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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2022-CP-23-00394
Appellate Case No. 2023-000082

Audra Starnes, Respondent,

v.

Craig Stoneburner and
Citivest Corporation Appellants.

INITIAL BRIEF OF APPELLANTS

March 24, 2023

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2. Were the acts of the Appellants willful and in bad faith when they disclosed the condition of the property and offered in good faith to help the Respondent repair the property and pay for the work? (Argument sections C and E(i))

3. Does S.C. Code Ann § 27-40-440(c) permit a landlord of a single-family dwelling to contract with the tenant in good faith to comply with the requirements of applicable building and housing codes and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition? (Argument section D)

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I. STATEMENT OF THE CASE

The Respondent Audra Starnes commenced this action in North Greenville Magistrate Court on September 7, 2021, alleging that she terminated her residential lease agreement (the "lease") to property owned by the Appellant Citivest Corporation, a South Carolina corporation owned solely by the Appellant Craig Stoneburner. The Respondent also alleged the Appellants failed to timely return her security deposit or pre-paid rent. She filed claims under S.C. Code Ann. §§ 27-40-620 and 27-40-410.

On October 27, 2021, Stoneburner, appearing pro se, filed an Answer and Counterclaims for breach of the lease. On November 30, 2021, the magistrate transferred the case to the Circuit Court in Greenville County on the grounds the counterclaim exceeded the jurisdictional limit. The case was docketed with the Circuit Court on January 27, 2022.

On August 5, 2022, the Respondent filed a Motion for Summary Judgment. Stoneburner obtained counsel, and on August 19, 2022, the undersigned counsel filed a Notice of Appearance. The Motion for Summary Judgment was scheduled for a hearing on October 20, 2022. On October 18, 2022, the Respondent filed and served a 52-page memorandum in support of the Motion for Summary Judgment with extensive exhibits. The Appellants' counsel was unaware of this hearing until receipt of the memorandum and promptly filed a motion requesting the hearing be continued. The court held the hearing on October 20, 2022, but allowed the Appellants ten days to file any opposition to the motion, and then allowed the Respondent five days to file any reply.

On November 1, 2022, the Appellants filed an affidavit of the Appellants in opposition to summary judgment. The Respondent filed a reply to this affidavit on November 7, 2022. By the Order filed November 17, 2022, the court granted the Respondent summary judgment by way of a Form 4. The Appellants timely filed a Motion pursuant to Rules 52(b) and 59(e) to reconsider,

alter, or amend the Order granting summary judgment. The Respondent filed a reply to the Appellants' Motion on December 13, 2022. On December 20, 2022, the court issued a Form 4 Order denying the motion for reconsideration without a hearing. The Appellants appealed both orders by serving a Notice of Intent to Appeal on Respondent's counsel on January 4, 2023, and filing the Notice of Appeal and Orders and Proof of Service with this court on January 13, 2023.

II. STATEMENT OF THE FACTS

The Appellant Craig Stoneburner's corporation, Citivest Corporation, is the owner of 411 Rangeview Circle in Greenville County, which contains a single-family residence ("the property"). Stoneburner previously leased the property to a tenant for well over a year, but that tenant was vacating to move to another part of the state. Stoneburner knew that the property needed repairs, so he listed the property for rent on Craigslist as a "Handyman Special," and included in the written lease as a "Special Condition" that tenants agree to provide appliances, heating, and air equipment if needed, and agree to conduct any repairs and maintenance at their own expense as needed to keep the property up to code. He also put in the advertisement that he would reduce the rent by $100 for three months for clean up and repairs.

The Respondent and her boyfriend, Robert Cornwell, saw the advertisement and were interested in leasing the property. Stoneburner arranged for them to visit and inspect the property on March 3, 2021, with his present tenant, Joseph Graham. Cornwell took numerous pictures at that inspection which they sent to Stoneburner prior to meeting with him in his office in Columbia, South Carolina, showing the Respondent and Cornwell were fully aware of the condition of the property prior to signing a lease.

On March 5, 2021, Cornwell and the Respondent met Stoneburner at his office to discuss the property and sign the lease. Cornwell and the Respondent seemed enthusiastic about the rental and fully understood the property was being leased in its present condition and would need

repairs and maintenance. Both Cornwell and the Respondent executed the lease on March 5, 2021, and on March 8, 2021, paid a $795 security deposit and an additional $795 for the first month's rent. The written lease was for a term commencing on March 5, 2021, and terminating on March 31, 2022.

