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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

[In the Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Presiding Judge

Circuit Case No.: 2021-CP-10-10-03684

Appellant Case No.: 2022-000622

Russell Crawford

Appellant

v.

Raymond Babich

Respondent

Appellant's Final Brief – Motion to Dismiss

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**Motion to dismiss the order for eviction in
Circuit Court Case No., 2021-CP-10-10-03684**

FACTUAL BACKGROUND

My name is Russell Crawford, and I am the Appellant in this action, case no., 2022-000622. I am a 72year-old, retired Civil servant since 2005, who has served as a non-denominational Christian minister for the past 50 years. My ministry is conducted over the Internet on a Facebook website.

I have owned a mobile home in the Respondent's mobile home park since 1988. And on the current lot since 1998. I have paid over \$50,000 in rental fees for the 75 square foot parcel of land that my 1975 manufactured home, legally too old to be moved over South Carolina roads, rests upon.

To get a permit to move a mobile home, it must be wind zone II certified. Mobile homes manufactured before 1976 are not rated for wind zone II, and is therefore unable to be legally transported over South Carolina roads for road safety reasons.

Therefore, no permit can be obtained to move my mobile home in Charleston or the surrounding counties.

In 2004, after serving honorably as a clerk for the US Postal Service for over 30 years I was required to retire by my doctor, (Dr. Alan Abel) who stated the medical MRI of my spine revealed I have a debilitating case of deteriorating disc disease, The MRI also revealed an advanced condition of spinal stenosis, pervasive osteoarthritis and pancreatitis and the a recent endoscopy performed on 10/12/2022 indicated the presence of stomach ulcers that are quite painful. For all of these painful conditions I've been prescribed no medication for pain. I am also insulin dependent, suffer from diabetic nerve pain in my hands, legs and feet and am taking daily prescribed medications for a heart condition, hypertension, high cholesterol, and insomnia.

I am old, frail and weak, without family or friends who could take me in should I be evicted from my home. I exist amid mental, physical, and psychological hardship, subsisting modestly on a small annual annuity while responsibly maintaining a credit score of 824.

I moved into the mobile home park in 1988 by purchasing the home on Lot 9 and resided there peaceably for ten years. I purchased and moved into my current

home on lot 3 (close to the front of the park) in 1998 and gave my former unit to a divorced, middle aged, unemployed, homeless schoolteacher, Mrs. Yvonne Hardee. She lived in it for a dozen years, moved to North Carolina and sold it to the Park owner, instead of offering to return it to me.

When Respondent Babich first appeared as the new park owner in 2016, I befriended him with suggestions and ideas of how to help improve the conditions in the park. In December 2018, a local bar/dance hall owner of the 787 Bar and Grille began playing loud, disturbing, and unnecessary noises from 8 PM to 2 AM five nights a week that disrupted the sleep of Appellant and 200 neighbors trying to sleep within a 365-foot radius of the business.

Our relationship soured after Respondent Babich refused to help me stop the near nightly amplified, subsonic, bass sounds that penetrate through all barriers as the Mobile Home Park Tenancy Act Section 27-40-440 requires a landlord to do when an established environmental threat exists that "materially affects health and safety".

Respondent refused to assist me in stopping the near nightly unlawful sounds in violation of his legal obligation to do so. Being subjected to sleep depriving

sounds is not a healthy environment to live in. The unlawful loud, unnecessary, and disturbing noises continue to this day, 48 months since they began in December 2018.

According to medical science irreparable medical harm is caused through this manner of continuous sleep deprivation due to deep, resonating, amplified subsonic sounds produced through sub-woofer speakers by the nearby 787 Bar and Grille owner. Some of the deleterious health effects from sleep disturbance due to being forced to hear these sounds are the destruction of blood vessels, metabolic syndrome, diabetes, hypertension, obesity, heart disease, and in my case PTSD.

