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**Oct 03 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

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Appellant Case No. 2022-001216

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KATKAMS VENTURES, LLC, and  
SUPREMA, LLC, as successors in  
interest to 521, LLC,

Respondents,

v.

NO LIMIT, LLC d/b/a No Limit  
Financial, LLC, and Erich Simpson,

Appellants.

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RETURN TO PETITION

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**TABLE OF CONTENTS**

Table of Authorities ..... iii

QUESTION PRESENTED FOR REVIEW ..... 1

Statement of Case .....1

Argument

    1.    THE APPELLANTS ARE NOT ENTITLED TO FUTURE RENTAL  
          DAMAGES REDUCED TO PRESENT VALUE.....2

Conclusion .....5

Certificate of Service .....6

**TABLE OF AUTHORITIES**

**CASES**

**SUPREME COURT OF SOUTH CAROLINA**

E & S Investment Corp. v. Richland Bowl, Inc., 264 S.C. 582, 216 S.E.2d (1975).....3

Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927) .....3

U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956).....4

**SOUTH CAROLINA COURT OF APPEALS**

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 772 S.E.2d 882 (2015) .....2, 4

**QUESTION PRESENTED FOR REVIEW**

1. WHETHER A NOVEL QUESTION OF LAW EXISTS, ENTITLING THE APPELLANTS TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

**STATEMENT OF CASE**

On March 12, 2018, Respondents filed a Summons and Complaint. On April 28, 2018, Appellants filed an Answer to Respondents' Complaint. On November 12, 2018, Respondents filed a Motion for Summary Judgment. On November 14, 2018, the parties executed a Stipulation to Substitution of Parties, subsequently, an Order was entered on February 8, 2019. On January 28, 2019, Respondents' Motion for Summary Judgment was heard by Honorable Brian Gibbons, Circuit Court Judge. On February 8, 2019, the Court entered a judgment granting the Respondents' Motion for Summary Judgment. On February 18, 2019, Appellants filed a Motion to Alter or Amend Judgment. On February 18, 2019, Appellants filed a Motion to Reconsider, and on June 25, 2019, the Court denied Appellants' Motion to Reconsider. On July 2, 2019, Appellants filed a Notice of Appeal to the South Carolina Court of Appeals. On May 18, 2022, the South Carolina Court of Appeals unanimously affirmed the circuit court order granting summary judgment to Respondents. On June 2, 2022, Appellants filed a Petition for Rehearing En Banc. On August 1, 2022, the South Carolina Court of Appeals denied Appellants' Petition for rehearing. On August 31, 2022, Appellants filed a petition for writ of certiorari to this Court.

**ARGUMENT**

1. WHETHER A NOVEL QUESTION OF LAW EXISTS, ENTITLING THE APPELLANTS TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

The Appellants are not entitled to future rental damages reduced to the present value, as the Appellants had a contractual liability under the lease to make rental payments as stipulated and established by the Lease Agreement, and no novel question of law exists where there is any special or important reason for this Court to hear this matter. In addition, no dissent opinion was filed with the South Carolina Court of Appeals, no conflict exists with the Court of Appeals and Supreme Court, no substantial constitutional issues are directly involved, no federal question is included, and the decision of the Court of Appeals does not conflict with a decision of the United States Supreme Court.

The South Carolina Court of Appeals has previously held that,

Although the landlord-tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rest for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages.

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 568, 772 S.E.2d 882, 890 (2015).

The Appellants in this matter abandoned the property in or around June 2017 and defaulted on the monthly rental payment due on July 1, 2017. The Appellants' abandonment of the property constituted a termination of the Lease Agreement but did not discharge the Appellants from their

duty to make rental payments pursuant to the Lease Agreement. Appellants admitted to the terms of the Lease Agreement and the breach of the Lease Agreement. Moreover, the Appellants' have failed to raise any issues regarding the Respondents' mitigation efforts. The value of all rental periods under the Lease Agreement were calculated, communicated, and agreed to by the parties. The future rental damages cannot be reduced to the present value, as the value was specifically and contractually preestablished by the parties and is a stipulated amount calculated by parties as damages at the time the lease commenced.

