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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

Audra Starnes, ……Respondent
v.
Craig Stoneburner and Citivest Corporation……Appellants

FINAL BRIEF OF RESPONDENT

July 11, 2023

SOUTH CAROLINA LEGAL SERVICES

Mark Fessler
SC Bar # 77376
701 South Main St.
Greenville, SC 29601
Office: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org

Attorney for Respondent

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STATEMENT OF THE CASE

On September 7, 2021, Audra Starnes ("Respondent") sued Craig Stoneburner and his corporation, Citivest Corporation, ("Appellants" or "Stoneburner" or "Citivest") alleging violations of S.C. Code Ann. §§ 27-40-410 and 620 by failing to return either her security deposit or pre-paid rent after she terminated the parties' lease. (R. pp. 9-15). Appellants' pro-se answer denied Respondent's allegations and counterclaimed for damages for breach of contract, civil conspiracy and fraud and deceit. (R. pp. 20-29). Because Appellants' counterclaims exceeded the Magistrate Court's jurisdiction, the case was transferred to the circuit court on November 30, 2021.

The parties then engaged in litigation and discovery. (R. pp. 331-332 and 362-366). On August 5, 2022, Respondent filed a motion for summary judgment. (R. p. 145). In

support she filed her affidavit, which included among its exhibits all text messages exchanged between her and Stoneburner. (R. pp. 39-144). She also filed records received from Greenville County Code Enforcement. (R. pp. 147-278). Her motion asked the Trial Court to enter judgment in her favor on her two causes of action and against Appellants on their three counterclaims. (R. p. 146). Before the hearing set for August 26, 2022, Appellants retained legal counsel and moved for a continuance, which the Trial Court granted. (R. pp. 7 and 279). The hearing was reset for October 20, 2022. (R. p. 332). Appellants moved for another continuance on October 19, 2022. (R. pp. 331-335). The Trial Court denied the motion but allowed Appellants ten days after the hearing to submit written opposition. (R. pp. 1 and 331).

On November 1, 2022, Appellant Stoneburner filed an affidavit, and Respondent filed a reply to it on November 7, 2022. (R. pp. 336-339 and 340-355). The Trial Court issued a Form 4 order granting Respondent's motion in full. (R. p. 1). Appellants moved under Rules 59(e) and 52(b), SCRCP, which motion the Trial Court denied by a Form 4 order on December 20, 2022, adopting the reasoning in Respondent's reply. (R. pp. 4, 356, and 359). Appellants appealed to this Court on January 13, 2023.

FACTS

In early 2021 Respondent and her boyfriend Robert Cornwell needed to find a larger space for their family. (R. p. 39). They were staying in a friend's living room in a small apartment. (R. p. 39). They found listed for rent on Craigslist 411 Rangeview Circle in Greenville, SC (the "Property"). (R. p. 39). Citivest Corporation owns the Property. Appellants advertised it as a "handyman special." (R. p. 39).

Respondent and Mr. Cornwell viewed the Property and traveled to Stoneburner's

office in Columbia on March 5, 2021, where the parties signed a lease that Stoneburner had prepared. (R. pp.39 and 314-318). The last page contains a handwritten provision that says, "For valid consideration Tenants agree to provide Appliances, heat and Air equipt if needed and agree to do any repairs, maintenance etc at their cost (unless agreed to otherwise in writing) as needed on the property + to keep it up to Code." (R. p. 318). Stoneburner faxed the first and last pages of the lease to Respondent on March 8, 2021, after she deposited the first month's rent and her security deposit. (R. pp. 40, 96, 98, 314, and 318). Respondent did not recall whether this clause had been written into the Lease at the time of signing. (R. pp. 39-40).

Stoneburner explained why he put this provision into the lease when he texted Respondent on March 17, 2021, saying, "Handymen are not very dependable these days that's why our lease says yall were willing to keep the place up. Read it!" (R. p. 110).

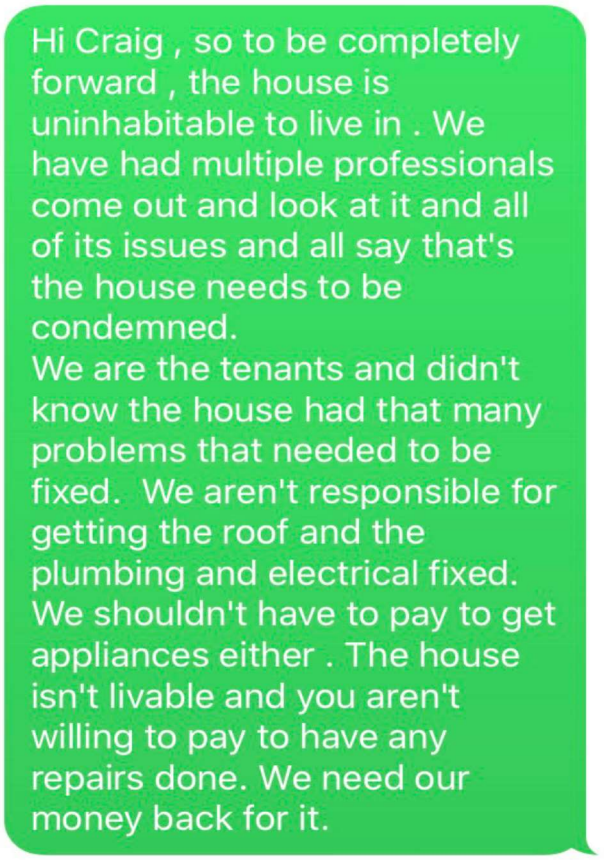
Stoneburner did not provide a key, so on March 6, 2021, Stoneburner told Respondent to drill out and replace the front lock. (R. p. 91). On March 8th, Respondent deposited into Stoneburner's bank account a security deposit of $795 and the first month's rent, also $795. (R. p. 95). However, due to the condition of the Property, Plaintiff and Mr. Cornwell never moved into or lived in it. (R. pp. 40 and 128).

Respondent and Mr. Cornwell attempted to clean and fix what they could, but the Property was in bad shape as seen in photos she took. (R. pp. 40 and 45-82[1]). On March 9, 2021, Respondent noticed that the windows would not open. (R. pp. 40, and 99-100).

[1] The photos include cleaning supplies such as trash bags, Kaboom cleaning solution, mops, brooms, and Home Defense pest control. (R. pp. 45, 54, 79, 80-82).

On March 15th she learned of problems with the electrical outlets and of plumbing issues when she discovered a water leak in the main pipe. (R. pp. 41 and 102-103). Respondent and Mr. Cornwell were not trained or experienced to handle these repairs. (R. pp. 41, 103, and 106). The Property also had a roof leak. (R. pp. 41, 105, and 254).

Between March 16 and March 20, 2021, Respondent contacted several people to inspect the Property and give an assessment or quote for repairs that needed to be done. (R. pp. 41-42 and 104-112). On March 20, 2022, Respondent texted Stoneburner demanding a return of the deposit and her pre-paid rent. She wrote:



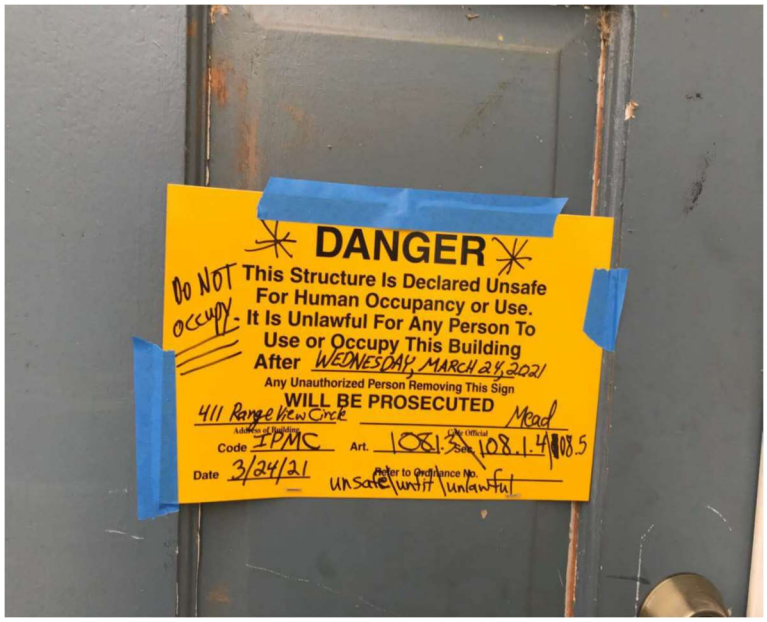
(R. p. 113). This was the first time she asked for a return of the deposit and pre-paid rent. She also made the same demand by text on March 22, 2021, March 24th, April 15th, and

April 29th. (R. pp. 43, 119, 121, 126, 128, 129, 140-143, and 144).

