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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

Case No. 2021-CP-08-00513
Appellate Tracking Number 2021-00768
(Companion Case Tracking No.: 2019-001169)

Aracelis Santos, ……. ……Appellant,

vs.

Harris Investment Holdings, L.L.C.
City of Hanahan Police Department, John Doe #1 and
John Doe #2, employees of the City of Hanahan Police Department, ……..Defendants,

of which

Harris Investment Holdings, L.L.C. is the ……Respondent.

REPLY BRIEF

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REPLY TO RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

While Rule 208(b)(2) *South Carolina Appellate Court Rules* permits a Respondent to propose a counterstatement of the issues or facts, it is not a license to beg the question by rewriting the issue into a straw man fallacy. "A person who misinterprets his opponent's position so that it will be easier to attack . . . is guilty of the fallacy of the straw man." Howard Kahane, *Logic and Philosophy*, 2d Ed. (Wadsworth Publ. 1973), Page 238 If Respondent is unsatisfied with Appellant's framing of the legal issue, it is not free to ignore the salient fact that gives rise to this action; to wit, that on or about March 21, 2019, the City deployed armed police officers to keep Appellant out of her business while Harris Investment Holdings drove it into the ground. The Respondent mischaracterizes the issue before the Court thus:

> **Did the circuit court properly grant Respondent's motion to dismiss where the Lease had expired and Respondent was entitled under the Lease and South Carolina law to retake possession of the property?** (Respondent's brief at page 1)

This is a disingenuous trick to treat "retake possession" and "destroy" as equivalent, but it is not only fallacious—because it omits the single most important fact in the case—but also flouts appellate procedure by misdirecting the Court away from the salient issue: the destruction of Appellant's property. Even if the law granted Respondent leave to restate its opponent's pleadings, it is still incumbent on Respondent to include the pertinent material fact which is that the Respondent did not "retake possession of the property"; it destroyed it. Rule 208(b)(2) does not allow Respondent to omit this single most important fact in the case. Respondent's counter statement begs the question raised by this appeal by assuming that "self-help" without a "breach of the peace" encompasses destroying Appellant's property, a proposition rejected by every court that has taken up the question of "self-help" repossession. The central issue before the Court is whether the destruction of Appellant's property is or is not a peaceful repossession. The

undisputed record demonstrates the Landlord, after continuously harassing the Appellant by removing her electrical meter, locking her door, fencing her building, finally resorting to bulldozing the building to the ground including the Appellant's valuable restaurant equipment, a fact Respondent concedes on page 3 of its brief: "On or about March 22, 2019, **while officers of the Hanahan Police Department were present**, contractors retained by HIH demolished the building in accordance with a permit obtained from the Town of Hanahan." (emphasis added) See ¶ 12 of the Complaint in the Record on Appeal at pages 55-56:

> 12. While the ejectment case was on appeal, on or about March 18, 2019, the defendant, Harris Investment Holdings, L.L.C. broke down the plaintiff's door and arranged to have electrical meters removed. After the plaintiff got the electrical service restored, either the City of Hanahan or Harris investment Holdings, L.L.C., or both, posted two uniformed Hanahan police officers in a Hanahan Police Department motor vehicle, designated above as John Doe #1 and John Doe#2, to stand guard over the building and prevent the plaintiff from entering her business. While the plaintiff filed motions with the Berkeley County Court of Common Pleas to compel the defendant, Harris Investment Holdings, L.L.C., to cease disobeying the Order of the Court and allow the plaintiff access as required by the appeal bond Order, sometime thereafter, on or about March 21, 2019, Harris Investment Holdings, L.L.C. bulldozed the building to the ground, including the plaintiff's valuable commercial restaurant equipment, including, but not limited to, commercial walk-in freezer, commercial food preparation equipment, tables, chairs, electronic equipment, and inventory. The defendant, Harris Investment Holdings, L.L.C., destroyed the building without asking the Court for relief from the stay Order or without asking the Berkeley County Sheriff's Department to put it in peaceable possession of the premises. (*Cf.* Appellant's March 19, 2019, Motion for T.R.O. and supporting affidavit at pages 181-194 of R.O.A.)

In advancing its reframed straw man issue before the Court to omit this destruction, Respondent adopts an ancient strategy of denying the existence of evil acts. Writers as diverse as the Puritan, John Wilkinson and the French writer, Charles Baudelaire, remarked on this technique albeit in a different context: "One of the artifices of Satan is, to induce men to believe that he does not exist**.**" The nonexistent, hypothetical case described in Respondent's "counter-statement" bears slight resemblance to the facts pending before this Court, including, but not limited to, the fact that City Police Officers are statutorily prohibited from handling ejectment matters. See § 27-

37-160, S. C. Code, ann. discussed in Appellant's brief at pages 15 and 23 - 24. This statute says in applicable part: "If necessary, the deputy sheriff, but not a constable, may then enter the premises by force, **using the least destructive means possible**, in order to effectuate the ejectment." (emphasis added) Since the lease in this case is a commercial lease, § 27-37-155, S. C. Code, ann. also applies, and this section authorizes a magistrate to issue a writ of ejectment if the Tenant fails to pay the rent. In this case, the Magistrate who ordered ejectment also provided Appellant could remain in possession during the appeal provided she post $5,500.00 appeal bond with the Court and timely pay the rent. She did both. See Appeal Bond Order at page 10 of the R.O.A. The Respondent suggests, without citing any authority, that a Landlord can retaliate against a Tenant and exercise "self-help" to destroy a Tenant's property, a proposition in conflict of both the operative facts and the controlling law. Harris Investment Holdings' definition of peaceable self-help is a novel proposition without legal support, and Respondent's counsel conceded as much to the circuit court:

> MR. ABNEY: . . . I will grant you, that's [the destruction of plaintiff's property] a factual issue, and if we want to have a trial on whether there was personal property in the building when it was demolished, who it belonged to, and whether—even if any of it belong to her, she should have removed it, having received two notices to get her belongings out of the building, we can do that.
>
> R.O.A. page 174 [tr. page 9, lines 3-8]

It is impossible to square the Respondent's statement to the trial court with the misdirection and change of position made to this Court on both the facts and the law, a misdirection that not only wastes this Court's time, but also fails to acknowledge the legal standard courts must apply when assessing the sufficiency of allegations to pass the 12(b)(6) motion threshold. (This wasteful exercise occurs again in Respondent's Argument 3 where it picks apart the Appellant's pleadings, ignoring the legal principle that plaintiffs are afforded the opportunity to correct pleading deficiencies prior to dismissal. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006) *Skydive*

Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019) See also Rule 8, *S. C. Rules of Civil Procedure*.) The Respondent pays lip service to the standard of review, but never applies it to the facts. Respondent also ignores its concession before the court on June 3rd that the Respondent's destruction of Appellant's equipment raises a jury issue. (This is also fully addressed in Appellant's Brief at pages 20-27 in Argument 1B.)