Instead of assisting me and the 200 residents living within a 365 foot radius of this business, several living as close as thirty feet away, who are being deprived of quiet, peaceful nights from 8 pm to 2 am, 5 nights a week through being forced to endure the amplified subsonic bass sounds he chose instead to respond with his August 2, 2019, emailed threat: "I intend to ask the police department if your repeated calling activity could ever have an impact on them responding to a real emergency at this address. If the answer is yes, I have a hard

decision to make regarding how to stop you from doing it." **(R. p. 16, lines 16 – 20)**

The result of Respondent's first action to evict me during a December 11, 2019, hearing, ended in failure with Magistrate Mikell stating, in part: "Section 2747310 of the South Carolina Code Annotated (Manufactured Home Park Tenancy Act) **requires** the owner of a manufactured home park to provide to a resident a written lease agreement specifying, among other provisions, regulations governing residency which, if violated, may be cause for eviction. **(R. p. 4, lines 21-22. R. p. 5, lines 1-2)**

MHPTA, Section 27-47-530 (A) - (3) provides that an owner may evict a resident for "noncompliance with a provision of the rental agreement or park regulations and failure to remedy the violation within fourteen days after written notice by the owner. The parties testified that since purchasing the park several years ago, Plaintiff has not entered into a written lease agreement with Defendant containing any park rules or regulations. As such, Plaintiff has failed to meet his burden under section 27-47-310 and cannot seek eviction based on Defendant' s alleged breach of any purported park rules."

The Magistrate erred in her ruling when stating MHPTA Section 27-47-310

"requires" the owner of a mobile home park to provide a written lease agreement. The law does not say it requires the owner of a manufactured home park to provide to a resident a written lease agreement.

The MHPTA Section 27-47-310 section (a) reads: "A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair-market rental value for the use and occupancy of the dwelling unit."

I heard and recorded on my digital mini-recorder Magistrate Mikell at the conclusion of the hearing giving Respondent Babich legal advice to try evicting me again using the 30-day written notice clause of the rental agreement I signed over two decades before (with no other signature present) as the basis for his next attempt at eviction; advice he took and followed.

Her questionable action indicated prejudice and a predisposition toward believing her advice was legally sound and she should therefore have recused herself from hearing the case in the future for lack of objectivity but did not.

Was it any wonder she ruled in Respondent's favor for summary judgment a mere sixteen hours before an alleged pool of 50 summoned potential jurors were expected to arrive the following morning?

What she failed to mention in her order were any reference to the thirty minutes of testimony I read into the court record, and recorded on my mini-recorder, during the hearing that quoted directly from the nineteen emails Respondent Babich sent to me prior to that hearing that listed his bad faith practices towards me and others he claimed he couldn't reason with, which he did not contest or deny that he wrote. **(R. pp. 14-24)**

The underlined parts of these pages are what I read and forwarded to my counsel Mr. Billingsley which he said he forwarded to Judge Dennis' court for review. **(R. p. 82, lines 18-20)**

If the court seeks confirmable copies of the original emails, they can be emailed to the court within minutes of any request.

Had Magistrate Mikell referred to this uncontested evidence of the 'bad faith' practices of Respondent Babich in either of her decisions his actions would have been established as factual and used as my defense in preventing what has occurred to me as the MHPTA strictly forbids such actions as those the Respondent used against me and admittedly toward others. **(R. p. 16, lines 10-11)** The Mobile Home Park Tenancy Act requires park owners to act in good faith. MHPTA SECTION 27-47-220 Good faith requirement as to every duty and act specified in chapter.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performances or enforcement.

HISTORY: 1991 Act No. 135, Section 1.

Respondent Babich repeatedly violated the MHPTA SECTION 27-40-910. Retaliatory conduct prohibited laws of the Act:

(a) Except as provided in this section, a landlord shall not retaliate by increasing rent to an amount in excess of fair-market value or decreasing essential services or by bringing an action for possession after:

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 27-40-660 as a defense in any retaliatory action against him for possession.

(1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.

(2) the tenant has complained to the landlord of a violation of this chapter.

I followed the prescribed legal means for correcting the noise abuse problem by contacting Respondent Babich and when he failed to assist me in keeping the park substantially free of environmental conditions that "materially affects health and safety" I contacted the Zoning Department by letter on April 2, 2019 about the noise disturbances made by the 787 Bar and Grille business that was granted a license to serve as a Dance Hall only 30 feet away from the nearest

resident instead of what the law requires, that of a 1,000 foot distance away and then kept calling Police dispatch on the average of twice a week over the last 200 weeks as the law required me to do or be considered complicit with the crime.