In response to the March 20, 2021, text, instead of agreeing to return the deposit or rent, Stoneburner told Respondent to deal with a Tyler Jackson and that he only wanted to deal with Mr. Cornwell. (R. pp. 42 and 114-115). Later that day Respondent informed Stoneburner that Mr. Jackson had not contacted Mr. Cornwell. (R. p. 118). He also did not show up for a meeting Respondent organized with him. (R. p. 42). Also on or around March 20, 2021, Stoneburner re-listed the Property for rent. (R. p. 120).

Two days later, on March 22, 2021, Respondent went to the Greenville County offices to speak to someone about the Property's condition and about getting her deposit and rent back. (R. pp. 42). She spoke with someone at the Magistrate's Court who directed her to the Code Enforcement office. (R. p. 42-43). She informed Stoneburner that she was at the Code Enforcement office, and again asked him for a refund. (R. pp. 43 and 120). Stoneburner deflected the question by asking her if she had called Tyler Jackson. She said she had called but received no answer. (R. p. 121). He further told her to get the Property inspected and make repairs, that she was in default under the Lease, and that he only wanted to deal with Mr. Cornwell. (R. pp. 122-124).

On March 24, 2021, Code Enforcement officer Brent Meade inspected and condemned the Property, posting this notice on the door:



(R. pp. 84 and 256). He also posted a notice that listed the numerous problems that he identified, including "Electrical Hazards," "Water supply [problems]," and problems with the roof, gutters, deck and steps. (R. pp. 85, 246, and 256). Officer Meade took photographs of the conditions that supported his decision to declare the Property to be unsafe and unfit for human occupancy (R. pp. 248-266). Code Enforcement marked this case resolved on June 22, 2021. (R. p. 152).

By March 31, 2021, the Craigslist ad for the Property read, "Needs work done on repairs before move in etc fpr [sic] City housing case." (R. p. 85). On that day Stoneburner texted Respondent:

> Robert, are you interested in making a decision to rent 411 rangeview as most of the work that you agreed to deal with is or will be completed. I would consider allowing you to lease it once all is done that you couldnt or wouldnt do including cleaning and painting and touch ups. You can call me a check it out first and go from there. Otherwise I will deal with your default on your contract etc and rent it to some one else. Robert call asap today as to your interest please and I'll go over details. Craig

(R. pp. 132-133) (emphasis added). Respondent visited the Property in response to Stoneburner's text only to discover that the locks had been changed. (R. pp. 134-136). Confronting Stoneburner about the locks, he replied that the person he had hired to make repairs "can meet robert tomorrow or open the lock if yall still want it." (R. p. 136). However, there was no meeting the next day. (R. p. 139).

On April 9, 2021, Respondent's attorney mailed Stoneburner a certified demand letter again asking him to return Respondent's rent and deposit. (R. p. 322). The postal service returned it on May 21, 2021, with a sticker saying "Unclaimed" and "Unable to Forward."[2] (R. p. 321). On April 15th, Respondent texted Stoneburner photographs of the letter. (R. pp. 140, 142-143). The letter, in part, instructs Stoneburner to send Respondent's security deposit and pre-paid rent to Respondent's attorney at his office address. (R. p. 323). On April 29th Respondent texted Stoneburner a final demand for him to send the deposit and pre-paid rent to her attorney. (R. p. 44 and 144). On May 1st, Stoneburner mailed a security deposit statement to Respondent without addressing it to her attorney as requested. (R. pp. 319-320). Respondent never received it. (R. p. 44). Stoneburner retained both the pre-paid rent and the deposit, claiming that Respondent and Mr. Cornwell owned him $8,745 (R. p. 319).

STANDARD OF REVIEW

An "appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. Summary judgment is appropriate when there is no genuine issue of

[2] Appellant's attorney mailed the letter to two addresses, one of which is the same address where Stoneburner was served with the complaint. (R. p. 36).

material fact such that the moving party must prevail as a matter of law." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted). Whether a triable issue of fact exists depends on the evidence and all factual inferences drawn viewed in a light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth*., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Summary judgment should be denied where the conclusions or inferences to be drawn from the undisputed facts are in conflict. *Baugus v. Wessinger*, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). "All ambiguities, conclusions, and inferences arising in and from the evidence must be construed most strongly against the movant." *Id.*

But an "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts.'" *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citation omitted). The party must identify specific facts that will create a genuine issue for trial. *Id.* "[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr*., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENTS

I. APPELLANTS PRESERVED NO ISSUES FOR REVIEW

Appellants argue on appeal that genuine issues of material fact exist about when the lease terminated, the condition of the property, whether Appellants complied with S.C. Code Ann. § 27-40-410, whether S.C. Code Ann. § 27-40-440(c) applies to this case, whether Appellant Stoneburner acted willfully and in bad faith in turning over possession of the property, and whether attorney's fees are recoverable by a client represented by South Carolina Legal Services under S.C. Code Ann. §§ 27-40-410(b) and 620(b). None

of these arguments are preserved for review because Appellants did not raise any of them to the Trial Court. Or, if raised, the Trial Court did not make specific rulings on these arguments, and Appellants did not re-assert them in their Rule 59, SCRCP, motion.[3]

"[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added). "'There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.'" *S.C. DOT v. First Carolina Corp*., 372 S.C. 295, 301-302, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)).

In this case, Appellants made no arguments to the Trial Court. The Trial Court continued the first summary judgment hearing at Appellants' request. (R. pp. 7-8 and 279). The day before the second hearing, Appellants' moved for another continuance, which the Trial Court denied but gave Appellants' ten days after the hearing to file written opposition to the motion. (R. pp. 1 and 331-332). Appellants made no oral argument at the summary judgment hearing or any written argument within the ten days thereafter.[4] Nor did

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[3] If any of these issues are preserved for review, Appellants also have abandoned the following arguments based on the lack of argumentation or citation to authority on appeal: (1) the Property's condition, (2) the applicability of S.C. Code Ann. § 27-40-440(c), (3) Appellants' willfulness, and (4) Appellants' compliance with S.C. Code Ann. § 27-40-410. *See* Arguments II.E, III, IV, and V below.

[4] They do not argue on appeal that the Trial Court abused its discretion by not granting the second continuance request or by limiting to ten days the period for submitting written argument.

Appellants ask the Trial Court to make any specific rulings on these arguments in a Rule 59 motion. Thus, Appellants have not preserved for review any of the arguments that they now make on appeal.

A. Whether Respondent's March 27, 2021, comment creates a genuine issue of material fact about the date of lease termination is not preserved for review.

Respondent argued to the Trial Court that the lease terminated on March 25, 2021. (R. pp. 288-292). Appellants argue on appeal that there is a question about whether the lease terminated on March 25, 2021, because of a statement that Respondent made on March 27th. (Initial App. Br. 9). Stoneburner referred to this text in his affidavit, but Appellants did not raise this argument with any specificity or pursue it before the Trial Court. (R. p. 338). *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. at 422, 526 S.E.2d at 724.

Even if Appellant's recitation of a solitary fact, without a corresponding argument, raised the issue of whether the March 27th text meant that the lease had not terminated on March 25th, the Trial Court did not make a specific conclusion about that argument. (R. p. 1). Appellants did not ask for a specific ruling on the March 27th text message in their Rule 52(b) and 59(e), SCRCP, motion. (R. pp. 356-357).[5] *Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party must file [a Rule 59(e) motion] when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") and *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 655, 780 S.E.2d 263,

[5] Appellants' Motion Pursuant to Rules 52(b) and 59(e), SCRCP argued three issues (1) that the order contained no findings of fact, (2) that Respondent understood the terms of the lease and should be held to it, and (3) that summary judgment was premature because additional discovery was necessary.