An additional misdirection in Respondent's "Statement of Case" requiring reply is the Respondent's inaccurate characterization of the Magistrate's 2017 ejectment Order becoming the "law of the case" for the 2019 destruction of Appellant's property. When the Magistrate entered ejectment in 2017, the Appellant's restaurant equipment was undisturbed and in daily use, and there is nothing in the ejectment Order that permits the Landlord to destroy it. The Magistrate's ejectment did not grant future permission to destroy, whether deliberately or negligently, Appellant's personal property, and court orders, like lawyers and litigants, do not time travel. (The record is undeveloped as to the relationship between Respondent and the contractor who demolished the building, but since the two of them are now suing and countersuing one another in the Berkely County Court of Common Pleas at Case Numbers 2022 CP 08 00767, *Tri-Bay Construction v. Harris Investment Holdings, LLC*, and 2022 CP 08 00 00775, *Harris Investment Holdings, LLC v. Tri-Bay Construction, et. al*., this recent litigation raises new avenues of inquiry to be explored in discovery. See R.O.A. pages 204 and 210 for these pleadings.) As the Respondent says on page 5 of its brief: "[T]he court may also consider documents attached to or referenced in the complaint. [citation omitted] In addition, the court may take judicial notice of court orders and other filings from related litigation." The law of the case doctrine has no bearing on either the Respondent's March 2019, destruction of Appellant's restaurant equipment or the Court's obligation to evaluate a motion to dismiss only within the four corners of the complaint.

Doe v. Marion 373 S.C. 390, 645 S.E.2d 245 (2007). "Law of the case" only applies to legal issues that a party does not raise or acquiesces to in a trial court's ruling, as Respondent did to Judge Curtis' June 14, 2021 finding that the ejectment action is moot. (R.O.A. page 49) It is not available to justify a post-judgment destruction of property:

> Ordinarily both issue preclusion and claim preclusion are enforced by awaiting a second action in **which they are pleaded and proved** by the party asserting them. The first court does not get to dictate to other courts the preclusion consequences of its own judgment. (Emphasis added)
> Wright, Miller & Cooper, 18 *Federal Practice and Procedure: Jurisdiction 2d* § 4405 "Raising and Enforcing Res Judicata"

In the 2016 ejectment action, the Appellant vigorously contested the three grounds alleged by the Landlord and prevailed on two of the three. However, because the Magistrate determined Appellant's business was a nuisance, he ordered ejectment on that sole ground. Appellant timely appealed, including posting an appeal bond as required by the Court's Order. However, while the case was pending and while the Appellant possessed the building under a filed appeal bond Order—which was not appealed—the Respondent prevented the Court of Appeals from reaching the merits of the ejectment action by bulldozing the building to the ground, thereby mooting the issue of whether Appellant was properly ejected or entitled to continued occupation of the premises. See *Skydive Myrtle Beach, Inc. v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020)—case is not moot **if** Tenant can regain possession. Moreover, as Judge Curtis' June 6, 2020 Order shows, the Respondent's destruction of the building mooted the ejectment case, and Respondent did not appeal that finding. See R.O.A. page 49 [Order]. Her Order says in its entirety: "The Magistrate court judge's award of attorney's fees is affirmed. All other issues in this appeal are now moot as the subject property has been demolished." It is, therefore, both absurd and frivolous to ignore this finding as the "law of the case" and simultaneously assert the concept imbued the 2016 Magistrate Court's decision with authority to destroy the Appellant's equipment three years

later in 2019 while the appeal was pending. It is equally absurd for Appellant to continue to sue for possession of a building that no longer exists. *Skydive, ibid*. The Respondent makes the frivolous argument, both here and in the next argument, that the Magistrate's ejectment Order morphed into future authority to destroy Appellant's equipment. In short, the Respondent asserts its misconduct cannot be scrutinized based on a non-existent legal principle. Respondent's legal theory is both daring and novel in South Carolina (or anywhere) because the Respondent is the only landlord in history to resolve a landlord/tenant dispute by destroying the subject matter during appeal. Whether the Magistrate was or was not correct in issuing a writ of ejectment in 2017 has no relationship, factually or legally, to Harris Investment Holdings' 2019 decision to destroy Appellant's property, and the principle of "law of the case" has no application here except as to Judge Curtis' finding that the Landlord mooted the ejectment appeal by "demolishing" the building, a finding to which Respondent acquiesced.

Even though Harris Investment Holdings is the only landlord in history to assert the absurd position that a tenant can sue for possession of a nonexistent building, our Supreme Court settled the issue of mootness in both a landlord case, *Skydive Myrtle Beach, Inc. v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020), discussed below, and a *F.O.I.A.* case, *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), often cited as *Sloan II*. In *Sloan I*, 369 S.C. 20, 630 S.E.2d 474 (2006), The Friends of the Hunley knew they were about to lose the case and capitulated, handing over the documents plaintiff sought under a *Freedom of Information Act* request. Thereafter, when the taxpayer asked the Court to award him attorney's fees under the statute, the Friends of the Hunley said, much like the Respondent here, that because they handed over the documents before the Court ruled, the case became moot, cutting off the taxpayer's path to attorney's fees. This mootness argument is the inverse of the Harris Investment's argument

here—that when the Magistrate issued an ejectment Order in 2017, the Appellant's personal property became forfeited by *res judicata* to the Landlord to do what it liked, even though it told the circuit court the exact opposite. (Quoted above on page 6) Here, the Respondent did something worse than handing over documents at the 11th hour and claiming immunity. Here, while the case was on appeal, while the Appellant possessed the building under an Appeal Bond Order (R.O.A. page 10), while the Appellant filed and served, just prior to Respondent's destruction, an application to the Court to restrain Respondent's interference (R.O.A. page 181), the Landlord preempted the Court's ability to address any of these legal issues by destroying the building while the case was pending on appeal, thereby mooting the Appellant's claim to possession and preventing the appellate court from rendering a decision on whether the tenant was entitled to possession. By destroying the building, Respondent prevented the Court the ability to issue a decision "having a practical effect upon [the] existing controversy" on whether the Magistrate correctly found Appellant to be a nuisance. The destruction rendered that legal issue purely academic under *Skydive*, and appellate courts do not issue decisions that can have no practical effect. See *Skydive v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020):

