305-***-**** to talk about your inquiry about booking two weeks on (sic) April." He then sent two similar follow up emails when she did not respond. Finally, she responded with specific April dates and asked him for confirmation, which he gave by writing "yes 4-9 thru 4-23 is ok, please call Al. Griffin for terms." The City argues that these emails, along with the VRBO ad, are competent substantial evidence that the Appellants "continued to rent their dwelling for less than six months…" However, neither the ad nor the emails show that the property was indeed actually rented by "Leigh Blair," Charlene Adair, or anyone else, for any amount of time. In fact, Charlene Adair testified that she did not occupy the house, sign a lease, pay any money, or ever intend to actually rent the property, either for herself or anyone else.

Though the magistrate's written order did not find the existence of a lease agreement, she stated on the record "I find that a lease agreement did exist…" Black's Law Dictionary defines "meeting of the minds" as "actual assent by both parties to the formation of a contract, meaning that they agree on the same terms, conditions, and subject matter." For a contract to be enforceable, there must be a meeting of the minds between all parties on all essential terms. *Business Specialists, Inc. v. Land & Sea Petroleum, Inc.*, 25 So. 3d 693, 695 (Fla. 4th DCA 2010). When essential terms are left open, there is no meeting of the minds. *Id*. Based on the emails here, it is obvious that the essential terms and conditions of the rental beyond the dates still needed to be discussed, as Al emailed "Leigh" twice directing her to call him for terms, and no other terms beyond dates are contained in the emails. Consequently, there was no meeting of the minds, so a lease agreement was not formed. Nothing in the record supports the conclusion that the Appellants ever rented, much less "continued to rent their dwelling for less than six months…" Therefore, the magistrate's order is reversed.

Reversed.

KANAREK, PEGG, JJ. and MORGAN, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.