274 (Ct. App. 2015) (finding an argument unpreserved in the summary judgment context where the court never ruled on an issue). Either because this issue was not raised, or if raised it was not ruled on, this issue is unpreserved for review.

B. The condition of the property is not preserved for review.

Appellants state without argument that the "condition of the property is also at issue." (Initial App. Br. p. 10). Respondent believes this is a reference to Stoneburner's affidavit where he says, "I am informed and believe, . . . that the property was not at any time uninhabitable, affecting the health and safety of the Plaintiff." (R. p. 339). Based on this statement, Respondent believes Appellants' might be contemplating an argument that the Property never failed to comply with S.C. Code Ann. § 27-40-440(a) and therefore Respondent did not have the right to terminate the lease on March 20th or thereafter under S.C. Code Ann. § 27-40-620(a)(1). Appellants never produced any fact to corroborate Stoneburner's statement made on information and belief, and they never argued to the Trial Court that it was fit and habitable on March 20th so as to deprive Respondent of the right to terminate the lease under S.C. Code Ann. § 27-40-620(a)(1). *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. at 422, 526 S.E.2d at 724. As with the date of lease termination issue, Appellants did not make any argument about the Property's condition to the Trial Court nor did they seek a specific ruling on that issue in their Rule 52(b) and 59(e), SCRCP, motion. (R. p. 356). This issue is not reviewable either.

Appellants also claim that Respondent's evidence that the Property was

uninhabitable, the Code Enforcement records, is hearsay.[6] Appellants did not make this argument to the Trial Court, so it is not preserved for review either. *Weston v. Kim's Dollar Store*, 385 S.C. 520, 532 n.3, 684 S.E.2d 769, 775 n.3 (Ct. App. 2009) (declining to address, in summary judgment appeal, a hearsay argument first raised on appeal).

C. Appellants' alleged compliance with S.C. Code Ann. § 27-40-410 is not preserved for review.

Appellants assert that they complied with S.C. Code Ann. § 27-40-410 because they mailed Respondent a letter explaining why they withheld her full security deposit and pre-paid rent and did so within thirty days of April 15, 2021, which Appellants assert is the first time that Stoneburner received "clear, unambiguous, written notice" that Respondent was terminating the lease. (Initial App. Br. 11-12). Respondent did not mention the security deposit letter in her argument to the Trial Court. (R. pp. 309-310). Stoneburner's Affidavit says that he received the April 15th text, but Appellants made no argument to the Trial Court that this was the first "clear, unambiguous, written notice" he had received or that he complied with S.C. Code Ann. § 27-40-410 by mailing the deposit letter. Nor is this argument pressed in Appellants' Rule 52(b) and 59(e), SCRCP, motion. This argument is not preserved for review. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. at 422, 526 S.E.2d at 724.

D. Appellants' argument that they did not deliver possession willfully or in bad faith is not preserved for review.

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[6] The records are exceptions to hearsay as public records under Rule 803(8)(B), SCRE. *See Barrilleaux v. Mendocino Cty*., No. 14-cv-01373-DMR, 2018 U.S. Dist. LEXIS 126291, at *19-20 (N.D. Cal. July 26, 2018) (holding that a code enforcement officer's report prepared in response to a complaint is a public record under FRE 803(8)) and *Maybank v. BB&T Corp*., 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.").

Appellants assert that Stoneburner did not violate S.C. Code Ann. §27-40-620(b) because he did not act willfully or in bad faith by turning over possession of the Property. (Initial App. Br. pp. 12-13, 15). Alternatively, they claim that there are genuine issues of material fact here. (Initial App. Br. pp. 9-10). Appellants made no argument to the Trial Court on either willfulness or bad faith. Respondent argued her theory on why the evidence proved both as matters of law. (R. pp. 308-309). Stoneburner's affidavit states that he had not seen the house in a year, that Respondent and Mr. Cornwell inspected it, that they sent him photos of the property, and that he believed that there were no health or safety issues present. (R. pp. 336-337). But Appellants made no written or oral argument to the Trial Court that he did not act willfully or that he acted in good faith within the meaning of S.C. Code Ann. § 27-40-620(b), nor did Appellants make this argument and seek a ruling on it in their Rule 52(b) and 59(e), SCRCP, motion. Appellants state that they are unsure about whether the Trial Court ruled on the issue of treble damages under S.C. Code Ann. § 27-40-620(b) and therefore raise the willfulness and bad faith argument out of caution. (Initial App. Br. 12). If Appellants are unsure of whether the Trial Court ruled on this issue, they should have brought the issue to the Trial Court's attention in their Rule 59(e) motion, which they did not do. This argument is unpreserved. *See Easterling v. Burger King Corp*., 416 S.C. 437, 452-53, 786 S.E.2d 443, 451 (Ct. App. 2016) (finding an argument unpreserved for review where "Easterling failed to raise the issue in his memorandum in opposition of summary judgment, in his Rule 59(e) motion, or at the summary judgment hearing.").

E. Appellants' argument about the application of S.C. Code Ann. § 27-40-440(c) is not preserved for review.

Appellants state that S.C. Code Ann. § 27-40-440(c) permits landlords and tenants of a single-family dwelling to agree that the tenant will perform the landlord's responsibilities under S.C. Code Ann. § 27-40-440(a)(1) and (2). (Initial App. Br. p. 13-14). Appellants' brief does not make a direct argument related to this case based on what they claim that S.C. Code Ann. § 27-40-440(c) permits. The implied argument seems to be that the Special Conditions clause in the lease was effective to require Respondent to make all required repairs to the Property to bring it into compliance with S.C. Code Ann. § 27-40-440. Therefore, she did not have the legal right to terminate the lease because the property did not comply with S.C. Code Ann. § 27-40-440 since this was her responsibility. (R. p. 318). Appellants never made this argument to the Trial Court, nor did they seek this ruling specifically in their Rules 52(b) and 59(e), SCRCP, motion, so it is unpreserved.

Appellants mentioned S.C. Code Ann. § 27-40-440(c) in the Answer, which prompted Respondent to argue to the Trial Court why it does not apply in this case. (R. pp. 24 (Ans. p. 4) and 294-307). But raising a claim or a defense in a pleading is not sufficient to preserve the matter for appeal if the party opposing summary judgment makes no argument in response to a summary judgment motion asking the court to toss out the claim or defense. In *Gibson v. Epting*, Gibson had filed a multicount complaint that included causes of action for negligent misrepresentation and the violation of the SCUTPA, 426 S.C. 346, 350, 827 S.E.2d 178, 180 (Ct. App. 2019). The respondents moved for summary judgment on Gibson's claims. *Id.* The Court held that, although Gibson offered "substantive argument and authority" on those claims on appeal, "[n]either have been preserved for appellate review. They were not argued at the summary judgment hearing,

and the trial court did not rule on them specifically in its order." *Gibson*, 426 S.C. at 356, 827 S.E.2d at 183. Furthermore, "it appears Gibson did not ask the court to address them in her reconsideration motion." *Id*.

As in *Gibson*, even though Appellants raised the application of S.C. Code Ann. § 27-40-440(c) as a defense in their Answer, they made no arguments in response to a summary judgment motion that argued specifically that this defense failed because the Special Conditions portion of the lease was not enforceable. This argument is also unpreserved.

F. Appellants' argument that a client represented by SC Legal Services cannot recover attorney fees is not preserved for review.

Appellants make a final unpreserved argument that Respondent cannot be awarded a reasonable attorney's fee because she is represented by South Carolina Legal Services, which does not charge its clients attorney's fees. (Initial App. Br. 15-17). Appellants did not raise this argument below. Moreover, Respondent's motion to establish the amount of the judgment, including a reasonable attorney's fee, is still pending. This issue is not preserved for review.[7] *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (holding unpreserved for review an argument raised for

[7] Even if it were preserved for review, a reasonable attorney's fees is recoverable under S.C. Code Ann. §§ 27-40-410(b) and 620(b) where those fees would not go to the client but would come back to SCLS and be used to provide litigation services for other low-income clients who might be unable to afford litigation costs. Appellants cite *Williamson v. Middleton*, 383 S.C. 490, 495-96, 681 S.E.2d 867, 870-71 (2009) to assert that no attorney fee is recoverable unless the client pays for the legal service. (Initial App. Br. 16). This misapplies *Williamson*. That case holds that where the statutory authority for the fee requires that they be "actually and reasonably incurred," a fee award was not appropriate where the litigant did not actually incur one. *Id*. The attorney fee language in S.C. Code Ann. §§ 27-40-410(b) and 620(b) is materially different and justifies a different result. *See, e.g., Black v. Brooks*, 285 Neb. 440, 827 N.W.2d 256 (Neb. 2013) (holding in part that an award of fees under Nebraska's versions of S.C. Code Ann. §§ 27-40-410(b) and 27-40-610(b) was properly made to the tenant's pro bono counsel, a legal clinic).

the first time on appeal).