> A case is moot "when judgment, if rendered, will have no practical legal effect upon existing controversy." *Mathis v. S. C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). **This case is not moot because a decision to reverse the ejectment order could have the practical effect of putting Skydive back in possession of the bird hanger**. (emphasis added)

Here, there is no dispute that "a decision to reverse the ejectment order could [not] have the practical effect of putting [Santos] back in possession" of a phantom building. Respondent seeks to escape the factual, legally settled, and logical cul-de-sac by misdirecting the analysis to the "law of the case," which does not apply to these facts. There is not a case in American jurisprudence that suggests a party can create the law of the case by preventing judicial review through the destruction of the subject matter:

Doctrine of "law of the case" is one of policy only and will be disregarded when compelling circumstances call for a redetermination of the determination of a point of law on prior appeal, and this is particularly true where intervening or contemporaneous change in law has occurred by overruling former decisions or establishment of new precedent by controlling authority. *Ryan v. Mike-Ron Corp*., Cal. App., 63 Cal Rpt. 601, 605. Doctrine is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. *People v. Medina*, Cal., 99 Cal. Rptr. 630, 635, 492 P.2d 686

Black's Law Dictionary, 5th Ed. "law of the case"

The "law of the case" is a shield, not a sword for wrongdoing, and the circuit court already declared the ejectment issue "moot" in its June 6, 2019 un-appealed Order. (R.O.A. page 49 [Order] That decision really is the "law of the case." In *Sloan II*, the taxpayer asked for an award of attorney's fees after compelling the Friends of the Hunley to hand over public documents. The Friends answered that they handed over the documents before the Court ruled and therefore the entire issue became moot, cutting off the Taxpayer's application for fees. As our Supreme Court said in *Sloan II*, ". . . the public body should not be able to preclude the prevailing party status to the citizen by producing the documents after litigation is filed." *Sloan II* at page 897. That same reasoning applies here: the Landlord is not entitled to prevent judicial review of ejectment or "preclude prevailing party status" by asserting the Landlord's destruction of Appellant's property is authorized by the "law of the case," when the destruction of Appellant's property did not arise until 2 years later and has never been litigated. The issue here is whether the circuit court did or did not properly dismiss Appellant's complaint on a 12(b)(6) motion, something also discussed by our Supreme Court in *Skydive* I. See *Skydive v. Horry County*, 426 S.C. 175, 86 S.E.2d 585 (2019), citing *Foman v. Davis*, 371 U.S. 178, 179, 182, 83 S.Ct. 227, 228, 230, 9 L.Ed.2d 222, 224, 226 (1962). The Court can take judicial knowledge of the companion appeal pending at 2019-001169 where the remaining issues from the 2017 Order are fully briefed and the Record on Appeal contains not only the entire trial in Magistrate's Court, but also the extraordinarily offensive May 26, 2017 Business License Revocation hearing.

REPLY ARGUMENTS

Reply to Argument 1A

Regardless of whether Harris Investment Investments, L.L.C. did or did not have the right to retake its premises using "self-help," it was not authorized to do so in breach of the peace or by destroying the Appellant's valuable commercial restaurant equipment.

The Respondent's arguments in Argument 1 and 1-A, pages 1-10 are demonstrably unavailing. Without citing a single case in a single jurisdiction at any time anywhere in the world, Respondent equates "retaking" possession and/or lawful, peaceable "self-help" with destroying the Appellant's valuable property. There is no need to burden the Court with a repetition of the full discussion of the facts and the law contained in Appellant's brief. Instead, the Appellant succinctly sets forth brief bullet points of the undisputed facts—drawn from the Complaint in the R.O.A. at page 53—and the undisputed law:

- At the time the Landlord bulldozed the building, it contained the Appellant's valuable commercial restaurant equipment, which the Landlord either intentionally or negligently destroyed. (R.O.A. page 55-56 [Complaint]
- At the time the Landlord bulldozed the building, the Appellant had possession of the building under an appeal bond order. (R.O.A. page 10 [Appeal Bond Order]
- At the time the Landlord bulldozed the building, the parties were in ongoing litigation over the Appellant's right to possession. (R.O.A. page 181 [Motion for injunction, companion Appeal at Appellate Tracking No. 2019-00169]
- At the time the Landlord bulldozed the building, it did not apply to the Court to dissolve the appeal bond Order.
- At the time the Landlord bulldozed the building, it was aware Appellant had pending an application for emergency injunction to prevent the Appellant from destroying the building. [R.O.A. page 181-183 [motion for injunction and supporting affidavit]

- At the time the Landlord bulldozed the building, it did not ask the Berkely County Sheriff's Department to put it in possession as required by South Carolina law, § 27-37-160, S. C. Code, ann.
- At the time the Landlord bulldozed the building, it made no effort to remove Appellant's valuable commercial restaurant equipment and either place it outside or in storage.
- At the time the Landlord bulldozed the building, it hired City of Hanahan Police Officers to lock Appellant out, or, in the alternative, Hanahan dispatched the officers to lock Appellant out. See Resp.'s Brief at page 3 and ¶ 12 complaint (R.O.A. page 55).
- South Carolina law does not allow a landlord to exercise self-help in retaking possession of a building unless it can be accomplished "without breach of the peace." *Barbee v. Winnsboro Granite Corp.*, 190 S.C. 245, 2 S.E.2d 737, 738 (1939), cited by Respondent on page 7 of its brief. This case holds:

> "As I understand it, the rule in this state is, where the tenancy had terminated, the landlord may enter upon and retake possession of the premises, and he commits no trespass upon the real estate in so doing, even if force is used in making such entry, and therefore, in such a case, he is not liable to a civil action for trespass. **If, however, the landlord, in making such entry, commits a trespass upon the person of the outgoing tenant, or upon his personal property, he may be liable to a civil action for such trespass.** But the simple removal of the tenant's personal property from the premises which had been rented, does not constitute a trespass, **unless it is effected by the use of unnecessary force, whereby such property is destroyed or injured**."
>
> . . .
>
> The evidence is uncontroverted that the [Landlord] took possession peaceably, and having gained entrance, **simply removed the [Tenant's] household effects from the premises, without injury to any of them, and carefully stored them.** (emphasis added)

If the Court grants oral argument on this case, the Respondent will have an opportunity to explain how maliciously destroying Appellant's property comports this well-settled law, but since Respondent offers no explanation in its Brief, any explanation will have to await oral argument because its brief does not explain how grinding the Appellant's property to dust comports with the caselaw or statutes of South Carolina or even with its admission before the circuit court. On pages

9 and 10 of its brief, Respondent asserts that "Although HIH denies that any restaurant equipment **belonging to Santos** was in the building when it was demolished, the allegation that equipment was demolished with the building would not establish a breach of the peace, particularly since HIH repeatedly directed Santos in writing to vacate and remove any belongings from the building after expiration of the Lease." (emphasis added) This facile assertion refutes itself. First, the Respondent cites *Barbee* as controlling authority, but as the above citation demonstrates, this case does not support Respondent's destruction. Second, the Respondent hedges with a sematic escape hatch from its logic in order to avoid making too direct of a misrepresentation to the Court. By inserting a qualifying phrase, "equipment belonging to Santos" in its otherwise demonstrably false statement, the Respondent hedges its bets by what it hopes creates plausible deniability where there is none. It is an odd strategy to mount a defense by suggesting: "The equipment I destroyed belonged to someone else." Third, the Appellant's complaint alleges that the equipment is hers, and that is all that is required to survive a motion to dismiss because the Court is required to accept her pleadings as true. R.O.A. pages 53-64 [complaint ¶ 12, 13, 24, 31, 38, 47, 48, 49 & 54] *Gressette v. South Carolina Elec. and Gas Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006) This is the overarching legal error below. The Respondent has not filed an Answer or any pleading casting doubt on Appellant's ownership, nor could it since the Appellant occupied the building **before Respondent purchased it**. See ¶ 6 of the Complaint: "In May 2014, the plaintiff entered into a lease with Francon, L.L.C. for the premises known as 5901 Loftis Road. In December, 2015, Francon, L.L.C. sold the property to the defendant, Harris Investment Holdings, L.L.C." R.O.A. page 54. At the demurrer, 12(b)(6), stage, Appellant's allegations are true, and therefore the equipment is hers and Respondent destroyed it. See R.O.A. page 54, ¶ 6 of the complaint. Moreover, as set forth above, the Respondent conceded to the court on June 3rd that Appellant

raised a jury issue as to the destruction of her property, R.O.A. page 174 [tr. page 9], and is judicially estopped from changing its legal position on appeal. The case Respondent relies upon to prop up its bogus position that destroying a Tenant's possessions is not a breach of peace says nothing of the sort. As quoted above on page 13, *Barbee v. Winnsboro Granite Corp.*, 190 S.C. 245, 2 S.E.2d 737, 738 (1939) is clear that a Landlord cannot destroy a Tenant's possessions and that a Landlord is liable to a Tenant for such damage to her personal property:

> . . . a conversion of the plaintiff's property, which has been defined as '[a]n unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another or the alteration of their condition or the exclusion of an owner's rights.' *Commercial Credit Co. v. Cook, et al.*, 165 S.C. 387, 164 S.E. 17, 19. Conversion is a tortious act and 'may arise either by a wrongful taking of the chattel or by some other illegal assumption of ownership, by illegally using or misusing it, or [244 S.C. 51] by wrongful detention.' *Young v. Corbitt Motor Truck Co.*, 148 S.C. 511, 146 S.E. 534, 542.
>
> *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964) (Court affirmed jury verdict for wrongful disposition of wrecked truck). See also *Owens v. Andrews Bank & Trust Company*, 265 S.C. 490, 220 S.E.2d 116 (1975) (Court affirmed verdict for Bank's misapplication of plaintiff's Christmas club account to Husband's outstanding debt.)

In closing, it is frivolous to suggest that a Landlord can destroy a Tenant's property because it alleges she is wrongfully holding over, and the General Assembly provides a remedy to tenants when landlords destroy property. § 27-37-140, S. C. Code, ann. It is worth repeating that the General Assembly requires put-outs to be accomplished by the Sheriff's Department and not the local police force. This restriction is pertinent here where the City of Hanahan has a documented history of persecuting the Appellant. See *Reyna d/b/a El Alamo Restaurant and Arelis Santos Gomez v. The City of Hanahan, Sgt. Travis Dodds, et. al.*, Case Number: 2017-CP-08-00177. (R.O.A. page 185) Since Respondent provides authority to the Court to take judicial notice of other actions, then the Court can take judicial knowledge of the 2017 civil rights violation action Appellant successfully prosecuted against the City of Hanahan arising out of this same dispute. It is shocking that the Respondent urges this Court to affirm a dismissal under Rule 12(b)(6) under

these undisputed facts and unequivocal principles of law because neither logic nor law leads to a conclusion that a Landlord can destroy a Tenant's possession without a breach of peace.

Reply to Argument 1B

The circuit court never explained why it was dismissing Plaintiff's complaint so it is futile to speculate about alleged deficiencies in pleadings when the court never identified deficiencies or provided Appellant an opportunity to amend to correct them if they exist.

The Respondent's argument here is also self-refuting absurdity, criticizing the Appellant for not being either a psychic or time traveler because she fails to address a legal analyses locked away in a solipsistic Court. As the transcript of the June 3, 2021, hearing before the circuit court demonstrates, the circuit court gave no indication of its ruling, a vacuum unfilled by the Court's June 14, 2021 Form Order. The transcript demonstrates the hearing was perfunctory; the entire transcript is 9.5 pages long. The Court gave no indication of either its analysis or decision. See R.O.A. pages 166-178 [tr. of hearing]:

THE COURT: All right. All right. I'll take it under advisement and put you on my expedited, end of the day.