After this point, the facts are in dispute, with each side stating their version of events in affidavits and text messages filed as exhibits with the court.

On March 7, 2021, the Respondent and Cornwell notified Stoneburner they had the locks changed on the property. On March 9, 2021, the Respondent and Cornwell discovered the windows at the property were caulked shut, probably to keep heat in during the winter. Stoneburner told the Respondent and Cornwell they needed to un-caulk the windows.

Then, on March 15, 2021, the Respondent notified Stoneburner that the water pipes were broken under the house and some of the electrical outlets didn't work. The Respondent acknowledged in text messages, "I know you [Stoneburner] didn't know about these issues until now." Stoneburner's initial reaction was to ask Cornwell, who represented himself to Stoneburner as a "handyman," why he could not fix some of these issues. However, after the Respondent replied that this was beyond Cornwell's capabilities, Stoneburner replied, "Let's try to find someone that is a reasonable professional handyman," and "I do want it all fixed just like you do." Stoneburner even suggested that the Respondent check the roof for leaks as well because Joseph Graham, the prior tenant, said he fixed that too. Stoneburner asked the Respondent to find a repairman to do what Cornwell could not do and said, "I will work with him!" Stoneburner also asked the Respondent to "break each thing down price wise if you like."

Between March 15 and 16, 2021, the Respondent supposedly attempted to contact and arrange for contractors to come out to the house and give repair estimates but was unsuccessful.

Stoneburner offered to help, noting that handymen are not very dependable these days, and texting, “I’ll try to help you cause I want [the property] safe and in good condition.”

On March 17, 2021, the Respondent gave Stoneburner the number of a handyman she had contacted, but Stoneburner never heard back from him, and told the Respondent and Cornwell he was “trying to get someone else to help yall.” The Respondent replied, “We believe we found somebody, he just came by and looked 20 minutes ago.” Stoneburner responded, “Give me his name and number.”

But on Saturday, March 20, 2021, the Respondent abruptly changed her tone in text messages with Stoneburner. She texted Stoneburner, “Craig, we have an urgent situation going on that we need to talk about.” Later that day, the Respondent texted “the house is uninhabitable to live in. We have had multiple professionals come out and look at it and all of its issues and all say [that] the house needs to be condemned.” Of course, the Respondent’s statements about what “multiple professionals” said is all hearsay and the Respondent fails to offer the court any repair estimates or affidavits from these professionals about the condition of the house. In the same March 20 texts, the Respondent falsely told Stoneburner, “you aren’t willing to pay to have any repairs done” to the property, and asked Stoneburner for her money back.

In response, Stoneburner provided the name and telephone number of his contractor, Tyler Jackson, whom Stoneburner said would “get the elec, plumbing and roof checked and fixed.” Later, Stoneburner wrote, “*I’m going to pay [Tyler Jackson] for the things that need to be done* but Robert [Cornwell] needs to show [Tyler Jackson] so I can get it done.” (Emphasis added). But the Respondent and Cornwell were not able to meet with Tyler Jackson that day, so Stoneburner, the Respondent and Cornwell agreed ask Tyler Jackson for a meeting the following day.

However, the Respondent apparently changed her mind and a meeting with Tyler Jackson never took place. On Monday, March 22, 2021, the Respondent texted Stoneburner a threat that "I am at the Codes enforcement office . . . give us our money back or I will have the property condemn[ed]." Stoneburner asked if the Respondent had called Tyler, but the Respondent told Stoneburner that she had "already filed for the house to be inspected." An exasperated Stoneburner replied that the Respondent was in default under the lease and that he would attempt to relet the property, requests the keys, and attempt to find a new tenant. The following day, March 23, 2021, Stoneburner texted Cornwell asking one final time if he and the Respondent had decided to no longer rent the property. "Have you left the keys over there or will you if you are no longer interested."

On March 24, 2021, having received no reply, Stoneburner texted, "I assume you are no longer interested, I will try to get [the property] rerented!" The parties then exchanged text messages with the Respondent demanding their money back and threatening to file a lawsuit. Stoneburner also stated he would pursue legal action "for breach of contract and damages until [the property] is released" and asked for the keys to be returned and the Respondent's present address for service of process.