Proof of their unlawful noise making activities can be found featured prominently on their Facebook website

I contacted the Zoning Department again by certified letter dated May 21, 2019, and was once again ignored. I also wrote to the Chief of the North Charleston Police Department and was ignored. I wrote two letters to the North Charleston Mayor and posted a dozen requests for his assistance on the City's Facebook website, all of which were ignored. I've sent hundreds of texts, emails, letters and phone calls to numerous powerful people and agencies seeking assistance and was ignored by all except by the Office of the State Attorney General whose office clerk replied by email stating resolving the problem with the bar owner wasn't their responsibility.

Respondent Babich's unwillingness to go with me to the Zoning Department as the owner of a mobile home park whose tenants were being unnecessarily disturbed at night (whether they were willing to admit it to a man they hated and feared) (**R. p. 14, lines (20-22)**) and preferring to evict me instead has resulted in the infliction of unconscionable anxiety, stress, and medical harm to me, an innocent elderly minister, who is a medically disabled, a respected retired civil servant who has been evicted from my home of 24 years for merely following the prescribed legal actions allowed under law to defend myself from unlawful, unnecessary, and health destroying nightly noise.

When the Respondent Babich helped my rear door neighbor construct a plastic, noise producing illegal ten foot tall and one hundred foot long black plastic tarp barrier right outside my bedroom window I filed a motion with the Court against the rear door neighbor in order for force compliance of the Zoning laws regarding the construction of an improperly constructed noisy barrier, and as a result I was threatened by respondent Babich, (**R. p. 20, lines 7-12**) and then punished with promised rent increases and have subsequently been evicted from my home.

This was Respondent Babich's emailed response to my taking legal recourse against the improperly constructed barrier builder:

August 17, 2019, "You received this warning, and then it appears you called city officials regarding their fence line. I first demand that you immediately cease annoying neighbors in the trailer park and the neighbor at 4675.(3) I have absolutely no problem raising your rent to \$300 plus water and if that does not fix the situation, maybe 350 or 400 will. You need to understand there are limits to what you can get away with at the detriment of your neighbors.

I again urge you to consider moving to a rural area where the problems you have with neighbors will not occur.

If I have to force the issue to 500 a month or eviction. I will. and I have done so in the past when I cannot reason with people.

..This is your final warning. Do not annoy any neighbor. Talk to me first." (R. p. 18, line 1)

Respondent filed for my eviction and during the August 17, 2020 hearing before Magistrate Amy Mikell to determine the disputed amount of rent I should pay she wrote in her order dated August 19, 2020.

"The parties in this action came before Judge Amy J. Mikell on August 17, 2020, for a hearing to set the bond during the pendency of the jury trial on Plaintiff's Application for Ejectment.

The parties dispute the amount of monthly lot rent due. After hearing the testimony of the parties and reviewing the evidence submitted by the parties, the court orders the Defendant to pay..."

The problem was Magistrate Mikell never allowed me to offer my testimony or submit the evidence of what she already knew to be 'bad faith' threatening practices of the Respondent. She stopped me from giving testimony with her recorded words on my digital recorder, "You can file a motion about it later." By taking this action she once again pre-empted confirmation of facts regarding Respondent Babich's 'bad faith' practices, that punished me for following the legally approved methods for resolving the two health endangering issues related to noise disturbances that materially affected me and my neighbor's health and safety needs.

I solicited my counsel's assistance, Mr. Billingsley in filing this motion for review to be heard during the initial hearing of review of case no. 2020-000656 and he seemed to approve of it because he did not say it was a mistake. **(R. pp. 30-31)**

I wrote to the court clerk regarding my counterclaim that would have allowed formal admission of the previously read contents of the 19 emails read to the court during the first eviction hearing and was first told I could not file it, likely because I had an attorney, and it was his place to do so.

The clerk replied with an invitation to proceed to the courthouse and file it right away, which is what I did not knowing it would not be considered for the above stated reason. **(R. pp. 12-13)**

My attorney received a copy of the email invite given to me six weeks prior to the hearing and never attempted to tell me it would not be considered because he needed to file it, not me.

Before I went to the courthouse to file the counterclaim that would have placed on record the bad faith practices of Respondent Babich I emailed a request for instructions to my counsel and in his reply, he did not attempt to dissuade me,

all the while knowing full well it would be rejected out of hand by the magistrate.