MR. ABNEY: I just want to add—I mean, under the point about this already being litigated and now being on appeal, I want to point out that the only issue that is on appeal is whether my award of attorney's fees stands. The propriety of that eviction ejectment is not on appeal. That is the law of the case at this point.

THE COURT: And that's still on appeal?

MR. ABNEY: That is not on appeal.

THE COURT: Oh.

MR. ABNEY: The only case that's on appeal is whether or not the fees were appropriate.

THE COURT: All right.

MR. GOLDSTEIN: Well, I take issue with that. And what I'd suggest is we'll send you the briefs and you can see that ejectment is fully argued in the briefs, but I acknowledge that the court could no longer grant relief on ejectment because the building has been destroyed, rendering it moot. That's what my brief says.

THE COURT: All right. I'll let you know something by the end of the day.

R.O.A. pages 177-178 [tr. page 12, line 16—page 13, line 12] (The Supreme Court says the same thing in *Skydive Myrtle Beach, Inc. v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020), where the Supreme Court declared that an ejectment case was **not** moot because the tenant maintained a possibility of regaining possession by a favorable decision.)

Thereafter, 11 days later on June 14, 2021, the Court entered a Form 4 Order, giving no explanation of the basis for the ruling, leaving both the parties and the reviewing court to grope in the dark as to its reasoning. R.O.A. page 4 [Order] The Order dismissing the complaint says in its entirety: "This matter came before the Court as Defendant Harris Investment Holdings, LLC's Motion to Dismiss heard on June 3, 2021. Defendant Harris Investment Holdings, LLC's Motion to Dismiss is granted."

Because neither the colloquy with the Court nor the Order revealed the reasons for the decision as required by the *Rules of Civil Procedure*, on June 15, 2021, the Appellant filed a motion for reconsideration pointing out the obvious: the parties do not know why the case was dismissed. See R.O.A. page 148 for Appellant's June 15th Motion for Reconsideration, which is divided into these sections:

> The Order of Dismissal fails to set forth the reason the case is dismissed.
>
> The Order of Dismissal fails to state whether the Dismissal is with or without prejudice.
>
> The Order of Dismissal fails to apply the correct standard of review on a demurrer/12(b)(6) motion to dismiss.
>
> The Order fails to provide minimal due process by failing to explain the reasons for dismissal.
>
> The Order fails to provide a means of judicial review by depriving the appellate courts of the means to understand the decision being reviewed.

Thus, Appellant presented her "issues and arguments to the lower court" in full. In response to this Motion for Reconsideration, the Respondent e-filed an unsolicited proposed Order on June 28, 2021, to which the Appellant immediately objected. See Correspondence to the Court dated June 28, 2021 in the Record on Appeal at page 163. This June 28th letter to the presiding judge says:

On June 15, 2021, I filed a motion for reconsideration, and I requested a hearing, in the above referenced case. (See enclosed cover letter.) On June 28, 2021, opposing counsel e-filed an unsolicited proposed Order without providing a copy to me. (After calling this omission to his attention, his legal assistant provided a copy. When I consulted with counsel about this oversight, he took the position that by e-filing it, he provided a copy to me. This is not correct. E-filing a proposed Order does not make it visible to opposing counsel.) After I received the Order, I see that it is not only inaccurate, but also purports to dismiss, with prejudice, the case, including my motion for reconsideration that has not yet been scheduled or heard. I consulted with opposing counsel and aske him to withdraw the proposed Order on numerous grounds, which he declined to do. Therefore, I am respectfully asking that your Honor not sign the proposed Order until such time as I am permitted an opportunity to be heard and make a full and fair record.

On June 29, 2021, the Court might or might not have adopted the Respondent's unsolicited proposed Order without changes (and without affording the Appellant an opportunity to be heard), but the record is unclear because the docket sheet (R.O.A. page 1) reflects it as signed and filed on June 29th and rejected seven days later on July 6th. The record is not clear because on July 6, 2021, the Court filed a notice stating the Court rejected the Order. The official docket entry says: "Decline to Sign Order/Dismissal." See R.O.A. page 1 [clerk of court docket sheet] Because South Carolina does not allow successive motions for reconsideration, Appellant had no choice but to file a Notice of Appeal on July 15, 2021, even though the record below is not clear as to the trial court's intention or decision:

In *Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999), the Court of Appeals held that a successive Rule 59(e), SCRCP, motion, following the denial of a similar motion, did not toll the time for filing the appeal, where the court's ruling on the first such motion did not change its ruling at trial.

. . .

We find that I Corp.'s second motion literally recites the arguments previously raised and previously ruled upon by the trial court in I Corp.'s first motion. The second motion was not, despite its caption, an appropriate Rule 59(e) motion. It was simply a successive motion for JNOV and new trial, and thus did not toll the time for serving the notice of appeal. I Corp. did not serve its notice of intent to appeal within the time prescribed in Rule 203, SCACR. We therefore dismiss the appeal as untimely. See *Mars v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) (timely service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.)

Quality Trailer Products, Inc. v. CSL Equip. Co., Inc., 349 S.C. 216, 562 S.E.2d 615 (2002)

Unfortunately, the record below is ambiguous because the July 6th "Decline to Sign" filing throws doubt on whether the trial court did or did not intend to sign Respondent's June 28, 2021, unsolicited proposed Order. However under *Christy v. Christy*, 354 S.C. 203, 580 S.E.2d 444 (2003) and the well-established case law of South Carolina, once the trial judge signed and filed the June 29th Order of Dismissal, he lost the ability to change it and foreclosed Appellant from filing a successive Motion for Reconsideration. When the trial court signed and filed Respondent's unsolicited proposed Order on June 29, 2021, that filing started the Appellant's 30-day clock ticking, and Appellant did not have the luxury of either debating what the "Decline to Sign" notation meant or revive the first motion for reconsideration by filing a successive Rule 59(e) motion to clarify it. Under *Christy*, South Carolina law is clear that once a judge has signed an Order and delivered to the Clerk for filing, she loses the ability to change the Order, and if the trial court ruled that the second motion for reconsideration to be successive, Appellant would forfeit her appeal rights. Because the trial Court did not communicate with the parties, a dilemma that would have been avoided by granting the Appellant a hearing on her motion for reconsideration, Appellant found herself sailing the procedural sea between Scylla and Charybdis, forcing her to elect between either filing a successive Rule 59(e) motion, which is not allowed, or filing a Notice of Appeal. South Carolina law demonstrates Appellant charted the correct course by filing her Notice of Appeal on July 15, 2021, and the matter is properly before the Court.