Although the Respondents mitigated their damages through the establishment of a new lease agreement, this does not relieve the Appellants of their obligation under the Lease Agreement for the stipulated rental payments. The Supreme Court of South Carolina in E & S Investment Corp. v. Richland Bowl, Inc. stated that "Damages are to be the difference between the rent under the old lease and the amount realized under the new lease. The crucial word is *realized*. We must place a construction upon it as is reasonable, considering the damages clause of the lease in its entirety." E & S Investment Corp. v. Richland Bowl, Inc., 264 S.C. 582, 591, 216 S.E.2d 522, 526 (1975) (emphasis added). The South Carolina Supreme Court has given further weight to the Respondent's entitlement to the full amount of future damages, albeit through factually distinguishable, but no less noteworthy, case law precedent. "The termination of a lease agreement does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, *unless the lease shall provide that*, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations." Simon v. Kirkpatrick, 141 S.C. 251, 262, 139 S.E. 614, 618 (1927) (emphasis added). The Court in Simon clearly stated that the tenant would be responsible at the termination of the lease for future rent as damages if the lease so provided. The Court in Bluffton, upon examining Simon, and

later expanding on the opinion, stated: “[W]e hold that Simon remains valid law.” Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 565, 772 S.E.2d 882, 888 (2015). Bluffton establishes a bright-line rule of law for a tenant’s obligation for future damages following a termination, and is factually similar to the present matter, as the Lease Agreement (R. pp. 22-34) between the two parties provides the Respondents the opportunity to pursue future damages.

The Supreme Court of South Carolina in U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956) which is often referenced in conjunction with Simon, and is factually distinguishable from the present case, but nonetheless establishes **the importance of the contractual intentions between parties of a lease agreement**, and the rights of the landlord to pursue its contractual remedies for damages which have clearly survived said termination. In the present matter, Section 20 of the Lease Agreement states:

Landlord may relet the premise or a portion of the premises for any reasonable use, and Landlord shall be entitled to recover from Tenant an amount equal to the amount of all rents reserved under this Lease, less the net rent, if any, collected by the Landlord on reletting the Demised Premises.

R. p. 28.

By examining the lease, the parties have contractually agreed to be bound by the stipulations of the Lease Agreement, the terms of which were contemplated by the parties prior to execution and commencement. The Lease Agreement provides a clear and unambiguous calculation of rental payments due, and further allows for the Respondents to recover stipulated rental payments as a result of the Appellants’ default, less the net rent collected upon reletting. Based on South Carolina law, the Respondents are entitled to the calculation of damages as set forth in Bluffton, and as properly applied by the court of common pleas.

The Appellants, while offering a persuasive argument for a reduction of the future rent

damages value, have failed to offer any controlling authority that outweighs the contractual agreement between the parties. Their argument for a reduction to present value fails because it is attempting to unilaterally redefine fixed terms of the Lease Agreement and limits the Respondents' ability to recover as established by legal precedents. The Appellants, therefore, are not entitled to a reduction in the value of the future rental damages and the writ of certiorari shall be denied.

### CONCLUSION

For the reasons stated, this Court should deny Appellants writ of certiorari and the South Court of Appeals' opinion shall be affirmed, as stated.

Respectfully submitted,

September 30, 2022

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NO LIMIT, LLC d/b/a No Limit  
Financial, LLC, and Erich Simpson, Appellants.

CERTIFICATE OF SERVICE

I certify that I have served the Return for Petition, September 30, 2022, on the following counsel or persons of record, by depositing the same with the United States mail, with sufficient first class postage attached, properly address to the Clerk of Court for the South Carolina Court of Appeals, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below, pursuant to Rule 262(b) of the South Carolina Appellate Court Rules:

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September 30, 2022

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