Also on this date, according to the Respondent's affidavit, an officer from Greenville County Code Enforcement inspected the property and posted a notice of code violations. There is no affidavit from the officer in the record, but only a picture of what the Respondent states was posted on the property. The Respondent did file certified copies of the code enforcement records. Several of the items listed in the violation – the trash, rubbish, garbage, and weeds – fall with the scope of responsibilities the Respondent agreed to take care of under the terms of the lease and for reduced rent. For the other items, Stoneburner had a contactor ready to repair at his expense.

On March 27, 2021, the Respondent texted Stoneburner, "You do know that we still have a lease with you and you are trying to find somebody to rent out the home." By that time, Stoneburner had hired another contractor to repair the property and texted the Respondent and Cornwell on March 31, 2021, about continuing to lease the property as "most of the work that you agreed to deal with is or will be completed." Stoneburner the repairs would include, "Elec box, plumbing, roof, painting touch ups, molding on around the floor, hand rails." After asking the Respondent if she would like to meet with the contractor, she replied, "We are meeting him tomorrow to look but I know the house isn't up to Code." The next day, April 1, 2021, neither the Respondent nor Cornwell showed up to the meeting. "Robert, he waited an hour and nobody showed so guess you are not going to follow through. Sorry, I tried!!!"

On April 15, 2021, the Respondent texted Stoneburner a copy of her attorney's letter to Stoneburner, dated April 9, 2021. Stoneburner states in his Affidavit that he did not receive this letter because it was sent to two different addresses, both of which were incorrect. Based on this the texted picture of the letter, Stoneburner mailed the Respondent a Security Deposit Transmittal Letter on April 30, 2021, addressed to her last known address and which was returned to Stoneburner.

The Respondent subsequently files this civil action and the case proceeded as outlined above in the Statement of the Case.

III. STANDARD OF REVIEW

When reviewing a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Under that standard:

> summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

> moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law.

Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986). Additionally, "[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston County Parks & Recreation Comm.*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004) (internal citations omitted). If the parties "vehemently dispute the inferences and conclusions to be drawn from the undisputed facts," that establishes that summary judgment is not appropriate. *Montgomery v. CSX Transp., Inc.*, 656 S.E.2d 20, 29 (2008). When determining if any triable issues of fact exist,

> the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues.

Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008) (internal citations omitted).

In 2009, the South Carolina Supreme Court clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. *See Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802-03 (2009). In *Hancock*, the Court held that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* at 330, 673 S.E.2d at 803. More than a scintilla is required only in cases requiring heightened burdens of proof or applying federal law. *Id.* at 330-31, 673 S.E.2d at 803.

IV. ARGUMENT

A. The trial court erred in granting summary judgment to the Respondent because further inquiry into the facts is desirable to clarify the application of the law and there are genuine issues of material fact which preclude summary judgment on both the Respondent's claims and the Appellants' counterclaims.

In signing a form order granting summary judgment without further findings, conclusion or explanations, the trial court overlooked genuine issues of material fact and relied upon inferences for the moving party and not the Appellants. There are several genuine issues of material fact which should not be decided by the court on summary judgment when the further development of the facts by testimony would clarify the application of the facts and the law.

For example, the Respondent contends that she terminated the lease by text to Stoneburner on March 20, 2023. However, a week later, on March 27, 2023, she claimed in a different text that she still had a lease with Stoneburner and was berating him for trying to find another tenant. Also, as late as March 31, 2021, the Respondent was telling Stoneburner she would meet with his contractor at the property to verify the work that had been completed. This conduct is not consistent with a termination of the contract, and at least raises an inference that the lease had not been terminated. Certainly, this is material as the termination date governs when the deposit must be returned.