Because the matter is properly before this Court, Appellant replies to the Respondent's most facile argument; to wit, that the Appellant has failed to preserve her arguments in the lower court!

Respondent inverts the well-established procedure governing motions to dismiss, and that inversion includes ignoring the requirement of Rule 52 *South Carolina Rules of Civil Procedure*

and the well-established case law summarized in *Spence v. Spence*, 368 S.C. 106, 628 S.E. 869 (2006). "Rule 41(b), SCRCP, applies to cases tried without a jury. The rule requires the judge, as trier of fact, to make specific findings as provided in Rule 52(a), SCRCP, when the judge renders judgment on the merits against the plaintiff." *Quality Trailer Products, Inc.* footnote 2. It is unnecessary to burden this Court with a repetition of the case law and other authority fully discussed in Appellant's Brief at pages 14-20, so it is sufficient to repeat succinctly the well-established procedure in South Carolina governing a Motion to Dismiss. If the Appellant's initial pleadings lacked sufficient specificity, then the Court is required to grant leave and an opportunity to the Plaintiff to refile to correct pleading deficiencies. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019) Thus, Respondent's parsing of Appellant's complaint at pages 11-18 of its brief requires no detailed reply because no one knows if putative pleading deficiencies were the basis for the dismissal, and if there are pleading deficiencies, the Appellant is afforded an opportunity to correct them. This has been the law in South Carolina for over a hundred years, reaching back to the ancient pleading of demurrer, which is exactly what the Appellant told the trial court:

> MR. GOLDSTEIN: I'll be very brief. We're here on a motion to dismiss under Rule 12(b)(6). I have cited the applicable standard under the *Spence* case, citing all sorts of things. [See R.O.A. page 142 for Appellant's May 27, 2021, memorandum to the trial court] If there are any deficiencies in my complaint, the Court can point them out and identify them, and I'll be happy to file an amended complaint to conform to any deficiencies in the pleading.
>
> So, unless you have other questions, that's it. I didn't come here to argue the case today. We're here on a motion to dismiss.
>
> R.O.A. page 176 [tr. page 11, lines 9-17]

Because the trial court never explained **why** it was dismissing the complaint in either the June 3rd colloquy with the Court or in the subsequent Orders, neither the parties nor this Court know the reason or if it were dismissing it with or without prejudice. It is thus a fruitless exercise to debate the Respondent's discussion of pleading deficiencies because Respondent merely

speculates such deficiencies are the trial court's reasons for dismissal. It is, therefore, a waste of time to analyze in detail the pleadings for putative deficiencies when there is no finding that they are deficient and/or that such deficiencies are the basis of the trial court's dismissal. For example, Respondent alleges on page 12 of its brief that "South Carolina does not recognize a cause of action for 'tortuous interference with business relations." In 1990, the South Carolina Supreme Court handed down *Crandall Corporation v. Navistar International Transportation Corp.*, 302 S.C. 265, 395 S.E.2d 179 (1990), reversing a summary judgment, holding: "To recover on a cause of action for intentional interference with prospective contractual relations, we hold the plaintiff must prove: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff." Destroying the plaintiff's commercial restaurant equipment meets these three, and to pick apart plaintiff's complaint from pages 11-18 of Respondent's brief is an exercise in futility when there is no indication such deficiencies form the basis of the decision below and where the plaintiff is afforded an opportunity to re-plead to correct them. It is worthwhile correcting Respondent's incorrect assertion that plaintiff cannot assert a valid claim for attorney's fees under § 15-77-300, S. C. Code, ann. (Respondent's brief ppgs. 17-18) is not supported by law. The U. S. Supreme Court held in *Dennis v. Sparks*, 449 U.S. 24 (1980):

> As the Court of Appeals correctly understood our cases to hold, to act "under color of" state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting "under color" of law for purposes of § 1983 actions. *Adickes* v. *S. H. Kress Co.*, 398 U.S. 144, 152 (1970); *United States* v. *Price*, 383 U.S. 787, 794 (1966)

Here there is nothing on which the reviewing court can analyze the basis for the decision below, or as said by this Court in 2016: "In short, there is no "ample record for this court to

conduct meaningful appellate review of the circuit court's [Order of Dismissal]." *Easterling v. Burger King Corp*., 416 SC 437, 786 S.E.2d 443 (Ct. App. 2016) (discussed more fully below) No one knows whether the trial court dismissed the complaint because it found the pleadings deficient or because it thought *res judicata* or collateral estoppel applied, or whether the case was stayed by the companion appeal, or for some other solipsistic reason. The fact is: we are all left to grope in the dark. Therefore, it is unnecessary to waste limited judicial resources to address such frivolous arguments as the Appellant failed to preserve her arguments before the trial court when the trial court's reasoning remains speculative.

Despite stating that it is a waste of this Court's time to address alleged deficiencies in pleadings in light of the demurrer standard and where the trial court never identified putative deficiencies as the reason for dismissal and because the Appellant is entitled to replead to correct alleged deficiencies, one of Respondent's arguments is so egregious as to call for a brief reply—not because it represents a meaningful or substantive argument—but rather because it illuminates the willful blindness of Harris Investment Holdings, L.L.C. On page 14 and 15 of Respondent's brief, Harris Investment Holdings argues that its 2016 ejectment cannot be the basis of the Appellant's claimed "outrageous conduct." How Harris Investment Holdings pretends to miss the point of Appellant's pleadings is a mystery. Even though Harris Investment Holdings L.L.C. and the City of Hanahan teamed up to mount a racially motivated persecution of Appellant—for which the City of Hanahan has once been held responsible (R.O.A. page 186 [amended complaint 2017-CP-08-0177])—the present action is necessarily different from both the 2016 ejectment and the 2017 civil rights cases because time is linear. The present action arises from Respondent's March, 2019, willful (or reckless) destruction of the Appellant's property, including the Respondent's continuous harassment of the Appellant in the run-up to destroying her property. It is impossible