Because Appellants made no arguments to the Trial Court, and because the Trial Court never ruled on the specific arguments Appellants make on appeal, none of their arguments are preserved for appellate review.

II. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT THAT THE LEASE TERMINATED BEFORE APPELLANTS BROUGHT THE PROPERTY INTO COMPLIANCE WITH S.C. CODE ANN. § 27-40-440.

Appellants assert that the Trial Court's grant of summary judgment finding them liable under S.C. Code Ann. §§ 27-40-410 and 620 was improper because there are genuine issues of material fact about whether Respondent terminated the lease on March 20, 2021, and whether the Property was uninhabitable when the Code Enforcement officer condemned it. (Initial App. Br. pp. 9-11, 12-13). There are no genuine issues of material fact, and the Trial Court's order granting summary judgment should be affirmed despite it being a form order since the record permits meaningful review. *See Easterling v. Burger King Corp*., 416 S.C. 437, 453, 786 S.E.2d 443, 452 (Ct. App. 2016) (noting that the record permitted meaningful appellate review despite the trial court's use of a Form 4 order to grant summary judgment).

The law regarding turning over possession of residential real estate is straightforward. The South Carolina Residential Landlord Tenant Act (the "Act") requires a landlord to turn over possession of residential rental property in compliance with S.C. Code Ann. § 27-40-440. S.C. Code Ann. § 27-40-430. In turn, Section 440(a) requires landlords to ensure that the property complies with "applicable building and housing codes materially affecting health and safety" and to "make all repairs and do whatever is

reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann. § 27-40-440(a)(1) and (2). If a landlord fails to comply with the turnover provision of Section 430, the tenant may "terminate the rental agreement upon at least five days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security." S.C. Code Ann. § 27-40-620(a)(1).

Although the interplay between S.C. Code Ann. §§ 27-40-430, 440, and 620(a)(1) has not been analyzed by South Carolina's appellate courts, this dynamic has been reviewed by appellate courts in two jurisdictions have statutes that are substantially equivalent to Sections 27-40-430, 440, and 620(a)(1).[8] *Vasquez v. Chi Properties, LLC*, 302 Neb. 742, 925 N.W.2d 304 (Neb. 2019) and *Ahlstrom v. Campbell Real Estate*, LLC, 482 P.3d 17 (Okla. App. 2020). These cases are authoritative in South Carolina. *Prevatte v. Asbury Arms*, 302 S.C. 413, 416, 396 S.E.2d 642, 644 (Ct. App. 1990) (noting that cases from other jurisdictions construing a uniform provision of the Act "are authoritative in construing the South Carolina statute"). Both *Vasquez* and *Ahlstrom* interpret the plain meaning of the statutes to require a landlord to turn over possession of residential real estate that complies with their respective versions of S.C. Code Ann. § 27-40-440, and if the landlord does not, the tenant may terminate the lease on written notice. *Vasquez*, 302 Neb. At 753, 925 N.W.2d at 315; *Ahlstrom*, 482 P.3d at 21. Appellants do not argue that this is an incorrect statement of the law.

Applying this statutory framework, the central material questions are whether

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[8] *Compare* Okla. Stat. Ann. Tit. 41 §§117, 118 and 120 and Neb. Rev. Stat. §§76-1418, 76-1419, and 76-1426 *with* S.C. Code Ann. §§ 27-40-430, 440, and 620.

Respondent's statements instructing Stoneburner to return her money were legally sufficient terminate the lease under S.C. Code Ann. § 27-40-620(a)(1) and whether she had the right to terminate the lease due to the Property's condition when she made those statements. Affirmative answers to both questions, which the record plainly supports, resolve almost every issue in the case. Further development of the facts via a trial would not add clarity to any material fact or aid in applying S.C. Code Ann. §§ 27-40-430 or 620(a)(1) in this case.

A. The March 20, 2021 text terminated the lease as of March 25th under S.C. Code Ann. § 27-40-620(a)(1).

It is undisputed that on March 20, 2021, Respondent texted Stoneburner, "The house isn't livable and you aren't willing to pay to have any repairs done. We need our money back for it." (R. p. 113). The legal questions are whether this statement constitutes "written notice" to Appellants that she desired to "terminate the rental agreement" and whether she did in fact have the legal right to terminate the agreement because Appellants had not turned over possession in compliance with S.C. Code Ann. § 27-40-440. S.C. Code Ann. §§ 27-40-620(a)(1) and 27-40-430. If the March 20th text constitutes the written notice required by the Act, and if Respondent had the statutory right to terminate the lease on that day, then the lease terminated on March 25, 2021.[9]

Respondent argued this point explicitly. (R. pp. 288-292). Appellants do not argue in their Appellants Brief that the March 20th text is insufficient in either form or content to

[9] The first day of the five-day period was March 21 because "[t]he time within which an act is to be done must be computed by reference to South Carolina Rules of Civil Procedure." S.C. Code Ann. § 27-40-240(D).

satisfy the "written notice" requirement of Section 27-40-620(a)(1). Therefore, it is the law of the case. *Shirley's Iron Works, Inc. v. City of Union,* 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

It is also the correct legal result. Under S.C. Code Ann. § 27-40-610(a)(1) a lease terminates five days after "written notice."[10] A person has notice under the Act if

> (1) the person has actual knowledge of it; (2) the person has received a notice or notification of it; or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person 'knows' or "has knowledge" of a fact if he has actual knowledge of it.

S.C. Code Ann. § 27-40-240(A). A tenant telling her landlord that she wants her deposit and pre-paid rent back because the place she rented is not livable cannot be mistaken for anything but notice that she is backing out of the lease. Appellants make no argument that this statement had or could have had any other meaning in this case. Appellants had "actual knowledge" that Respondent was terminating the lease by written notice as of March 20, 2021. S.C. Code Ann. § 27-40-240(A)(1).

Furthermore, Respondent's subsequent actions and statements leave no doubt about what the March 20th text meant. When Tyler Jackson did not contact her about repairs like Stoneburner said he would, she went to a local magistrate's court and then to the Greenville County Code Enforcement office on March 22nd. (R. pp. 42-43). She texted Stoneburner, "I'm at the codes office right now and they want to condemn the property. We want our deposit and rent money back. The whole 1590 or I continue to file the process. It's

[10] Appellants make no argument that the text message is not a writing.

uninhabitable, give us our money back or I have the property condemn [sic]." (R. p. 119). Then on March 24th, after Code Enforcement condemned the property, she texted, "We want our money be [sic] Craig. Back. It's unrentable Craig. We need our money back now or I'm taking you to court. Got this for you today." (R. p. 126). Later that day she wrote,

> We want our money back. I have a checking account that you can deposit my money into. Or we can do Western Union. Or I can sue you and we can take this to court and you'll be paying court fees and much more as well, I'm fine with going to court about this. That's up to you. Give us our 1590 back or I am suing you.

(R. p. 129). A tenant who intends to continue in a lease does not demand their money back multiple times and then, when the landlord will not acquiesce, apply to have their rental unit inspected with the expectation that the code enforcement officer will confirm that it is unfit for human occupancy. Respondent's intent to terminate the lease on March 20th, as confirmed by her statements and actions on March 22 and 24, 2021 is unmistakable. Appellants can make no argument that Stoneburner did not have actual knowledge or at least have reason to know from the facts and circumstances that Respondent intended her March 20, 2021, text to constitute written notice that she was canceling the lease.[11]

B. If other possible dates are selected to start five day period, Appellants still lose the lease termination issue.

If the March 20, 2021, text is inadequate to trigger the 5-day period under S.C.