This was my first indication my attorney was not seeking my best interests but rather that of the court's attempts to get me to sign an unlawful lease with Respondent Babich that would permit him the freedom to evict me without my having any right to legal recourse.

This deception prevented the damning email evidence from being formally introduced into the hearings that ultimately limited the scope of admissible evidence that could be discussed during the hearings. Respondent's attorney Mr.

Jung would like to continue this narrow view of the case.

Respondent Babich sent me an email with a 30-day notice to terminate my tenancy on March 17, 2020.

Respondent Babich filed this action on July 15, 2020, alleging that my lease has ended and seeking ejection of me and his mobile home from the park, knowing full well it could not be legally transported over State roads.

The 'lease' in question is the standard month to month rental agreement form that gives no termination date and the Appellant, as a month-to-month holdover tenant, was bound only by the eight conditions listed for continued residency contained within the MHPTA SECTION 27-47-530. Respondent based his reason for eviction on the last condition:

(8) other reason sufficient under common law.

Appellant submits that there have been no violations, or disturbance caused that "materially affected health or safety" in the park and therefore are no reasons under common law to evict. Therefore, the Respondent's eviction against Appellant should be viewed as discriminatory, and therefore should not result in an unjust enrichment to the Respondent through concluding with an unconscionable decision of eviction.

My court-referred, pro-bono attorney Mr. Matthew Billingsley filed a motion for summary judgment, with Magistrate Amy Mikell that ably stated the facts. **(R. pp. 46-49)**

Although the word 'unconscionable' is not mentioned in the document it is alluded to and the term 'unjust enrichment' is mentioned in part #10 of the summary:

"The results in allowing an eviction based on the end of lease term for this type of case are that the Defendant would lose his home. Plaintiff would be unjustly enriched as it is unlikely that a sale of the mobile home through a court sanctioned auction would result in a sale to someone other than Plaintiff. Even if it did, Plaintiff could simply start the same process over by ending that lease term with 30 days' notice and the new owner being unable to move the home and an inevitable sale." **(R. p. 49, lines 2-6)**

Respondent Babich filed his motion for summary judgment, which the Magistrate heard on July 14, 2021, and granted at 3:30 PM, leaving the court less than two hours to contact the 50 summoned jurors for the jury trial I requested to cancel their need to appear the following morning at 8:30 AM, a mere sixteen hours before jury selection was scheduled to begin.

It is the Appellant's belief that no potential jurors were summoned because Magistrate Mikell originally suggested to Respondent that he file for eviction using the thirty-day notice clause at the conclusion of the first eviction hearing in which the Magistrate denied Respondent Babich's first eviction request for lack of merit due to no signed lease rules having been broken, instead of for the misbehavior of Respondent Babich in conducting his business in a bad faith manner.

After Respondent Babich filed his motion for eviction in December of 2019 I filed a harassment suit against him which was scheduled to be heard the following week. When he lost his request, I forgave him and cancelled the lawsuit against him as I have subsequently done with the lawsuit against the rear door, barrier building neighbor, which means I have resigned myself to never seeing another sunrise from my bedroom window nor birds on the wing or other scenes of nature.

The full contents of the lease were emailed by me to Attorney Billingsley for his careful consideration, review, and analysis. **(R. pp. 59-69)**

His emailed reply of, "It looks fine to me", **(R. p. 59, line 5)** confirmed what I suspected after he lost enthusiasm for the case and our chances of winning, that his primary purpose as my court referred, pro-bono counsel was to gain my confidence and trust so I would sign the new lease so Respondent Babich could later evict me at his leisure. His conscience would not allow him to be the consummate actor he would need to be in order to fool me.

I questioned him about this in an email: "You were no different; within a very short time you revealed your annoyance and dislike for me.

Remember what you said when I asked you why you were not more enthusiastic in support of me outside the initial phone call. Actually, I asked you twice, and your reply was the same; you said nothing. You were quick to warn me to expect a loss at each hearing, and you were correct.

I never heard the word 'unconscionable' mentioned by either of you during any of the hearings, I wonder why that was." **(R. p. 92, lines (1-2))**

His reply was: "As you seem to disagree with my view of the case and argument, you can certainly represent yourself at this hearing or if needed moving up to the court of appeals." **(R. p. 89, lines 10-13)**

Mr. Billingsley's repeated urgings I sign the lease to avoid losing yet another case only made me more suspicious of his motives.

