

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

Case No. 23-CP-160070  
Case No. 23-CP-160071  
Case No. 23-CP-160072  
Case No. 23-CP-160073  
Circuit Court Judge

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Magistrate Civil Cases  
Case No. 2022CV1610401203  
Case No. 2022CV1610401204  
Case No. 2022CV1610401205  
Case No. 2022CV1610401206  
Judge of the Magistrate's Court – Hon. Craig L. LaCross

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Appellate Case No. 2023-000546

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Stephanie McAnuff, *pro se* ..... Appellant

v.

ASIO Town Park, LLC. .... Respondent

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**INITIAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER [MAGISTRATE] COURT COMMIT AN ERROR OF LAW BY APPLYING AN INCORRECT STANDARD IN REVIEWING AN ACTION FOR EVICTION/EJECTMENT FILED BY RESPONDENT IN RETALIATION AGAINST A “PARTNER”, WITH A PROFIT SHARING AGREEMENT.
2. WAS THE LOWER [MAGISTRATE] COURT’S FAILURE TO SET BOND IN THIS APPEAL A STATUTORY VIOLATION, WHICH WAS PREJUDICIAL TO THE APPELLANT

## STATEMENT OF THE CASE

This appeal arises from four (4) eviction/ejectment cases filed by Respondent with the Magistrate Court of Darlington County, on December 9, 2022, in retaliation against a partner who had a profit-sharing agreement with “respondent”, ASIP Town Park, LLC/Allen Smith, dating back to November 27, 2018. In exchange for management services provided, Appellant would accrue profit sharing at a rate of twenty-eight per cent (28%) of cash flow. As stated, “when profit sharing equals fifty percent (50%) of the total profit equity invested, Appellant and Respondent would share the cash flow equally. The Profit Sharing Agreement also stated that “*a management fee of six percent (6%) would be paid as an expense either to Appellant or an agreed upon entity for continued management services*”. Respondent would retain “*exclusive ownership of the property [and] all profit sharing accrued by Appellant [would] mature and be payable upon the sale of the property*”.

Appellant also became a tenant of Respondent, renting four (4) lots upon which she had placed four (4) mobile homes. Initially, the “lot rent” was not necessary, as Appellant was a management partner contributing to the growth of the property for public sale. Appellant would step down as a manager, after taking ill in 2022. She kept it professional. Respondent acted in a retaliatory manner by charging rent for the four (4) lots. The rents started at \$300.00/month.

They would quickly escalate to \$600.00/month when Appellant did not agree to a proper lease quickly enough. Respondent's intentions were clear – to cause financial discomfort and harm to the individual who was a profit-sharing partner for years.

The eviction/ejectment cases came before Magistrate Court for hearing on December 27, 2022 and entered an Order on January 12, 2023. At hearing, the Magistrate asked Respondent what he wanted and Respondent replied that he just wanted Appellant to move her homes. The Magistrate then granted eviction/ejectment, not for the purpose that the cases were originally filed, but on Respondent's request for Appellant to move her homes. On objection by Appellant, the magistrate stated that Appellant could appeal.

Magistrate would grant Respondent's motion to dismiss the appeal on March 2, 2023. This Appeals Court would deny the Motion to Dismiss on June 30, 2023.

## STATEMENT OF FACTS

The Appellant was a property manager and partner in the mobile home park. The Respondent was her friend, and owner of the park. The two individuals, and separate business entities, had a profit-sharing agreement dating back to November 27, 2018. Additionally, Appellant had four (4) lots on which she put four (4) mobile homes. At some point in 2022, Appellant became ill and reached out to her partner about stepping down as the manager, giving 30-day Notice, per their Management Agreement. Respondent initially asked, sometimes in heated discussions, that Appellant run a 27-unit rental property on a \$2,000.00/month budget. When the Appellant stepped down, the Respondent retaliated. The rent started at \$300.00/lot/month. On August 29, 2022, Respondent announced that rent would jump to \$600.00/lot/month beginning October 1, 2022.

Four (4) eviction/ejectment cases were filed by Respondent with the Magistrate Court of Darlington County, on December 9, 2022. The matter would come before the Magistrate Court for hearing on December 27, 2022. The Magistrate Court, on January 12, 2023, entered an Order granting eviction/ejectment. Appellant filed appeals in the four (4) eviction/ ejectment cases.

On February 21, 2023, the Magistrate Court held a hearing, where Appellant was represented by counsel regarding the issue of Appellant's need to post a bond pursuant to S.C. Code Ann. § 27-37-130, the only issue over which the Magistrate Court retained jurisdiction upon the filing of the Notices of Appeal.

In accordance with S.C. Code Ann. § 27-37-120, "*either party may appeal the decision [of Writ of Ejectment], but if the tenant does so, he must post a bond, the amount of which is determined by the magistrate*".