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[11] Stoneburner says in his Affidavit that he "understood that the tenancy of the Plaintiff and Robert Cornwell was hopeless" no later than March 22, 2022, and refers to the series of events that transpired between March 15, 2021, when Respondent discovered the water leak and other defects in the property, and March 22, 2021, when she went to the Code Enforcement office. (R. p. 338). Stoneburner also had the Property listed for rent as of March 20, 2021. (R. pp. 43 and 120).

Code Ann. § 27-40-620(a)(1), Appellants cannot prevail on the lease termination issue if either of the texts that Respondent sent on March 22, 2021, or March 24, 2021, demanding her money back, independently constitute the statutorily required written notice. (R. pp. 119 and 126). To prevail, Appellants would have to show that they brought the Property into compliance with S.C. Code Ann. § 27-40-440 within the relevant five-day period. Viewing the record in the light most favorable to Appellants, they state that some, but not all repairs were complete, at the earliest, by the end of March or April 1st or 2nd. (R. pp. 132 and 339). Five days after March 22nd is March 27th, and five days after March 24th is March 29th. Both are before March 31st. Therefore, even if the March 20th text was not adequate to trigger S.C. Code Ann. § 27-40-620(a)(1), which it was, Appellants still lose the lease termination issue because under Appellants version of events, the Property was not brought into compliance with S.C. Code Ann. § 27-40-440 prior to end of March, the earliest date that Appellants claim any repairs were completed. (R. p. 339).[12]

Appellants claim that April 15, 2021, was the first day Stoneburner learned about Respondent's intent to terminate the lease. (Initial App. Br. pp. 7, 11). On that day, Respondent texted Stoneburner a photo of her attorney's demand letter. (R. pp. 322-324 and 140-143). Even if April 15, 2021, is used as the date starting the five-day clock, the lease terminated on April 20, 2021, and Appellants still are liable under Sections 27-40-620(a)(1) and 27-40-410(b) for not returning the pre-paid rent or the deposit. Code Enforcement photos show indisputably that the Property did not comply with S.C. Code

[12] Also, the exterior HVAC unit, photographed as an electrical hazard on March 24, 2021, remained unremedied as of April 6, 2021. (Compare R. pp. 250 and 254 with R. p. 273).

Ann. § 27-40-440 at least as late as April 27, 2021. (R. p. 269). The improper railing on the back porch alone meant that the property did not comply with "the requirements of applicable building and housing codes materially affecting health and safety." S.C. Code Ann. § 27-40-440(a)(1).

Non-compliance with just one housing code materially affecting health and safety means that the Property was not turned over as required by the SC Residential Landlord Tenant Act (the "Act"). *Cf. Ahlstrom v. Campbell Real Estate, LLC*, 482 P.3d 17, 21 (Okla. Ct. App. 2021) (holding, under Oklahoma's version of S.C. Code Ann. § 27-40-440 that one non-functioning air conditioner gave tenants legal ground to terminate lease). Porch railings are required by housing codes.[13] Porches must have guardrails if they are at least 30 inches off the ground. IPMC, § 307.1 and SCRC, § R312.1.1.[14] The back porch at the Property required guardrails. (R. pp. 246, 248, 267, 271, and 275). Vertical guards must be spaced no more than four inches apart. SCRC, § R312.1.3.[15] On March 24, 2021, the porch had no railing along the lefthand side (looking towards the house) or the front of the porch.

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[13] Greenville County follows the 2018 International Property Maintenance Code (IPMC) and the 2018 South Carolina Residential Code for One and Two Family Dwellings (SCRC). Greenville County Code, §§ 5-21 and 5-22(h) and (i) (available at https://www.greenvillecounty.org/disclaimer/CountyOrdinances.aspx) (last visited April 10, 2023).

[14] IPMC Section 307.1 reads, "Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair **and every open portion of a** stair, landing, balcony, **porch**, **deck**, ramp **or other walking surface** that is more than 30 inches (762 mm) above the floor or grade below shall have guards." (emphasis added).
SCRC Section R312.1.1 reads, "Where required. Guards shall be located along open-sided walking surfaces of all decks, porches, . . ., that are located more than 30 inches measured vertically to the floor or grade below and at any point where a downward slope exceeds 3V:12H within 36 inches (914 mm) horizontally to the edge of the open side."

[15] SCRC Section R312.1.3 reads, "Required guards shall not have openings from the walking surface to the required guard height that allow passage of a sphere 4 inches (102 mm) in diameter."

By April 6th one horizontal rail and one vertical guard had been installed, and by April 27th some additional guards had been installed along the left-hand side of the porch, but none had been installed at the front edge of the porch. (R. pp. 248, 269, and 271). Thus, as late as April 27th the porch did not comply with a building code materially affecting health and safety.

Railings materially affect health and safety. In *Thompson v. CDL Partners LLC*, the Fourth Circuit Court of Appeals, applying South Carolina law, held that a landlord was not liable for injury to a person who fell through a defective railing because the landlord had no notice of the defect. 378 F. App'x 288 (4th Cir. 2010). It was taken as a given that a defective railing could have triggered liability under S.C. Code Ann. §27-40-440 but for lack of notice. 378 F. App'x at 291 ("Both parties agree that the railing did not satisfy required safety standards under § 27-40-440 at the time of Thompson's fall."). *See also Miller v. David Grace, Inc*., 2009 OK 49, 212 P.3d 1223, 1230 (OK 2009) ("This Court recognizes that the safety of tenants is furthered by properly installing guardrails and ensuring other protective devices are in sufficient working order.").

Therefore, even as late as April 15, 2021, Respondent still had a legal right to terminate the lease on five day's written notice because it is indisputable that the Property did not comply with S.C. Code Ann. § 27-40-440 at least as late as April 27, 2021.

C. Stoneburner's statements and actions show that he understood that the lease had ended no later than the end of March 2021.

Stoneburner acknowledged repeatedly that he considered the lease ended. On March 20, 2021, Stoneburner put the Property back up for rent. (R. p. 120). He said that Respondent's "strident" texts on and after March 20th caused him to start looking for a new

tenant by putting the Property on Craigslist. (R. p. 338). By March 22nd Stoneburner considered the tenancy "hopeless." (R. p. 338). On March 23rd, Stoneburner texted, "Robert, have you decided not to rent 411 rangeview. Your wife says no." (R. p. 125). On March 24th he indicated his understanding that the lease is over by saying, "I assume yall want me to rerent it and no longer are interested in doing your part of the agreement. So this [is] your notice." (R. p. 127). Later that day he said that he planned to sue Respondent for breach of contract and demanded the keys and her address so that he could serve her with a lawsuit. (R. p. 131). He fully understood the meaning and intent of Respondent's statements and actions starting on March 20th.

Then on March 31st, Stoneburner asked Mr. Cornwell if he is "interested in making a decision to rent 411 rangeview as most of the work that you agreed to deal with is or will be completed. I would consider allowing you to lease it once all is done that you couldnt or wouldnt do . . ." (R. p. 132). Offering to enter into a new lease with just Mr. Cornwell discloses that Stoneburner understood that the prior lease was over.

Stoneburner also had the locks changed and did not give Respondent a key, which she discovered on March 31st. (R. p. 134). Stoneburner could not have believed, in good faith, that a comment that Respondent made on March 27th meant that the lease signed on March 5th was still in effect. Locking a tenant out of rental property is antithetical to the notion that a lease remains in effect. *Thomas v. Hancock*, 271 S.C. 273, 275, 246 S.E.2d 604, 605 (1978) ("[A]n actual eviction is an actual expulsion or physical ouster of the tenant from a material part of the premises; . . .") and *cf. Parker v. Shecut*, 349 S.C. 226, 231, 562 S.E.2d 620, 623 (2002) (holding that one co-owner's actions in changing locks and not giving the other co-owner a key "are so distinctly hostile to [sister's] rights that [brother's]

intention to disseize is clear and unmistakable."). There is no genuine issue of material fact that the lease terminated on March 25, 2021, or at the very latest prior to March 31, 2021, as proved by Stoneburner's own statements and actions acknowledging that the lease was over.

D. Respondent's statement from March 27th does not create a genuine issue of material fact about whether the lease remained in effect.

