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**Jan 13 2023**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
The Honorable Edgar W. Dickson, Circuit Court Judge

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Case No. 2018-CP-38-01339  
Appellate Case No. 2020-000451

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Rufus Rivers and Merle Rivers

Appellants

VS.

James Smith, Jr.

Respondent

**APPELLANTS' REPLY TO RESPONDENT'S FINAL BRIEF**

JANUARY 12, 2023



RUFUS RIVERS  
Appellant



MERLE RIVERS  
Appellant

JANUARY 12, 2023

## STATEMENT OF CASE

Respondent Smith allegedly owns property at 1429 Legrand Smoak Street Cordova, South Carolina. Jessie Mae Smith, now deceased intestate as of June 2016, granted Appellants possession of the property about September, 2009 with no conditions or rent. Respondent Smith executed a power-of-attorney and transferred the property to himself (self-dealing). Appellants always contended that Mr. Smith was not a valid owner of the property. (R.p. 10-20) Summons and Complaint with expedited Motion for injunctive relief filed August 6, 2018. (R.p. 45) documents were served on Mr. Smith via certified mail on August 14, 2018. (R.p. 50-51) Respondent filed Application for Ejectment and Rule to Vacate or Show Cause on August 20, 2018 and served on Appellants on August 23, 2018. Respondent shows that those same documents were filed on August 8, 2018, which is irrelevant.

The magistrate ruled in favor of Plaintiff/Respondent while lacking subject matter jurisdiction and there (see Appendix: Judicial Branch's elements of landlord-tenant problems) was no finding of fact that a landlord-tenant relationship exist. Pursuant to South Carolina Code Of Laws 22-3-20, "no magistrate shall have cognizance of any civil case when title to real property shall come in to question". (R.p. 52-53) Pursuant to South Carolina Code Of Laws 22-3-1110, Appellants/Defendants presented the court and counsel for the Defendant/Respondent with their answer and reply showing that the title to real property was in question. "...defendants either with or without other matter of defense, set forth in their answer any matter showing that such title will come in to question. Such answer shall be in writing, signed by the defendant... and delivered to the magistrate". (R.p. 10-20) Appellants'/Defendants' Summons and Complaint were also provided. The magistrate failed to accept and enter the documents in to the record along with refusing Appellants'/Defendants' offer of Bond of Undertaking which only needed an amount to be set by the magistrate and Appellants'/Defendants' agent was prepared to come and execute. Appellants/Defendants were forced into a position where they had to accept the Bond to Stay Ejectment ordered by the magistrate.

Appellants never paid rent because there was never any agreement to pay rents between Appellants and Respondent. Respondent through his counsel told the magistrate Appellants were tenant-at-will which does not create a landlord-tenant relationship. On the day of the bond hearing on 11-2-2018, Respondent's counsel approached Appellants with a rental market analysis that was used by the magistrate to determine the rent amount of \$700.00.

## **STANDARD OF REVIEW**

The Court Of Appeals reviews lower court decisions on questions of law and questions of fact. When the Court finds that an error of law has occurred, it should reverse the lower court's decision.

## **ARGUMENT**

### **I. THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION**

Pursuant to South Carolina Code of Laws 22-3-20 “no magistrate shall have cognizance...” and South Carolina Code Of Laws 1110 “when title to real property shall come in to question in an action brought in a court of a magistrate...” (R.p. 52-53) Appellants Reply and Answer in the magistrate's court barred the magistrate from proceeding with the eviction process. Repondent's assertion that Appellants Summons and Complaint had no affect on the magistrate court's jurisdiction and South Carolina Code Of Laws 22-3-20 does not apply to evictions is incorrect because it is laid out under magistrates jurisdiction, procedures and the absence of a landlord-tenant relationship is front and center. Appellants never stated they held title to the property, but emphasized that Appellants were granted possession by Jessie Mae Smith, now deceased and died intestate. At no time has the Respondent denied the agreement between Appellants and Jessie Mae Smith. The possession of the property was a gift to Appellants from Jessie Mae Smith At no time has Respondent denied there was an agreement between Appellants and Jessie Mae Smith with the promise that Appellants could live

and maintain the property as their own indefinitely without interference. Appellants continuing to reside at the property is simply performance and keeping with the promise of Jessie Mae Smith. Appellants' claims in circuit court were never fully adjudicated, but dismissed after Respondent filed for dismissal out of time. Appellants had requested a jury trial but was somehow awarded a bench trial simultaneously with a motion to dismiss filed out of time. In response to Respondent's counsel regarding re-litigating this matter as being futile and a waste of Judicial resources, "Due Process" is never futile and a waste judicial resources.