During our first phone call Mr. Billingsley, after hearing the facts for what was happening to me acted as outraged as I did and vowed to fight for me to the Supreme Court if necessary. After I lost the appeal in Judge Dennis' court and told him I would not sign the new lease he surprisingly declared he wouldn't defend me any further. **(R. p. 82, lines (21-22) R. p. 83, lines (1-4)**

The main freedom denying, objectionable points of the unlawful lease state:

1)"Lessor may end this lease during the month-to-month portion of this lease as follows: with a notice in writing 30 days in advance, to the mailing address of Lessee(s) shown above, stating the intention to terminate the lease and end the tenancy of all Lessee(s) and other occupants, whether their names are shown in this agreement or not, to vacate the premises, and remove the mobile home trailer and all other possessions from the trailer park...

2) No person may become a Lessee without specific approval in writing by Lessor...

3) Dogs cannot be kept on the property. Any dog kept as a pet is grounds for immediate eviction...

4) No person may become a Lessee without specific approval in writing by Lessor...

5) Guests may stay for no more than 5 days without specific approval in writing by Lessor.

6) Lessee(s) is responsible for all costs involved with removing an unwanted guest, including but not limited to legal costs, whether the removal is being forced by Lessor or Lessee(s)...

7) Lessor must agree in writing permitting any substantial interior alterations of the mobile home, or for any exterior alterations of any kind, or for any increase in the square footage of the mobile home, and for any outbuildings, and for any digging up of soil...

8) Lessor may enter and may inspect the mobile home inside and out, with a 24hour notice on the front door of the mobile home, or immediately in any emergency such as but not solely fire, or in response to municipal Code Enforcement or law enforcement personnel...

9) Lessee(s) shall indemnify Lessor against, and hold Lessor harmless from, any and all claims and costs resulting from lawsuits, court actions, and liabilities of the Lessee(s) , including attorney's fees resulting from or arising from this leasehold estate...

10) Lessee(s) are jointly and severally responsible for any reasonable fees imposed by Lessor including reasonable legal fees and court costs incurred by Lessor to enforce the terms of this lease and/or to affect an eviction...

- 11) If any part or parts of this lease agreement is held unenforceable for any reason, the rest of this agreement shall still be in full force. If any provision shall be unenforceable as written, but by limiting such provision would make it enforceable, then any such provision shall be deemed to be understood to be limited as such...

- 12) Lessee(s) shall not rent the mobile home nor the lot without the written permission of Lessor. Otherwise, If the mobile home is sold, it must be sold to Lessor or moved away from the park...

- 13) Any Lessee(s) who themselves, or any of their guests, leave the trailer park by driving a motor vehicle under the influence of alcohol or another intoxicating substance is subject to eviction...

- 14) Not enforcing any provision of this agreement does not bring forth a valid reason to allow a limitation of a right by Lessor to enforce adherence to this agreement...

15) This is the entire lease agreement. There are no other promises and no other verbal agreements relating to this lease on this date. Prior agreements are no longer in effect as of this date."

The new lease Respondent Babich required me to sign in order to temporarily halt the eviction order against me is unlawful in that it violates: MHPTA, SECTION 27-40-330. Prohibited provisions in mobile home rental agreements.

(a) A rental agreement may not provide that the tenant:

(1) agrees to waive or forego rights or remedies under this chapter; (my rights in accordance with the month-to-month original lease agreement, that requires a violation of any of the 8 reasons required for eviction.)

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable, if a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited and attempts to exercise the rights created by the agreement, the tenant may recover in addition to his actual damages an amount not to exceed the security deposit and reasonable attorney's

fees.

After Magistrate Amy Mikell gave consent to Respondent Babich's motion for summary judgement in his favor I let Mr. Billingsley know in an email why I considered his court defense of me to be inadequate.

"I still cannot get over, at the point in the hearing when the judge asked for one pertinent fact to oppose her ruling to rule for my eviction without a jury trial, you stood there and said nothing! I was so disappointed to hear you and the judge debating what would be more 'absurd' evicting a blameless person or not allowing a lot owner to ever evict anyone unless there was a reason. I have that also on tape.