There is also a genuine issue of material fact regarding the Respondent's allegations that Stoneburner's conduct was "willful" or "bad faith." Stoneburner did not hide the condition of the property, clearly advertising the property as needing work and placing provisions in the lease for a reduction in rent for the three months for cleanup costs. The Respondent also visited the property and took pictures *prior to signing the lease*. Further, the Respondent admitted that Stoneburner was probably unaware of some of the issues until the Respondent discovered them while renting the property, according to her text messages. The record is replete with examples of Stoneburner offering to help and arrange for a contractor to make required repairs. For

example, on March 15, 2021, Stoneburner texted, "I'm going to pay [a contractor] for the things that need to be done." However, the Respondent claims that Stoneburner was not willing to pay for repairs.

Accordingly, Stoneburner's good faith and lack of willful misconduct are issues of material fact. Generally, issues of good faith are issues of fact to be determined by the trier of fact. *See, e.g., Murray v. Holnam, Inc.*, 344 S.C. 129, 140 (Ct. App. 2001) (Holding, in a defamation context, "Factual inquiries, such as whether the Appellants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine."); *See also, Nabors v. S.C. Farm Bureau Mut. Ins. Co.*, 273 S.C. 126, 129 (S.C. 1979) (Ruling, in an insurance context, "It is well settled that it is normally a question of fact for the jury to determine whether the insured acted in good faith in making the valuation or whether there was an intention on his part to defraud the insurer.").

The issue of "good faith" is also an example where a hearing and testimony would clarify the application of the law. For instance, a hearing might clarify questions about genuine issues of material fact, such as: What did Stoneburner know, and when? What do contractors know about the property and their attempts to meet with the Respondent? What repairs were made, and when? What conditions of the property could and should the Respondent fix?

The actual condition of the property is also at issue. The Respondent posted pictures of the Notice of Code Enforcement and filed a copy of related records, but this is hearsay, and without context. There is no affidavit by the code enforcement official about the inspection, only a business records affidavit in response to the subpoena. Stoneburner should have been given the opportunity to depose or at least cross-examine the code enforcement official at a hearing on the

merits. This is another example of when testimony would be useful to clarify the application of facts to the law. These issues are relevant to Stoneburner's counterclaim for rent and deductions for the return of the security deposit and prepaid rent. There are also factual issues which should be developed at a hearing regarding notice of termination and the Security Deposit Transmittal Letter sent by Stoneburner.

This court should hold the trial court erred in deciding this case by summary judgment when there are genuine issues of material fact and a further inquiry into the facts would clarify the application of the law.

B. The trial court erred in granting summary judgment to the Respondent for the Appellants' alleged failure to timely return the Respondent's security deposit when the Appellants mailed the notice within thirty days of notice of termination as required by S.C. Code Ass § 27-40-410.

The Respondent claims she gave written notice of termination of her lease to Stoneburner by her text message on March 20, 2021, thereby triggering the requirement to return her security deposit and prepaid rent pursuant to S.C. Code Ann. §27-40-620(a)(1). However, only a week later, on March 27, 2023, the Respondent was claimed in text that she still had a lease with Stoneburner and was berating him for trying to find another tenant. Also, as late as March 31, 2021, the Respondent told Stoneburner she would meet with his contractor at the property to verify the work that had been completed. This conduct is not consistent with a termination of the lease, and at least raises an inference that the lease had not been terminated.

The first clear, unambiguous, written notice that the Respondent was terminating the lease came from the letter by her counsel, dated April 9, 2021, which Stoneburner says he received as a picture sent by text from the Respondent on April 15, 2021. Under S.C. Code Ann. §27-40-620(a)(1), a lease terminates five days after written notice, assuming there are valid grounds for termination in the first place.

Pursuant to S.C. Code §27-40-410 et. seq., a landlord has thirty (30) days after termination to return any security deposit and prepaid rent along with a notice itemizing any deductions from the security deposit and rent. Stoneburner sent the Respondent a Security Deposit Transmittal Letter on April 30, 2021, to her last known address, which was returned to Stoneburner. The mailing was within the thirty (30) days required by the statute. Any dispute by the Respondent with the deductions should have been resolved by a hearing on the merits.

C. The Appellants' alleged failure to deliver possession was not willful or in bad faith and the Respondent should not be awarded three months' rent and attorney's fees.

The Respondent asserts that she is entitled to three months rent and attorney's fees under the provisions of S.C. Code Ann. §§ 27-40-620(b)[1]. The trial court's order only granted summary judgment by form order and was silent at to the amount of the judgment or whether treble damages or attorney's fees should be included. The Respondent filed a motion to establish the judgment amount prior to this appeal being filed, which has not been heard. In an abundance of caution, and since the order was silent, Stoneburner is addressing this argument in his brief.