## **II. NO LANDLORD-TENANT RELATIONSHIP EXISTED**

Respondent's counsel states that Appellants never provided any argument that they were not tenants, Appellants never argued they were tenants. The issue of landlord-tenant relationship was never adequately addressed. The magistrate's decision was simply upheld. Respondent's definition of "landlord, owner and tenant does not determine a landlord-tenant relationship. Respondent's definition of "tenant" sums it up, "all agreements written or oral. "Tenant-at-will" is when a term of tenancy has ended or terminated, hence, there had to have been some form of agreement at some point that could be ended by either party. Tenant-at-will does not create a landlord-tenant relationship. (R.p. 50-51) Application for Ejectment and Rule To Vacate or Show Cause does not reflect any agreement or rental payment amount.

Respondent does possess an invalid quitclaim deed and at the time of the eviction hearing a challenge to the validity of that title was in process and barred the magistrate from adjudicating the case at the time she did rule. Even if the Master-in-Equity later dismissed the matter doesn't prove that the title is valid. "Due Process" was hindered by the magistrate holding her foot on Appellants' necks while the Master-in-equity scenario played out, placing undue stress on Appellants.

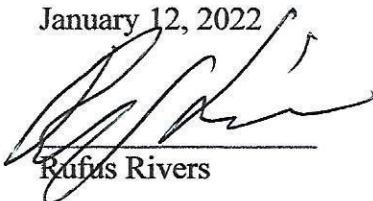
### III. APPELLANTS ARE ENTITLED TO FUNDS HELD IN ESCROW

Appellants have paid money into escrow as supersedeas, however, the magistrate and Respondent held a motion hearing on October 26, 2021, which was to have been a follow-up hearing from August 25, 2021 (see Appendix A) summons, where Plaintiff unilaterally dismissed the matter. (see Appendix B) there was only one writ of ejectment attempt which was remedied by filing of Appellants' appeal with the Court of Appeals. After the magistrate's office began refusing to accept payments, (See Appendix C) affidavit. Appellants were summoned to the magistrate's court with a summons for motion to vacate and no details. (See Appendix A) Summons. When Appellants arrived at court a discussion was held for remedying past due payments that the court had been refusing to accept, but accused Appellants refusing to pay during the pandemic. (See Appendix D) CDC Certification. It ended with Appellants agreeing to applying for assistance through S. C Stay and ordered to start paying directly to Respondent's attorney. There was to be a follow-up hearing scheduled for October 26, 2021. Appellants arrived late at approximately 2:25 p.m. and was not allowed to attend the hearing but was allowed to obtain a recording of the hearing. Appellants completed their portion of the S.C. Stay form and submitted it to Respondent's counsel to complete the form. After following up with Respondent's attorney there was no response.

### CONCLUSION

Appellants pray that this court reverse the lower court's decision for error of law, lack of subject matter jurisdiction and the lack of a landlord-tenant relationship. Appellants also ask this court to examine magistrate's order to dismiss and amend and rule that the matter was terminated as a result, and Respondent be made seek whatever remedies afforded him to proceed.

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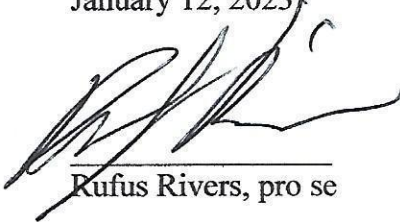
James Smith, Jr.

Respondent

**PROOF OF SERVICE**

We certify we have served Appellants' Reply To Respondent's Final Brief on Respondent James Smith, Jr. by electronically filing a copy with the Court Of Appeals depositing same in the U.S. Mail in an envelope with proper postage attached addressed to his attorney of record, Kathleen McDaniel, esq. At P.O. Box 1929 Columbia, SC 29202 on January 12, 2023.

January 12, 2023



Rufus Rivers, pro se



Merle Rivers, pro se