I wonder why you didn't say something intelligent, helpful, and useful like, "If it pleases the court your Honor, I will give you three. 1.The abundant email evidence from the Plaintiff reveals him to be a businessman who has not operated in the past in good faith nor in the present with his three-year history of persecuting, harassing and monetarily extorting money from Mr. Crawford as punishment, when he has done none harm, nor broken any rules nor caused any trouble during the 34 years he's lived peaceably within the park.

Yes, he sued the neighbor for erecting a noisy ten-foot tall, illegal plastic tarp barrier right outside his East facing bedroom bay window, in which

the Plaintiff helped him construct, which has kept him from conducting his usual spiritual sunrise morning services for nearly three years, which lawsuit was his legal right to do so. State law refuses to enforce harmful actions for one who does not operate in "Good Faith."

2. There are numerous emails confirming the Plaintiff's plan to evict, buy at auction the Defendant's newly remodeled home and rent it out for more money than he was charging the Defendant, thereby contributing to his "Unjust Enrichment", which the law forbids.

3. To evict this respectable and reputable Minister of God who is of meager means and declining health due to all the stress he's been forced to endure from the Plaintiff during the past 30 months taking the form of repeated rent increases and threats of eviction for no reason at all certainly qualifies as a classic example of "Unconscionable Action". Let's proceed with the jury trial set for tomorrow morning and see what six impartial people decide as to what's fair and just in this matter." **(R. p. 93 lines 8-12)**

When Attorney Billingsley and I appeared via teleconference during the hearing for the appeal in Judge Dennis' Circuit Case No.: 2021-CP-10-10-03684 I wrote an email to Mr. Billingsley asking for clarification of what happened within the

five minute long hearing that ended with the sustaining of the eviction order against me. "Mr. Billingsley, I'm very interested in what your follow up will say, that you felt the pressure of time, which should not be a concern when a man's very life is at stake, and you never presented the 'bad faith' issue, or the 'unjust enrichment' objection or the fact I cannot take my home with me. You certainly appeared to be nervous, hesitant, and uncertain in your presentation.

As far as he knows lot owner Mr. Babich owns the home and I can easily find somewhere else to live. Nothing is the truth unless it's the whole truth. I consider his lack of proper preparation and administration of justice to be woefully insufficient if not atrocious!

He OBVIOUSLY didn't read your document, or he would have seen the "Truth in the details" that he so comically referred to.

I consider the judge's conduct in not reviewing the documents in a just, prudent and thorough manner prior to this hearing in order to save time, to be a grievous miscarriage of justice and just grounds for an appeal to a higher court where I hope you will not feel so intimidated with concern

over taking too much time to say what needs saying in order to save a vulnerable senior citizen's life, if I live that long."

This was Attorney Billingsley's reply, that, lacking the availability of an unlocatable transcript, also confirms the brevity of the hearing:

"As I said in my previous email, you may not hear every argument that we made in the appeal in the oral argument. If you noticed, Judge Dennis interjected and asked questions. (of Mr. Babich) He also shifted to Mr. Babich and made his decision after a short discussion of end of the lease term. There was not a worry of time or anything like that. Judge Dennis typically guides the argument. If he interjects, I stop talking and listen. When a judge speaks, we have to be quiet. Also, when he makes his decision, I cannot argue the case further. I am required to stop arguing at that point." **(R. p. 82, lines (13-16))**

I believe Judge Dennis treated me unfairly as evidenced by the fact he did not even acknowledge my presence before, during or after his ruling indicating to me that I was a non-person in his view and not worthy of respectful consideration.

STANDARD OF REVIEW

The 5 Civil Liberties guaranteed on the US Constitution include the right to security, to privacy, to liberty, and a fair trial with guaranteed freedoms of equal treatment, and protection from tyranny under the laws of the Constitution.

The Bill of Rights, Amendment 4 Annotations to the Constitution states: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause, supported by an Oath of Affirmation, and particularly describing the place to be searched and persons or things to be seized.

