

**RECEIVED**

**Jun 17 2022**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

\_\_\_\_\_  
APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Clifton Newman, Circuit Court Judge

\_\_\_\_\_  
Order of the S.C. Court of Appeals, filed March 23, 2022  
(Rehearing Denied, May 19, 2022)

Morgan Conley.....Petitioner,

v.

April Morganson.....Respondent.

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

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Petition for Writ of Certiorari

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**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Petition for Rehearing in this matter was made and finally ruled on by the South Carolina Court of Appeals on May 19, 2022 and received by counsel for Petitioner on May 19, 2022.

**QUESTIONS PRESENTED FOR REVIEW**

**I. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS CONFLICT IN GENERAL WITH THE ACCEPTED “BRIGHT LINE” RULES OF PROPER STATUTORY CONSTRUCTION?**

**II. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS SPECIFICALLY CONFLICT WITH THIS COURT’S HOLDINGS IN BOITER V. SOUTH CAROLINA DEPT. OF TRANSP., 712 SE 2D 401 (2011) AND SKINNER V. WESTINGHOUSE ELEC. CORP., 716 SE 2D 443 (2011)?**

**III. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS SPECIFICALLY CONFLICT WITH THE COURT OF APPEALS’ HOLDING IN HEMBREE V. \$1,847.00 US CURRENCY, 743 SE 2D 864 (CT. APP. 2013)?**

**IV. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS SPECIFICALLY CONFLICT WITH S.C. CODE §27-40-240(B)(3)?**

**V. DID THE COURT OF APPEALS ERR WHEN IT FOUND, “WE FURTHER HOLD ANY ERROR IN THE MAKING OF CERTAIN STATEMENTS AT THE HEARING WAS HARMLESS BECAUSE [PETITIONER] HAD SUFFICIENT NOTICE”?**

**STATEMENT OF THE CASE**

This matter began with the filing of the Complaint of Petitioner/Tenant, Morgan Conley in the Richland County Court of Common Pleas, First Amended on May 24, 2017 (Appendix pp. 62-68). The Respondent/Landlord refusal to return Petitioner/Tenant's prepaid rent of \$920.00, and security deposit of \$1,200.00, caused Petitioner/Tenant to file a Complaint, which contained Causes of Action for Breach of Contract, and Violations of the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann., §27-40-240, §27-40-330(b), §27-40-410(a), §27-40-410, §27-40-430, and §27-40-620, (1976, as amended), (Appendix pp.. 62-68). The Respondent/Landlord filed her Answer and Counterclaim to the First Amended Complaint on June 16, 2017, (Appendix pp. 69-71). A bench trial was held before the Honorable Clifton Newman on September 28, 2018, (Appendix p. 72). At the conclusion of that Trial the Respondent/Landlord's Motion for Directed Verdict was granted (Appendix pp. 58-61). Also, at the conclusion of the Petitioner/Tenant's case, the Respondent/Landlord affirmatively abandoned her Counterclaim, (Appendix p. 60). Thereafter, the Trial Court issued its Order of August 16, 2019, (Appendix pp. 58-61). Petitioner/Tenant's Appeal followed on September 11, 2019. The Court of Appeals denied Petitioner/Tenant's Appeal on March 23, 2022. Tenant then filed a timely Petition for Rehearing, which was denied by the Court of Appeals Order of May 19, 2022, (Appendix p. 4 and p. 3). Tenant's Petition for a Writ of Certiorari follows.

## ARGUMENT

### **I. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT IN GENERAL WITH THE ACCEPTED “BRIGHT LINE” RULES OF PROPER STATUTORY CONSTRUCTION.**

Petitioner/Tenant respectfully submits that the Court of Appeals misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Petitioner/Tenant’s Appeal. The Court of Appeals failed to comply with “Bright Line” rules, often cited by Appellate Courts, concerning proper statutory construction.

“The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (Ct. of App. 2005).

“Where a statute’s language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning.” Hodges v. Rainey, 533 SE 2d 576 (2000).

“If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it de hors the statute.” <sup>1</sup>Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); “...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent].” State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 533 SE 2d 576 (2000).

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<sup>1</sup> See Trial Judge’s statements on page “12” and “13” herein.

The Lower Court and the Court of Appeals improperly overlooked or misapprehended a provision of South Carolina Law specifically requiring Notice, "...in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt." (Emphasis supplied). S.C. Code Ann., §27-40-240(B)(3), (1976, as amended). Under the facts of this case, Notice was not hand-delivered to the Tenant, and Notice was not mailed by Registered or Certified mail to the Tenant, (Appendix p. 75 lines 3-11); (Appendix p. 84 lines 2-3). Both Courts ignored the specific provision of South Carolina Law in favor of a general provision concerning actual Notice.

**II. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE SPECIFICALLY IN CONFLICT WITH THIS COURT'S HOLDINGS IN BOITER V. SOUTH CAROLINA DEPT. OF TRANSP., 712 SE 2D 401 (2011) AND SKINNER V. WESTINGHOUSE ELEC. CORP., 716 SE 2D 443 (2011).**

In a review of statutory construction by this Court the following applies, "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." Boiter v. South Carolina Dept. of Transp., 712 SE 2d 401 (2011). Also, in a review of statutory construction the Court of Appeals cannot choose a general provision S.C. Code Ann., §27-40-240(B)(1), over a specific provision S.C. Code Ann., §27-40-240(B)(3), Skinner v. Westinghouse Elec. Corp., 716 SE 2d 443 (2011).

Under the facts of this case, Notice was **not** hand-delivered to the Tenant, and Notice was **not** mailed by Registered or Certified mail to the Tenant. (Appendix p. 75 lines 3-11); (Appendix p. 84 lines 2-3). Both Court's improperly ignored the specific provision of South Carolina Law in favor of a general provision concerning actual Notice.