Appellants' point to one statement that Respondent made on March 27th after she discovered that Appellants had re-advertised the Property for rent despite it being declared unfit for human habitation to argue that there is a genuine issue of fact about when the lease terminated. (Initial App. Br. 9 and R. pp. 131-132). Taking one sentence out of the evidentiary record and interpreting it out of context does not create a genuine issue of material fact. *Grimsley v. S.C. Law Enforcement Div*., 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015) (cherry-picking one sentence and reading it out of context did not create a genuine issue of material fact); *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984) ("The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.").

The record must be viewed as a whole with the statement read in context of the entire conversation. *Grimsley*, 415 S.C. at 42, 780 S.E.2d at 901. Examining the context demonstrates that Respondent's statement represents an attempt by her to chastise Stoneburner on a moral level as one of her many attempts to get him to return her money. Seven days prior, on March 20, 2021, Respondent first informed Stoneburner that she wanted her money back. Rather than acquiesce, Stoneburner told her to coordinate with a

Tyler Jackson, who never showed up (R. pp. 112-121). On March 22nd, after Respondent made her complaint to Code Enforcement, Stoneburner persisted in withholding the money, instead telling her that she agreed to keep the property up to code, that he only wanted to speak with her co-tenant Robert, that she needed to do the repairs and that she was in default under the lease. (R. pp.122-124). On March 23rd Stoneburner told Respondent that he "had a contractor to do the work but after getting negative texts from your wife I told the guy it looked like yall had changed your mind. Read your lease." (R. p. 125). On March 24th, Respondent sent Stoneburner photos of the condemnation notice, after which followed an extended argument about the property's condition and ended with each party threatening to sue the other. (R. pp.126-131).

On March 27th Respondent texted, "You do know we still have a lease with you and you are trying to find somebody to rent out the home, on top of it being condemned by the code enforcement office and it being uninhabitable to live in? You can't do that." (R. p. 132) (emphasis added).

Appellants assert that this raises a question about whether the lease remained in effect. For this interpretation to have rational force, one must be able to conclude that, after days of the parties arguing back and forth and most recently threatening to sue each other on March 24th, Respondent had an unexplained change of heart, despite the Property being under a condemnation order. No reasonable factfinder examining the entire record and the context of that statement could endorse Appellants' proposed interpretation of it. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (a party opposing summary judgment must "'do more than simply show that there is some metaphysical doubt as to the material facts.'" (citation omitted)). Rather, Respondent makes the

statement as part of the power struggle where she is trying to find leverage to get Stoneburner to return her money by pointing out to Stoneburner how he is acting illegally, or at least hypocritically (i.e. both advertising the property for rent despite it being condemned while also retaining her money and claiming that she is responsible for making repairs under a lease).

E. There is no genuine issue of material fact that the Property was uninhabitable at the time it was condemned on March 24th.

Appellants submit that the "condition of the property is at issue" and assert that Stoneburner should have been given the opportunity to cross examine the Code Enforcement official at a trial. Appellants have not come forward with evidence as required by Rule 56(e), SCRCP, to show that there is a genuine issue of material fact on this issue, and their failure here means that summary judgment is appropriate on the question of whether the Property was in fact uninhabitable on March 20, 22, and 24, 2021, when Respondent told Stoneburner that she wanted her money back. Furthermore, Appellants have abandoned this issue because they make no argument based on the condition of the property. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009) (failing to argue an issue on appeal constitutes abandonment).

Despite allegedly having retained one or more persons to make repairs, Appellants produced no statements from any third party in response to the motion for summary judgment. Nor did they produce any evidence such as a receipt, invoice, email, or other record showing any dealing or transaction with "Giles Corp" or anyone person he may have engaged to work on the Property. And his affidavit contains no details or explanations about the work done other than general, conclusory remarks that he "engaged a Giles Corp,

a maintenance man, . . to tend to all maintenance, issues," that the Code Enforcement officer "went over several things he needed to do to lift the violation" and that Mr. Corp did these things. (R. pp. 338-339). These non-specific, conclusory statements do not create a genuine issue of material fact about whether the Property was uninhabitable at the time that Code Enforcement so concluded. *See McCall v. State Farm Mut. Auto. Ins. Co*., 359 S.C. 372, 379-380, 597 S.E.2d 181, 185 (Ct. App. 2004) (finding that an affidavit opposing summary judgment that did not "address with any specificity" the statements and claims made in the affidavits supporting summary judgment was conclusory and not adequate to withstand summary judgment).

The Code Enforcement officer condemned the property for several specific reasons, including "electrical hazards," "water supply" issues, "repair roof/gutters," and "HVAC." (R. pp. 83-84, 246, and 248-266). Stoneburner does not respond to these specific issues and instead attempts to imply that the only issues were the back porch railings, trash, rubbish, and cutting the grass. (R. p. 339). Clearly there is photographic proof of other issues. (R. pp. 45-82 and 248-266). Because Appellants have failed to "set forth specific facts showing that there is a genuine issue for trial," summary judgment was appropriate on the question of whether the Property was in fact uninhabitable on March 20th and thereafter. Rule 56(e), SCRCP ("[A]n adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.").

Appellants also have abandoned this issue because they make no argument about what a different condition of the Property legally would mean. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009) (failing to argue an

issue on appeal constitutes abandonment). If the Property had been in some other condition other than what the Code Enforcement officer found it to be on March 24th, that does not automatically create a genuine issue of material fact. Appellants must raise a scintilla of evidence showing that the Property complied with S.C. Code Ann. § 27-40-440. S.C. Code Ann. §27-40-430. For example, it would make no difference in the case if the Code Enforcement officer was wrong about the "water supply" issue mentioned in the Official Notice but was correct about the rest. In that case, the Property still would have been out of compliance with S.C. Code Ann. § 27-40-440, and Respondent still would have had a right to terminate under S.C. Code Ann. § 27-40-620(a)(1). Appellants make no specific argument about what they claim the Property's actual condition was or about the legal significance of this hypothetical alternate condition. Therefore, any argument over the Property's condition is abandoned.

However upon a review of the entire record, there can be no question that the Property did not comply with S.C. Code § 27-40-440 on March 20th, that Respondent gave written notice of her intent to terminate the lease on that day as well as on March 22nd, March 24th, and April 15th, any one of which would be a sufficient date under S.C. Code Ann. §27-40-620(a)(1), that Stoneburner acknowledge by his own statements and actions that he understood that the lease was over, and that the Property was not brought into compliance with S.C. Code Ann. § 27-40-440 prior to March 25th or prior to the end of any other possible five day period. The Trial Court properly granted Respondent summary judgment on the issues of when and whether she terminated the March 5, 2021, lease as permitted by the Act.

III. THE SPECIAL CONDITIONS CLAUSE IN THE LEASE IS UNENFORCEABLE

In addition to being unpreserved for review, Appellants are wrong that the Special Conditions clause in the lease trumped Respondent's right under S.C. Code Ann. § 27-40-620(a)(1) to terminate the lease and required her and Mr. Cornwell to make the property fit and habitable. The Special Conditions provision fails to comply with Section 440(c), it contradicts or conflicts with other parts of the Act, and it is ambiguous. Therefore, it is ineffective. [16]

A written agreement under S.C. Code Ann. § 27-40-440(c) must not be for the purpose of evading the landlord's obligations. The clear purpose of Special Conditions clause is to avoid Stoneburner's repair obligations. Appellants make no argument that the provision is not an attempt by Appellants to avoid their obligations under Section 440(a). Appellants only caution the Court not to let this limitation "swallow the rule." (Initial App. Br. 14). Therefore, this issue is abandoned. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009) (failing to argue an issue on appeal constitutes abandonment).

However, there is no need to be careful in this case because Stoneburner himself admitted that he used the provision to avoid his statutory obligations. He told Respondent, "Handymen are not very dependable these days that's why our lease says yall were willing

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[16] Appellants note that the interpretation of S.C. Code Ann. § 27-40-440(c) is a novel issue of law in South Carolina. A novel issue of law does not make summary judgment inappropriate where the record demonstrates beyond doubt that the Special Conditions clause does not comply with the law. *Medical Univ. of S.C. v. Arnaud*, 360 S.C. 615, 620 n. 6, 602 S.E.2d 747, 750 n.6 (2004) ("[T]he mere fact a case involves a novel issue does not render summary judgment inappropriate.").

to keep the place up. Read it!" (R. p. 110). In other words, the lease requires tenants to perform all repairs and maintenance because it is too much trouble for Stoneburner to find someone to do the work that S.C. Code Ann. § 27-40-440(a) requires him to do. The Special Conditions clause is unenforceable as a result.