Amendment 9 Annotations to the Constitution states: The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

SC State Constitution Section 3 Privileges and immunities; Due process and equal protection of laws:

The privileges and immunities of citizens of this State and of the United States, under this Constitution shall not be abridged nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

Magistrate's Court judgments are effectively subject to a de novo standard of review in Circuit Court. S.C. Code Ann. § 18-7-170 provides that: "[u]pon hearing the appeal the [Circuit Court] shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

In addition to correcting errors of law, this statute gives the Circuit Court authority to reverse a Magistrate's findings of fact. *Burns v. Wannamaker*, 281 S.C. 352; 315 S.E.2d 179 (Ct. App., 1984); *Parks v. Characters Night Club*, 345, S.C. 484; 548 S.E.2d 605 (Ct. App. 2001).

The Circuit Court has the same power in an appeal from Magistrate's Court as the Circuit Court in trials without a jury and may draw factual conclusions different from those of the Magistrate when considering the same evidence.

See *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232; 312 S.E.2d 20 (S.C. App, 1984).

ARGUMENT

Appellant submits that, for the reasons that follow, the Magistrates court, and Magistrate in the court of Common Pleas erred in holding that an eviction is proper in this case. The appellant believes that there was no end date to the tenancy and therefore cannot be evicted without one.

Appellant requests that this Court reverse the judgment of the court below granting an eviction for the following reasons:

Magistrate Dennis in the Court of Common Pleas allowed defense counsel only two minutes to speak before he was interrupted by the late arrival of the Respondent, whereupon after speaking with him socially for a couple of minutes,

made his ruling. There was no due process given to the counsel for defense in the

Magistrate ruling.

Request for the court transcript of this meeting was met with the admission by the Clerk of the court that no such recording of this five-minute session could be located. **(R. p. 106)**

The arguments for dismissal by the Magistrate were never allowed to be made by the attorney for the Appellant, and they are as follows:

The Manufactured Home Park Tenancy Act, and specifically S.C. Code §27-47-530 does not provide for an eviction from a mobile home park for end of lease term.

This tenancy is subject to the Manufactured Home Park Tenancy Act, hereinafter MHPTA. S.C. Code §27-47-530 sets out the grounds for an eviction of a mobile home from a lot such as in this case.

Absent from this list is the end of lease term. S.C. Code §27-47-20 describes the purpose of the MHPTA.

The purpose and policy is to clarify the law, rights, and obligations of the owner and tenant, and it is to be applied to promote the statutes purpose and policy.

The MHPTA does not list end of lease term as a ground allowed for eviction.

Although it lists a general provision for “other reason sufficient under common law,” this provision must be construed to promote the policy of clarifying the law related to these tenancies. S.C. Code §27-47-530 (A) (8).

The MHPTA set out in Chapter 47 of title 27 came to be after the Residential Landlord Tenant Act (RLTA) in Chapter 40 and the ejection of tenants set out in Chapter 37. S.C. Code §27-37-10 specifically sets out three reasons a tenant can generally be evicted.

The MHPTA came out much later and is specific to situations such as this case. It specifically does not list end of the lease term.

The legislature clearly knew and could have listed end of the lease term as a reason for eviction if they intended that to be available to owners.

Included in the MHPTA is failure to pay rent and lease violations, both of which are also listed in S.C. Code §27-37-10.

S.C. Code §27-47-530 sets out the reasons that a mobile home park owner may bring an eviction action.

It does not reference other sections within the MHPTA or set out additional grounds for eviction in other sections. S.C. Code §27-47-530(8) notes “other reason under common law,” however a reference to common law does not draw in another statute.

It would reference causes of action available to owners of mobile home parks under common law.

Magistrate Mikell’s decision and order and subsequent confirmation by Magistrate Dennis do not specify that Respondent’s cause of action arises from common law, but rather through the above referenced statutes.

The South Carolina Supreme Court addressed an issue involving a landlord and tenant lease in *Koon v. Fares* 379 S.C. 150 (2008).

The case reviewed the meaning of a contract term and found that the ability to terminate and evict based on an end of lease term was available to the landlord despite the contract only noting the tenant’s ability to terminate the tenancy.

The Residential Landlord Tenant Act applied in that case and contained a provision in the statute to allow such termination by the landlord. In all the above reviewed cases none of them involved a tenant who owned the dwelling they were being evicted from.