to guess what actions might qualify as "extreme or outrageous" in the Harris Investments Holdings' dictionary, but under a jury charge of "extreme" or "outrageous," destroying someone else's property meets the definition, and in South Carolina such destruction is known as trespass to chattels or conversion. Here, the Appellant plead it, and at the 12(b)(6) stage, that is all that is necessary. As set forth fully in Appellant's brief at pages 27-29, citing *Spence* and other authority, the most the trial court is authorized to do at this stage is identify putative deficiencies and provide the plaintiff an opportunity to correct them. *Skydive Myrtle Beach v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019): "Any plaintiff is . . . entitled to accept the court's ruling . . . the original complaint was deficient, and replead in an attempt to fix the deficiencies." Arguing over whether the plaintiff's pleadings are sufficient to go to a jury is not only premature (and at variance with Respondent's statement to the Court on June 3rd), but also ignores the pleading requirements of Rule 8 of the *South Carolina Rules of Civil Procedure*. Whatever pleading deficiencies the Respondent believes exist is not the issue here. The issue here is that neither the parties nor the reviewing court have any understanding of why the circuit court dismissed the plaintiff's complaint, and it is a waste of time to speculate that pleading deficiencies might have been the reason.

Reply to Argument 2

Rule 52 *South Carolina Rules of Civil Procedure* requires a trial court to explain the reason for dismissing a case.

Ludwig Wittgenstein famously wrote in his *Tractatus*: "Whereof one cannot speak, thereof one must be silent." Proposition Seven, *Tractatus Logico-Philosophicus* According to Wittgenstein, the "problems" in philosophy and logic result from imprecise language, and imprecise language leads to fruitless cul-de-sacs. Rather than be trapped, Wittgenstein thought the proper course is to be silent. Appellate lawyers do not enjoy that luxury.

Respondent creates a logical cul-de-sac in its Argument 2. Citing *Easterling v. Burger King Corporation*, 416 S.C. 437, 786 S.E.2d 443 (Ct. App. 2016), Respondent argues that the circuit court did not err in dismissing this case on a motion to dismiss without stating the reasons because there is an "ample record" from which the reviewing court can draw its own conclusions. First, the Respondent is simply wrong about Rule 52 not applying to an Order dismissing a case. As set forth in Appellant's brief at pages 14-20, the rule specifically requires findings by the trial court if the case is being dismissed because it amounts to a decision on the merits: "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion **except as provided in Rule 41(b)**." Rule 41(b) is the rule that allows courts to end cases on involuntary non-suits, **which is a decision on the merits**. "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, **operates as an adjudication upon the merits.**" (emphasis added) The Respondent asks this Court to ignore the rule, which it cannot do.

More importantly, *Easterling* is the right case in this situation, but not for the Respondent, and it is surprising Respondent relies on it. In *Easterling*, the plaintiff brought a negligence action against Burger King when a motorist in the drive-thru attacked another customer ahead of him in line. The trial court granted summary judgment to Burger King because the discovery in the case demonstrated that the random, criminal attack occurred outside Burger King over the course of a few minutes, and no one inside the store had any indication that the plaintiff was in danger, and the discovery in the case did not reveal that Burger King created or contributed to an unreasonable risk to the plaintiff. This Court affirmed the dismissal on a Form 4 Order because

. . . the parties provided an **ample record** for this court to conduct meaningful appellate review of the circuit court's grant of summary judgment and rule upon the merits of this case. See *Woodson*, 406 S.C. at 527, 753 S.E.2d at 433 noting appellate courts apply the same standard as the circuit count under Rule 56c), SCRCP, and finding the court of appeals had a "sufficient record before it to permit meaningful appellate review and make a decision on the merits"); *Porter v. Labor Depot*, 372 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007 (stating "not all situations require a detailed order, and the [circuit] court's form order may be sufficient **if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal**"). (emphasis added)

Because this case is not a dismissal on summary judgment, which can only be granted after the plaintiff is provided a "full and fair opportunity to complete discovery," *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001), and because this record does not contain "an ample record for this court to conduct meaningful appellate review," the case must be reversed. See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2020): "Skydive was—any plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim." There is not a *scintilla* of explanation in this case as to the circuit court's reasons for granting a motion to dismiss, and therefore, either this Court must make an independent determination under the *Spence* standard and based on its own application of the law to the facts as they are alleged in the plaintiff's complaint, or remand the case to the circuit court with instructions to state the reasons the case is dismissed. Of course, under the *Spence* standard, it is much more judicially economical if this Court identifies whatever defects, if any, exist and remands the case back to the circuit court with leave to amend. See *Skydive, ibid*.

Reply to Argument 3

Neither the parties nor this Court can discern why the circuit court dismissed the case.

Respondent's third argument is textbook begging the question. First, the plaintiff need not allege any additional facts to make out proper claims against the defendant. The complaint alleges

defendant either intentionally or recklessly destroyed the plaintiff's valuable, commercial restaurant equipment in March of 2019, and the plaintiff brought suit for this wanton destruction. The destruction of her valuable property gives rise to a cause of action, and it is immaterial what label the plaintiff puts on it. See § 27-37-140, S. C. Code, ann.: "In case any tenant is wrongfully disposed he may have an action for damages against the landlord." It is a waste of limited judicial resources to ask a reviewing court to address each objection to the plaintiff's pleadings when there is not a *scintilla* of evidence that pleading deficiencies formed the basis of the dismissal below and where the Appellant is afforded the right to amend to correct pleading deficiencies. *Spence, ibid, Skydive, ibid*. This record does not provide an understanding of why the trial court dismissed the case, and it is not Respondent's prerogative to parse the plaintiff's pleadings on appeal when the circuit court gave no indication that pleading deficiencies were the basis for its decision. (Of course if the pleadings are deficient—and Appellant asserts they are not—it is more economical for the reviewing court to identify them and remand the case with instructions to allow Appellant to replead to address them in keeping with the directives of *Spence* and *Skydive*.) In accordance with Rule 8 of the *South Carolina Rules of Civil Procedure*, the plaintiff is only required to provide a short and plain statement of the facts and the claim for relief, and under the *Spence* standard, if the circuit court dismissed for pleading deficiencies, the plaintiff is afforded an opportunity to amend them. Here, no one has any idea why the circuit court dismissed the case, and for that reason Appellant declines the tacit invitation to analyze her pleadings for potential deficiencies that may or may not have been the basis for the decision below.