Moreover, the Special Conditions clause fails to specify any repairs or maintenance tasks. Assuming that S.C. Code Ann. § 27-40-440(c) even applies in the context of turning over possession of property at the outset of a lease, then by its plain terms it requires the lease to specify what repairs or maintenance tasks the tenant is agreeing to undertake.

Permitting a blanket statement that the tenant will "provide appliances, heat and air equipt if needed and agree to do any repairs, maintenance, etc. at their cost . . . as needed on the property + to keep it up to Code" to satisfy Section 27-40-440(c)'s specificity requirement would violate the plain meaning of the text. "When faced with an undefined statutory term, the Court must interpret the term in accordance with its usual and customary meaning" *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011). Specify means "to mention or name definitely; state or describe in detail." World Book Dictionary 2008 (1990). Black's Law Dictionary does not contain a definition for "specified" but defines the related adjective "specific" to mean "[o]f, relating to, or designating a particular or defined thing; explicit <specific duties>." Black's Law Dictionary 1434 (8th ed. 2004). Thus, S.C. Code Ann. § 27-40-440(c) requires a writing to make explicit and definite the particular repairs that are to be the tenant's responsibility. The Special Conditions clause does not specify anything and is ineffective.

The Special Conditions clause also conflicts with or renders meaningless other provisions of the Act. (R. p. 318). First, it places the landlord and tenant in the positions

they would have occupied prior to the Act's passage, making it incompatible with the General Assembly's intent to embark on a "course totally divergent from existing precedent in this area as to the duty of the landlord to the tenant to repair the leased premises." *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989).

Second, under S.C. Code Ann. § 27-40-440(a)(5), "[n]o appliances or facilities necessary to the provision of essential services may be excluded." The Special Conditions clause attempts to exclude both the provision and the maintenance of all appliances, including heating equipment. If the Special Conditions clause is enforceable, then Section 27-40-440(a)(5) is meaningless as well as Section 27-40-630, which provides remedies to a tenant when the landlord negligently or willfully fails to provide essential services such as heat.

Third, residential tenants have a right to insist that the landlord provide housing that is "fit and habitable." S.C. Code Ann. § 27-40-440(a)(2). A lease may only contain provisions "not prohibited" by the Act or other rule of law. S.C. Code Ann. § 27-40-310(a). Any provision in a lease agreement that requires a tenant to waive a right is unenforceable. S.C. Code Ann. § 27-40-330(b). The deliberate or malicious use of a prohibited rental provision can subject a landlord to damages and reasonable attorney's fees. S.C. Code Ann. § 27-40-330(b). These provisions demonstrate a strong anti-waiver policy adopted by the General Assembly that would be upended if a blanket statement that the tenant is responsible for all repairs and maintenance could suffice to state the "specified repairs, maintenance tasks" contemplated by Section 440(c).

Fourth, the General Assembly's purpose in passing the Act was to encourage both landlords and tenants "to maintain and improve the quality of housing." S.C. Code Ann. §

27-40-20(b)(2). Also, a rental agreement that entirely separates the landlord's right to receive rent from the obligations under S.C. Code Ann. §27-40-440(a) is not allowed. S.C. Code Ann. § 27-40-340. Permitting the landlord to cast onto a tenant all the landlord's repair and maintenance obligations offends both the express purpose of the Act and the restriction against completely severing the landlord's right to receive rent from the landlord's obligations under S.C. Code Ann. §27-40-440(a).

The upshot of these considerations is that the phrase "specified repairs, maintenance tasks" means a specific listing of particular tasks, not a broad, sweeping transfer of all the landlord's obligations. "'A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.'" *Sparks v. Palmetto Hardwood, Inc*., 406 S.C. 124, 128, 750 S.E.2d 61, 63, (2013). Reviewing the Act as a whole, the Legislature intended to permit parties to identify discreet, specific items or tasks for which the tenant would assume responsibility, but not for the landlord to be able to use a lease a blanket statement that the tenant is responsible for everything to destroy

the Act's primary innovation.[17] *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989).

Finally, the lease is ambiguous on the repair question and must be construed against the drafter. *Canal Ins. Co. v. Nat'l House Movers, LLC*, 414 S.C. 255, 265, 777 S.E.2d 418, 424 (Ct. App. 2015). Although the Lease says in part, "Tenants agree to provide Appliances, heat and Air equipt if needed, and agree to do any repairs, maintenance etc. at their cost . . . to keep it up to Code," other provisions contradict this. (R. p. 318). For example, in paragraph 1 of the section titled "USE, OCCUPANCY AND MAINTENANCE," the lease says that the tenant agrees to provide a list of any major repairs and agrees to meet the "repair or service person at the appointed time . . ." (R. p. 315). This language indicates that the landlord is undertaking duties of "major repairs" in contradiction to the Special Conditions clause. Under paragraph 1 of the "RESPONSIBILITIES AND ADDITIONAL CHARGES" section, the tenant will "report promptly any running water, electrical and/or heating malfunction and repay the Landlord for any added costs of repairs made necessary by negligent or careless use . . ." (R. p. 315).

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[17] Moreover, requiring a specific listing or description has practical purposes that this case illustrates. It permits a tenant to understand the exact obligations or repairs he is agreeing to make and to assess the added costs. The Act goes to great lengths to protect the uninformed about waiving legal rights under the Act, it would make sense that that the Act would require a specific listing of repairs or maintenance tasks so that there would be no doubt about what the tenant is agreeing to do. S.C. Code Ann. § 27-40-330 (a) (tenant may not waive rights or remedies through a rental agreement). A general transference of the duty to maintain a fit and habitable dwelling could encompass many unknown and expensive problems as happened in this case. Respondent did not know until March 15, 2021, that there were major plumbing and electrical problems that were beyond her or Mr. Cornwell's ability to address. Furthermore, as Iowa's Supreme Court pointed out when analyzing Iowa's version of S.C. Code Ann. § 27-40-440(c), a situation might arise where "a tenant could be liable for highly expensive repairs that occur at the end of the term of the lease even though the tenant did not cause the uninhabitable condition to arise." *De Stefano v. Apts. Downtown, Inc*., 879 N.W.2d 155, 182 (Iowa 2016). Given the potential for abuse and inequitable outcomes, Section 27-40-440(c) takes the sensible position that a written agreement must specify exactly repairs or tasks the tenant agrees to undertake.

This also suggests that the Landlord retains an obligation to make repairs. And under paragraph 2 of the "INSURANCE AND INDEMNITY" section, the landlord "will use every reasonable effort to assist in the correction of" the "discontinuance of heat, electricity, sewer, water, or any other basic services, or the failure of any appliance . . ." (R. p. 316). This language cannot be reconciled with that of the Special Conditions clause, thereby creating a patent ambiguity. Construing the ambiguity against Defendants, the Special Conditions clause is ineffective.

IV. APPELLANTS TURNED OVER POSSESSION OF UNINHABITABLE PROPERTY WILLFULLY AND IN BAD FAITH

Appellants claim that Stoneburner's actions were not willful and were in good faith. (App. Initial Brief, pp. 9, 10, 12-13). They make no argumentation or citation to authority as to willfulness. (App. Initial Brief, pp. 9, 10, 12-13). Any argument Appellants do make focuses exclusively on the good/bad faith element.[18] Therefore, the issue of willfulness is abandoned. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009) (failing to argue an issue on appeal constitutes abandonment).

However, the evidence of willfulness is manifest. Willfulness is an attempt to intentionally avoid obligations under the rental agreement or the Act. S.C. Code Ann. § 27-40-210(16). Stoneburner was familiar with his obligations under S.C. Code Ann. § 27-40-440(a). His lease agreement says it is "governed by the SC Residential Landlord Tenant

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[18] Appellants argue that Stoneburner advertised the Property as needing work, that he allowed Respondent to inspect and take pictures, that he offered to help find people to make repairs, and that he was unaware of some issues. (Initial App. Br. 9-10, 12-13). Respondent can understand how these points may be relevant to the issue of bad/good faith, but she does not see how these relate to the issue of willfulness. For example, even if Stoneburner allowed potential tenants to inspect the Property, this does not prove that he was not still attempting to intentionally avoid obligations under the Act. S.C. Code Ann. § 27-40-210(16) (defining willfulness).