S.C. Code Ann. § 27-40-620(b) provides, "If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or twice the actual damages sustained, whichever is greater, and reasonable attorney's fees."

The code states, "'good faith' means honesty in fact in the conduct of the transaction concerned," (S.C. Code § 27-40-210(5)), and defines "willful" as "an attempt to intentionally avoid obligations under the rental agreement or the provisions of this chapter," S.C. Code § 27-40-210(16). Stoneburner did not hide the condition of the property and clearly advertised it as

[1] The Respondent is also claiming three times her security deposit and attorney's fees pursuant to S.C. Code Ann. §27-40-410(b); however, this section does not appear to be limited by the willful and good faith standards.

needing work, including provisions in the lease for a reduction in rent for the three months for cleanup costs. The Respondent and Cornwell had the opportunity to visit the property and took pictures *prior to signing the lease*. The Respondent also admitted that Stoneburner was probably unaware of some of the issues until the Respondent brought them to Stoneburner's attention. The record is replete with examples of Stoneburner offering to help and arrange for a contractor to make required repairs. For example, in a text dated March 15, 2021, Stoneburner said, "I'll try to help you cause I want [the property] in safe and in good condition," while on March 21, 2021, he texted, "trying to get someone else to help yall." The Respondent claims that Stoneburner was not willing to pay for repairs, yet on March 15, 2021, Stoneburner texted, "I'm going to pay [a contractor] for the things that need to be done."

This court should find that there is ample evidence to demonstrate Stoneburner's good faith and his alleged failure to deliver the property in a habitable condition was not willful. Therefore, three-months' rent and attorney's fees should not be awarded. At the very least, Stoneburner has provided a scintilla of evidence on this issue to preclude summary judgment.

D. S.C. Code Ann. § 27-40-440(c) permits a landlord of a single-family dwelling to contract with the tenant in good faith to comply with the requirements of applicable building and housing codes and make all repairs and do whatever is reasonably necessary to put and keep the premises in habitable condition.

Additionally, Stoneburner may contract with tenants to comply with the requirements of applicable building and housing codes, make repairs, and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition under S.C. Code Ann. § 27-40-440. While this code section does provide guardrails, requiring that the transaction is "entered into in good faith and not for the purpose of evading the obligations of the landlord," the statute does not ban such contractual arrangements for landlords of single-family residences. Here, Stoneburner acted in good faith, disclosing the condition of the property and allowing the

prospective tenants to inspect the property prior to entering into the lease. Regarding the limitation against landlords evading their obligations, the court should be careful not to allow the exception or limitation to swallow the rule, thus making every permissible shifting of obligation from the landlord to the tenant to be an attempt to evade obligations of the landlord.

The court should also note that the statute makes a distinction between a "single family residence," which is covered under S.C. Code Ann. § 27-40-440(c), and a "dwelling unit other than single family residence," which is covered by S.C. Code Ann. § 27-40-440(d). The court will note that in the latter case, a provision is specifically added in S.C. Code Ann. §27-40-440(d)(2) which provides the following limitation, that "the work is not necessary to cure noncompliance with subsection (a)(1) of this section." It is a basic rule of statutory construction that where a word or phrase is used in one provision, but absent from another, the absence of language typically is intentional. *See Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L.Ed.2d 17 (1983) (citations omitted). As the Supreme Court has noted, "[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Id.* "Fundamental to statutory construction is the principle that "where the Legislature has employed specific language in one paragraph but not in another, the language should not be implied where it is not present." *Costello v. School Committee of Chelsea*, 27 Mass. App. Ct. 822, 826 (Mass. App. Ct. 1989).

The absence of this limitation in S.C. Code Ann. §27-40-440(c) clearly suggests that a landlord of a single-family residence could contract with a tenant to provide the work necessary to cure noncompliance with subsection (a)(1). Furthermore, to the extent this is a novel issue

(and the undersigned could find no cases on point) this should not be decided by summary judgment.