In accordance with S.C. Code Ann. § 27-37-130, “*Bond required to stay ejectment on appeal. An appeal in an ejectment case will not stay ejectment unless at the time of appealing, the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate.*”

There is no record of the Magistrate Judge setting any bond in any amount for the appeal in these ejectment cases. However, there is a record of the Magistrate Judge continually penalizing Appellant for not fulfilling the bond requirements of an appeal. The Magistrate Judge’s indiscretion amounts to a statutory violation that was deliberately prejudicial to the Appellant.

#### **STANDARD OF REVIEW**

Questions of fact are reviewable for “clear error”. Respondent has attempted to thwart the rights of Appellant to both a fair hearing before the Magistrate Court, and to an unobstructed appeal due to the “clear error “ of the Magistrate Judge, which lead to a prejudicial complacency on the part of said Magistrate Judge both prior and post-appeal. The Magistrate Judge focused on the needs and “wants” of the Plaintiff in the ejectment cases, then followed up with a “block” on the Appellant by not setting a bond for Appellant’s appeal.

Matters of discretion are reviewable for “abuse of discretion”. Court of Appeals “must not . . . set aside” a trial court’s findings of fact, whether based on oral or other evidence . . . unless clearly erroneous and must give due regard to the trial court’s opportunity to judge the witnesses’ credibility. Fed. R. Civ. P. 52(a)(6). In this case, the Magistrate Judge had a focus directly on the Plaintiff and his whims. It would lead him to be abusive with his discretion and prejudicial actions towards the Defendant in the Magistrate’s Court.

There were no recorded / transcribed hearings on record.

## ARGUMENTS

### **1. The Magistrate Judge's failure to set a secure bond for Appellant's Appeal amounted to a statutory violation.**

I In *Santos v. Harris Inv. Holdings*, No. 5964 (S.C. Ct. App. Jan. 25, 2023) the issue of post-ejectment bond is correctly pronounced and adhered to. In said case, it states that HIH filed an action seeking ejectment of Santos from the Property (a nightclub called "El Alamo" with reports of criminal behavior). The magistrate granted the application for ejectment and awarded HIH attorney's fees. Santos subsequently appealed to the circuit court, which issued a bond order staying the appeal of the ejectment action. Santos posted bond and continued to occupy the premises.

In these ejectment cases before the appeals court, it can be determined that the "magistrate's failure to make findings why a secured bond was necessary amounted to a statutory violation" *State v Labinski*, 654 S.E.2d at 741 (N.C. Ct. App. 2008). It is up to the Magistrate to set a value to the bond in an ejectment appeal. This goes all the way back to *The Act of 1946, under section 30*, which provides: "An appeal in an ejectment case will not stay ejectment unless, at the time of appealing, the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the trial magistrate, and conditioned for the payment of all costs and damages which the landlord may sustain thereby." *Horn v Blackwell*, 48 S.E. 2d 322 (S.C. 1948).

### **2. The Magistrate Judge's actions and inactions were prejudicial to the Appellant in the ejectment cases.**

At hearing on December 9, 2022 for eviction/ejectment the Magistrate Judge's focus was on the needs of the Plaintiff. The Magistrate Judge would learn that Plaintiff simply wanted Defendant to remove her mobile homes from his lots. Plaintiff and Defendant had operated as

profit-sharing business associates. Defendant had a profit-sharing equity share of the property. She had enhanced the property in general by securing four (4) lots for her four (4) mobile homes. She brought her management skills to the property and it operated successfully under her care. Defendant / Appellant was an asset to the property and the business known as ASIP Town Park, LLC. Plaintiff / Respondent acted as a “proverbial woman-scorned” and played the Magistrate Judge accordingly. The Magistrate Judge took action for Plaintiff and demonstrated inaction for Defendant.

Clearly prejudicial to Appellant, the Magistrate Judge would fail to set bond for the ensuing appeal(s), only to dismiss the appeal(s) for failure of the Appellant to pay a bond that had not been set. The Appeals Court would deny the dismissal of the appeal by the Magistrate Judge on June 30, 2023.

## CONCLUSION

The Magistrate Court's decision, as set out in an Order of Eviction on January 12, 2023, was a clear error of law and an abuse of discretion. This Court has ample basis to reverse the decision(s) made regarding ejection(s). It was arbitrary and capricious in its behavior, favoring the retaliatory wishes of Plaintiff/Landlord with specificity in detail and intent – to cause undo harm to Appellant by a disgruntled, profit-sharing “friend”. The record, in the short lower [magistrate] court life of this legal action, is limited at best. The reversal, by the Appeals Court on June 30, 2023, of the Magistrate's *instant* dismissal of Appellant's Appeal immediately demonstrates that the Magistrate's ruling was abrupt, prejudiced, and wrong. Respondent's request for ejection should be remanded to the Lower Court with instructions for dismissal of the ejection(s).

Respectfully submitted,

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