Act." (R. p. 318). As argued in the previous Argument, he attempted use the Special Conditions clause to get around the Act's landlord repair and maintenance obligations. He also was familiar enough with S.C. Code Ann. § 27-40-440(c) to raise it as a defense in his pro se answer. (R. p. 24 (Ans. p. 4)). He expressed his intent to avoid all repair and maintenance obligations when he told Respondent on March 17, 2021, "Handymen are not very dependable these days that's why our lease says yall were willing to keep the place up. Read it!" (R. p. 110). By trying to rent the Property only to "handyman" tenants, Stoneburner undoubtedly did not care about the Property's condition because he believed that he could require the tenant to do any repairs as demonstrated by his Craigslist ad which offered $100 off for three months "for clean up and repairs . . . Needs work done on repairs before move in etc fpr City housing case." (R. pp. 85-86, 126-129, 131-132). Respondent proved willfulness as a matter of law.

Respondent also proved bad faith, or lack of good faith, as a matter of law. "'Good faith' means honesty in fact in the conduct of the transaction concerned." S.C. Code Ann. § 27-40-210(5). Calling the Property a "handyman special" understated the extensive scope of the problems with and repairs needed at the Property. This language was not "honesty in fact" because the Property needed much more than a "handyman" to attend to it. It misled Respondent into believing that some elbow grease would be all she needed to clean up the place. (R. p. 40). Defendants' inaccurate advertisement of the Property's condition demonstrates the lack of good faith.

Any error in the Trial Court granting summary judgment on S.C. Code Ann. § 27-40-620(b) is harmless because it will not affect the outcome of the case. *Bass v. Gopal, Inc*., 384 S.C. 238, 249, 680 S.E.2d 917, 923 (Ct. App. 2009) (applying the rule that an

error not affecting the outcome of a case is not reversible). In her motion to establish judgment, Respondent asks for judgment of $4770 plus reasonable attorney's fees. (R. p. 367). Even if one excludes the treble damages and reasonable attorney's fees under Section 27-40-620(b), Respondent is entitled to the damages figure she has requested under S.C. Code Ann. § 27-40-410(b) alone. Finding a scintilla of evidence that possibly raises a genuine issue of material fact about bad faith under Section 620(b) will not affect the damages to which she is entitled because she is entitled to the same damages under Section 410(b). Therefore, if the Trial Court erred in finding bad faith under Section 620(b), the error is harmless.

V. APPELLANTS WRONGFULLY WITHHELD RESPONDENT'S PRE-PAID RENT AND DEPOSIT ENTITLING HER TO JUDGMENT AS A MATTER OF LAW UNDER S.C. CODE ANN. §27-40-410(b)

Appellants assert that they are not liable under S.C. Code Ann. §27-40-410 because Stoneburner mailed a notice to the wrong address. (Initial App. Br. pp. 11-12). The notice told Respondent that he was keeping her pre-paid rent and deposit to offset against rent owed under the lease. (R. p. 319). Because there is no genuine issue of material fact that Respondent legally terminated her lease under S.C. Code Ann. § 27-40-610(a), there can be no genuine issue of material fact that Appellants are liable under S.C. Code Ann. §27-40-410(b) for three times the amount of pre-paid rent and the deposit, plus reasonable attorney's fees for failing to return the deposit and rent.

Under Section 410(a), "[u]pon termination of the tenancy" the landlord must return to the tenant any amount retained as security, minus amounts due for rent and damages. S.C. Code Ann. §27-40-410. The landlord must itemize any amount withheld from the

deposit and send the tenant the deposit or send a written notice with the amount due within thirty days after lease termination. The tenant must provide a forwarding address to the landlord, and the landlord is not liable for damages if the landlord mails the notice and the amount due to the forwarding address. S.C. Code Ann. §27-40-410(a). Only if the tenant fails to provide a forwarding address may the landlord use the tenant's last known address. S.C. Code Ann. §27-40-410(a). If the landlord fails to return the deposit and pre-paid rent with the notice, "the tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees." S.C. Code Ann. §27-40-410(b).

Appellants cannot escape liability because Stoneburner mailed the security deposit notice to Respondent at 10201 Assembly View Circle in Greenville, SC. Respondent's attorney's letter, which Respondent texted to Stoneburner on April 15, 2021, instructed him to mail it to 701 South Main St., Greenville, SC. (R. p. 143). Respondent's text on April 29, 2021, also told him to use her attorney's address. (R. p. 144). On April 30, 2021, Stoneburner filled out the security deposit transmittal form. (R. p. 319). The envelope is post-marked May 1, 2021. (R. p. 320). He saw the instruction to send the deposit and rent to Respondent's attorney because he wrote on the top right of the transmittal form, "Any Questions have your Attorney contact me!" (R. p. 319). Thus, Appellants do not avoid liability by having mailed the security deposit transmittal form to a wrong address.

Appellants assert without argument that "any dispute . . . with the deductions should have been resolved by a hearing on the merits." (Initial App. Br. p. 12). No hearing is necessary. There is no genuine issue of material fact that Appellants "wrongfully withheld" the entire pre-paid rent and the deposit totaling $1590.

Wrongfully withholding an amount under Section 410(b) means withholding an amount to which the landlord is not entitled. *Cf. Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642, (Ct. App. 1990) (involving a jury verdict finding that landlord had withheld $42 that it should not have resulting in a $126 judgment plus court costs). *See also Love v. Monarch Apartments*, 13 Kan. App. 2d 341, 344, 771 P.2d 79, 82-83 (Kan. App. 1989) (holding, under Kansas' version of S.C. Code Ann. § 27-40-410(b) that "wrongfully" means an amount that the landlord is not authorized to withhold).

Appellants were entitled to no part of the pre-paid rent or deposit. Rent abated under S.C. Code Ann. § 27-40-620(a) because the Property was not habitable, and Respondent terminated the lease under Section 620(a)(1) before Appellants brought the Property into compliance with S.C. Code Ann. § 27-40-440. Respondents never occupied the Property because it was uninhabitable and therefore cannot be liable for any damages to the property. Appellants make no argument that Respondent is responsible for any damages. They generally assert that this issue should be resolved by a trial but they fail to argue or point to evidence that suggests that any other outcome is possible. The failure to argue an issue or to show that there is any genuine issue of fact for trial constitutes abandonment of the issue on appeal and makes summary judgment appropriate. Rule 56(e), SCRCP, *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 557, 684 S.E.2d 779, 783 (Ct. App. 2009).

Respondent was entitled to judgment as a matter of law under S.C. Code Ann. § 27-40-410(b) in the amount of three times $1590 plus reasonable attorney's fees because Appellants "wrongfully withheld" the entire $1590.

CONCLUSION

This Court should affirm the Order granting summary judgment to Respondent as

to Appellants' liability under S.C. Code Ann. §§ 27-40-410 and 620 and remand the case to permit the trial court hear Respondent's motion to establish the judgment amount. At that time Appellants can assert their argument that a client of a Legal Services organization, such as SC Legal Services, is not entitled to an award of attorney fees under S.C. Code Ann. §§ 27-40-410 and 620 where that award would be paid over to SCLS.

As to the rest of Appellants' arguments, they failed to preserve them or abandoned several of them. Moreover, on the merits there is no genuine issue of material fact that Appellants offered for rent residential property that they knew to be in need of repairs that are a landlord's responsibility under the Act, that Respondent terminated the March 5, 2021 lease by written notice as permitted by the Act, that the lease terminated on March 25, 2021, that Appellants fully understood that the lease had ended, that they refused to return either the pre-paid rent or security deposit, none of which they were entitled to keep, rendering them liable as a matter of law under S.C. Code Ann. §§ 27-40-410(b) and 620(b).

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

Greenville, South Carolina

July 11, 2023

s/ Mark Fessler
Mark Fessler
SC Bar # 77376
701 South Main St.
Greenville, SC 29601
Office: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org

Attorney for Respondent

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

Audra Starnes, ……Respondent
v.
Craig Stoneburner and Citivest Corporation……Appellants

CERTIFICATE OF COUNSEL

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

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler

July 11, 2023

Mark Fessler (S.C. Bar No.: 77376)
701 South Main St.
Greenville, South Carolina 29601
Office: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org