E. The Respondent is not entitled to attorney's fees.

The Respondent seeks an award of $19,825 in attorney's fees., but for the reasons set forth below, she should not receive an attorney's fee award. To the extent Order granting summary judgment holds that the Respondent is entitled to attorney's fees, the decision should be reversed and remanded.

i. The Appellants' alleged conduct was not willful or in bad faith.

As argued previously herein, Stoneburner's actions were not willful or in bad faith; therefore, the Respondent should not be awarded attorney's fees under S.C. Code Ann. § 27-40-620(b). Appellant incorporates by reference the argument in Argument section C of this brief.

ii. The Respondent did not incur and is not responsible for attorney's fees.

Under South Carolina law, a party may recover attorney's fees if they are provided by statute or by contract. Stoneburner concedes that both S.C. Code Ann. §27-40-410 and §27-40-620(b) allow for the recovery of attorney's fees; however, the Respondent did not incur and is not obligated to pay any attorney's fees.

The Respondent is represented by excellent counsel from South Carolina Legal Services. As described on its website:

> South Carolina Legal Services (SCLS) provides free legal assistance in a wide variety of civil (non-criminal) legal matters to eligible low-income residents of South Carolina. SCLS is a non-profit corporation, funded by grants from the federally funded Legal Services Corporation, the South Carolina Bar Foundation, local United Ways, state court filing fees, and other federal, state and local funding.

South Carolina Legal Services, *About SCLS*, https://sclegal.org/about/ (last visited March 24, 2023). In its frequently asked questions, also listed on its website, South Carolina Legal Services writes:

> Eligibility for our services is based upon income and assets. Although we may be able to consider certain extenuating circumstances, routine monthly expenses such as rent, utilities and groceries are not considered. *We are not permitted to charge a fee for our services*.

South Carolina Legal Services, *Frequently Asked Questions (FAQs)*, https://sclegal.org/faqs/ (last visited March 24, 2023) (Emphasis added).

South Carolina has consistently held that when a client does not actually have to pay for legal services, they are not entitled to recover them from the opposing party. In the case of *Williamson vs. Middleton*, 681 S.E.2d 867 (S.C. 2009), an attorney represented his friend, Middleton, to recover unpaid commissions from a former employer was awarded attorney's fees. The South Carolina Supreme Court ruled:

> We find no competent evidence to support the finding that Middleton incurred attorney's fees. Though Middleton's counsel did indeed indicate that he and Middleton would "talk about a fee" at the conclusion of the case, he also explained that Middleton had no obligation other than a moral obligation to pay a fee and that Middleton would have the final say. In our view, the only logical interpretation of the statement by Middleton's counsel is that Middleton could choose not to pay a fee to his counsel. It therefore follows that no attorney's fees were incurred.
>
> *Williamson vs. Middleton*, 681 S.E.2d 867 (S.C. 2009).

There is additional president to support the *Williamson* court's conclusion. In S*outh Carolina Dep't of Soc. Servs. v. Mary C.*, 396 S.C. 15 (Ct. App. 2011), legal counsel appointed to represent a volunteer Guardian ad Litem (GAL) had scheduling conflicts and chose to hire another attorney to represent the volunteer GAL. After counsel sought to recover attorney's fees at the end of the case, the court held, "because the General Assembly has already provided for

payment of the GAL Program's attorneys, we find Mother should not also be required to pay attorney's fees."

Likewise in this case, South Carolina Legal Services are paid from grants from federally funded Legal Services Corporation. Therefore. this court should find that Stoneburner should not also be required to pay attorney's fees.

V. CONCLUSION

The trial court signed a Form 4 Summary Judgment Order for a complex, landlord tenant dispute which had genuine issues of material fact both as to the complaint and the counterclaims. Further inquiry into these issues in a trial on the merits would help clarify the application of the law. The evidence shows that the Appellants timely provided the Respondent with the notice required by S.C. Code Ann. §27-40-410 and itemized deductions. The Appellants acted in good faith and disclosed the condition of the property both in the advertisement and conditions in the lease. Despite these contractual provisions, the Appellants offered to pay a contractor at his expense to make repairs to the property. Additionally, the Appellants are not entitled to attorney's fees because the Respondent was not obligated to pay any attorney's fees. For all these reasons, this court should reverse the ruling of the trial court and remand this case for a trial on the merits.

March 24, 2023

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