**III. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE SPECIFICALLY IN CONFLICT WITH THE COURT OF APPEALS' HOLDING IN HEMBREE V. \$1,847.00 US CURRENCY, 743 SE 2D 864 (CT. APP. 2013).**

In a review of statutory construction, the Court of Appeals cannot choose a general provision S.C. Code Ann., §27-40-240(B)(1), over a specific provision S.C. Code Ann., §27-40-240(B)(3), Hembree v. \$1,847.00 US Currency, 743 SE 2d 864 (Ct. App. 2013). The Court of Appeals in affirming the Lower Court, overlooked its **own** decision in Hembree, which gave clear guidance that, "...the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." Hembree at 246.

**IV. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE SPECIFICALLY IN CONFLICT WITH S.C. CODE ANN., § 27-40-240(B)(3).**

The Court of Appeals' Order highlights that the Court of Appeals overlooked and/or misapprehended S.C. Code Ann., §27-40-240(B)(3), when the Court of Appeals adopted and approved of the Respondent's position in the Lower Court. Namely, that Petitioner/Tenant received proper Notice, when Petitioner/Tenant only received email communications and not the proper Notice, **required** by S.C. Code Ann., §27-40-240(B)(3), (1976, as amended)<sup>2</sup>.

In the Court of Appeals' Order on page "1", the Court of Appeals stated that Petitioner/Tenant, "...[argued] that the circuit court erred...finding [Petitioner/Tenant] received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007)." (Appendix p. 1). On its face, S.C. Code Ann., §27-40-240(B)(3), **requires in pertinent part**, "...in the case of the tenant, [Notice] is delivered in hand to the tenant or mailed by registered or certified mail to the tenant..." Note, that the Tenant in this case **did not** receive Notice by hand-delivery, **did not** receive Notice by Registered Mail, **nor did** the Tenant receive Notice by Certified Mail, (Appendix p. 75 lines 3-11); (Appendix p. 84 lines 2-3).

The Court of Appeals improperly agreed with Respondent and the Lower Court, by ruling that an email communication was legally sufficient for actual Notice under S.C. Code Ann., §27-40-240(B)(1), (1976, as amended), and thereby the Court of Appeals' Order ignores the **specific** requirements of S.C. Code Ann., §27-40-240(B)(3), (1976, as amended). (Appendix pp. 1-2).

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<sup>2</sup> In pertinent part, §27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant..."

Therefore, in a review of statutory construction, the Court of Appeals cannot choose a **general** provision S.C. Code Ann., §27-40-240(B)(1), over a **specific** provision S.C. Code Ann., §27-40-240(B)(3), Skinner v. Westinghouse Elec. Corp., 716 SE 2d 443 (2011).

**V. THE COURT OF APPEALS ERRED WHEN IT FOUND, “WE FURTHER HOLD ANY ERROR IN THE MAKING OF CERTAIN STATEMENTS AT THE HEARING WAS HARMLESS BECAUSE [PETITIONER] HAD SUFFICIENT NOTICE”.**

Petitioner/Tenant has outlined herein numerous errors by the Lower Court below. Also, Petitioner/Tenant specifically alleged prejudice as shown hereinafter. Specifically, Petitioner/Tenant was prejudiced by Respondent’s unlawful retention of Petitioner/Tenant’s prepaid rent and security deposit and the prejudice was described in Petitioner/Tenant’s “Statement of the Facts” on page “6” in Petitioner/Tenant’s Final Brief filed with the Court of Appeals on January 9, 2020, “The Respondent/Landlord never returned Appellant/Tenant’s security deposit or prepaid rent....” (Appendix p. 23).

Errors in the Making of Statements at the Hearing.

Petitioner/Tenant respectfully submits that the Court of Appeals misapprehended or overlooked, *inter alia*, the following in the Court of Appeals’ Order of March 23, 2022, dismissing Petitioner/Tenant’s Appeal, (Appendix pp. 1-2).

- **The Trial Judge opined** that he believed that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send electronic mail, not by hand-delivery, Registered or Certified Mail, to the Petitioner/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), that Notice be by hand-delivery, or by Registered or Certified Mail, (Appendix p. 91 lines 10-20); (Appendix. p. 101).

- **The Trial Judge stated** that he was justified in changing the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in Trial Judge's opinion, a tenant attempting to enforce the plain and ordinary meaning of the Statute, §27-40-240(B)(3), against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (Appendix p. 93 lines 19-25).
- **The Trial Judge stated**, "...so I think it is time to simplify, clarify, modernize, and revise the laws concerning landlords and tenants." (Appendix p. 91 lines 11-13). This statement by the Trial Judge that he intended, in effect, to simplify, clarify, modernize and revise the South Carolina Residential Landlord and Tenant Act, is remarkable. Obviously, the Lower Court was without authority to take the actions he took at the conclusion of the Petitioner/Tenant's case, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000). "Where a statute's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).
- **The Trial Judge's Order stated** that, "The South Carolina Landlord/Tenant (*sic*) Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties lease." (Appendix p. 60).
- **The Trial Judge stated** that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (Appendix p. 91 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Petitioner/Tenant about the Respondent/Landlord's confiscation of both the Petitioner/Tenant's prepaid rent and security deposit, (Appendix p. 91 lines 10-20). The Trial Judge found it was acceptable to send the Notice by electronic mail, which was not hand-delivered, or mailed by Registered or Certified Mail, to the Petitioner/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (Appendix pp. 58-61).

**CONCLUSION**

Based on the foregoing, and for the reasons stated, Petitioner asks the Court to grant her Petition for a Writ of Certiorari.

Respectfully Submitted,

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