Second, and here is the logical fallacy of begging the question: Respondent **assumes** the trial court dismissed the plaintiff's complaint for a pleading deficiency, even though there is nothing in the record to support this assumption. As the entire transcript in the Record on Appeal,

pages 168-178 demonstrates, the fleeting appearance before the Court on June 3, 2021, does not provide any insight as to why the trial judge dismissed the case. The best that can be said for this record is that it might suggest that the trial court might have concluded that the case then pending was somehow foreclosed by the companion case already on appeal even though Respondent conceded Appellant is entitled to a jury trial on the issue of the destruction of her property. Because the record is a vacuum, the Respondent commits the logical fallacy of assuming the truth of what he sets out to prove and then relies upon his belief in his truth of his assertion as the authority for its position. By arguing Appellant failed to set out "new facts" to support her Rule 59 motion for reconsideration, Respondent begs the question, without a shred of supporting evidence, that a lack of "new facts" was the basis for the dismissal, which, when examined, turns out to be nothing more than Respondent's unsupported, circular assertion.

Reply to Augment 4

When the circuit court withheld the basis for its decision from the parties, it prevents the Appellant from having access to judicial review, which is a denial of procedural due process.

The Respondent concedes that procedural due process requires that the Appellant be afforded an opportunity to be heard in a "meaningful" manner. The right of judicial review is part of being heard in a meaningful manner.

> No person shall be finally bound by judicial . . . decision . . . affecting private rights except on due notice and an opportunity to be heard; . . . nor shall he be deprived of . . . property unless by mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. Article I, § 22, South Carolina Constitution

The Respondent, again, grounds its entire argument on what it tacitly asserts is an "ample record," citing *Easterling*, sufficient to provide judicial review and its continued incorrect assertion that Rule 52 does not apply to an Order ending a case. As demonstrated in Appellant's Brief and

above, the Respondent's reading of Rule 52 is incorrect. Nowhere is this clearer than in the Respondent's astonishing reliance on *Kinghorn v. Sakakini*, 426 S.C. 147, 825 S.E.2d 748 (Ct. App. 2019), a case that stands for the legal proposition precisely opposite of Respondent's assertion. On page 24 of its brief, Respondent asserts that *Kinghorn* allows a trial court to dismiss a case on a Form 4 Order. Respondent must not have read the case: "Thus, pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decision on motions to dismiss, summary judgment motions, or any other motion e**xcept those dealing with involuntary dismissal**." (emphasis added) The present case, obviously, is "dealing with involuntary dismissal." If Respondent's misreading of *Kinghorn*'s holding were not sufficiently erroneous, it compounds its error by ignoring the facts presented in that case. In that case, the decision involved a motion to enforce a written settlement agreement reached in mediation and signed by both parties, a fact pattern that makes *Kinghorn* even more inapposite.

Because the circuit court applied the wrong standard of review, remained silent about its reasoning, even after being requested to disclose the reasons for the involuntary dismissal, it deprived the Appellant of fundamental procedural due process by closing off her path to meaningful judicial review by failing to provide anything for the appellate court to evaluate. This was legal error, and this legal error severely prejudices the Appellant.

Conclusion

For reasons set forth in the Appellant's brief and above, either this Court must dispose of the 12(b)(6) motion on its merits exercising its discretion to review the record and reach the merits of the dismissal, or it must remand the case to the circuit court with instructions to explain why the case is dismissed. To promote judicial economy, Appellant hopes this Court exercises its prerogative to apply the circuit court's standard of review on a motion to dismiss and state whether

the case should be dismissed for some reason, and if it should be dismissed for pleading deficiencies, then set the time period for Plaintiff to file amended pleadings. If this Court should decide that dismissal without prejudice is proper to address pleading deficiencies, then the law requires that the Appellant be afforded an opportunity to replead the case to correct whatever deficiency the Court identifies. Clearly the circuit court failed to apply the correct standard of review which requires the Court to reach a decision solely within the four corners of the complaint with the understanding that everything set forth is true. However the Respondent attempts to characterize its destruction of the Appellant's valuable restaurant equipment, its decision to destroy it, whether intentional or negligent, gives rise to causes of action for damages, and the Appellant has set forth viable causes of action. See § 27-37-140, 160, S. C. Code, ann. As stated in Appellant's Brief, this appeal from a 12(b)(6) dismissal should not be before this Court. The circuit court failed to fulfill its responsibilities to adjudicate a serious case as required by the *Rules of Civil Procedure*. Rule 1 of the *South Carolina Rules of Civil Procedure* says the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." The circuit court failed to do this. See *Spence v. Spence*, 368 S. C. 106, 628 S.E.2d 869 (2006)

The procedural vacuum created in this case benefits no one, and unnecessarily burdens this Court with having to correct something that should not require the Appellate Court's attention. The orders under review are controlled by palpable errors of law, this Court should either decide the Motion to Dismiss on its own under the proper standard, or it should remand the case to require the circuit court to explain why it is issuing an involuntary nonsuit on a motion to dismiss.

As set forth above, the trial judge erroneously granted Respondent's motion to dismiss, and even if a motion to dismiss properly lay, the trial court compounded its error by failing to identify the alleged deficiency or provide Appellant an opportunity to correct it. If there were a summary

judgment procedure in the appellate courts, this would be the case for it. It is not fair to the Appellant to incur the expense and delay associated with an appeal of a decision so obviously erroneous. It is also not fair to the Appellate Court to be burdened with taking up an appeal of a decision so blatantly erroneous. Appellant alleges serious and severe intentional or grossly reckless torts, one of which even the Respondent concedes is for a jury to determine, and South Carolina law is devoid of a case allowing a landlord to retake possession of a disputed leasehold by driving a bulldozer over it in the face of pending litigation and destroying the Appellant's valuable restaurant equipment. The arrogance of Harris Investment Holdings, L.L.C. is unparalleled in the case law of South Carolina.

This Court should remand this case to the circuit court and entertain a motion for enhanced fees under Rule 222(b) *South Carolina Appellate Court Rules* at the appropriate time for Harris Investment Holdings' unconscionable conduct because its willful destruction of Appellant's property represents "the most extraordinary of circumstances."

Respectfully submitted,

July 25, 2022

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CERTIFICATION

I certify that that this Final Reply Brief complies with Rule 211(b) *South Carolina Appellate Court Rules*.

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