The current action is different as it involves the Manufactured Home Park Tenancy Act that contains a specific statute for eviction grounds. S.C. Code §2747-530 uses the term “may” in stating the reasons for an eviction. That term is referring to the landlord’s discretion to evict for one of those reasons or to not evict the tenant. In *Prevatte v. Asbury Farms*, 302 S.C. 413 (1990) the SC Court of Appeals looked at the meaning of “may” as it related to acclaim for attorney fees related to the return of a security deposit.

The Court found that “may” referred to the discretion of the tenant to request the fees rather than the discretion of the lower court to grant the fees.

Other provisions of the MHPTA do not state a separate ground for eviction. S.C. Code §27-47-310 discusses what is required to be in a written lease to be provided by the owner.

It states that terms of the lease should include notice period to terminate the tenancy, which the preferred document does not.

It does not state that end of tenancy is a ground for eviction. In this case, as long as the Plaintiff operates the mobile home park, he does not have a statutory right of eviction based on end of the lease term, as this would be tantamount to discrimination against a tenant.

While rules of statutory construction look to interpret the words of a particular statute, they do not add terms to the statute.

A decision in favor of Respondent would be to add a number 10 to the grounds for eviction in S.C. Code §27-47-530 which the legislature failed to do.

S.C. Code §27-47-440 sets out the right of a mobile home park owner to approve someone purchasing a mobile home located within the park.

However, the owner cannot unreasonably withhold his approval. An eviction based on end of the lease term would render S.C. Code §27-47-440 useless. A tenant with a month-to-month lease or agreement could sell a mobile home to another with the reluctant approval of the mobile home park owner.

The new buyer could then be immediately given a notice of end of the lease term in 30 days requiring the home to be moved. This goes against the intent and purpose of the statute.

An act of bad faith in violation of S.C. Code §27-47-220 does act as a defense to the eviction based on end of lease term.

S.C. Code §27-47-220 imposes a duty of good faith in any duty or act under the MHPTA for owners and tenants. The nineteen emails from the Respondent, submitted to the court as evidence, reveal that the respondent has not operated in good faith towards the Appellant in this matter.

Further, it is not a lease per se, but rather a general agreement for a month-to-month holdover tenant stating no term limit or date of expiration or extra conditions.

Although the laws are silent as to what an appropriate remedy would be, it does serve as a defense to the eviction filed in this case. The obligation of good faith includes actions as "...a condition precedent to the exercise of a right or remedy..." This could include the notice of end of lease term.

While the statute appears to be ambiguous as to whether this includes the motivation of the owner to terminate the lease, a motive rooted in bad faith has an unjust and unconscionable result.

In this case Appellant has an old mobile home that has impediments to move based on its age and inability to get a permit as well as the prohibitive cost or the willingness of a mobile home mover to take on the task even if allowed to by a county.

Effectively, the result is that Appellant loses his home without fault on his part.

If the eviction is enforced by this court, it will establish a precedent that any unscrupulous owner of any of the 80,000+ mobile home parks in the State of South Carolina could be used and abused as settled law to evict and acquire any home owned by any tenant in their park who is unable to afford to move their home elsewhere or prohibited by law from doing so.

If anything, good comes out of the reversal of this eviction order it will establish case law that will prevent any other unconscionable decision by a local magistrate to force another innocent mobile homeowner from being forced to


endure a long, torturous, health destroying legal ordeal that I've been forced to endure over these past three years.

THEREFORE, Appellant hereby respectfully requests that the court's ejectment order be stayed, and the judgment for eviction be reversed.

I, Russell Crawford certify that I have read this document and to the best of my knowledge, information and belief, there is good ground to support it; and the document is not interposed for delay.

Respectfully Submitted on February 20, 2023, for Case No. 2022-000622 by

Russell Crawford - Appellant, Pro se

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X_s/s Russell Crawford

FORM 16
CERTIFICATE OF COUNSEL IN FINAL BRIEF

RECEIVED
Feb 21 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE COURT

OF COMMON PLEAS

CHARLESTON COUNTY

R. Markley Dennis, Jr.,
Presiding Judge

Circuit Case No.: 2021-CP-10-10-03684

Appellate Case No.: 2022-000622

Russell Crawford, Appellant,

v.

Raymond Babich, Respondent.

1156 Bowman Road,
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29464

Respondent

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THE STATE OF SOUTH CAROLINA

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

February 20, 2023

/s/ Russell T. Crawford
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