FORM 13
FINAL BRIEF OF APPELLANT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable Lawton McIntosh
Circuit Court Judge

Appellate Case No. 2023-000133

Donald Eaton, Kristy Drees, and Logan Drees,

Plaintiffs,

v.

DBC Anderson Cove LP,

Respondent,

Of Whom Donald Eaton is the Appellant

FINAL BRIEF OF APPELLANT

Donald Eaton
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Anderson, South Carolina 29621
(864) 540-3035
Appellant (Pro Se)

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STATEMENT OF ISSUES ON APPEAL

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2. THE FINDING BY THE MAGISTRATE JUDGE THAT THERE WAS NO CONSIDERATION TO CONSTITUTE A CONTRACT WAS IN ERROR.

STATEMENT OF THE CASE

The matter on appeal is a case originating from Anderson County that was filed on November 4, 2022. This case was an appeal to the Circuit Court from a matter with the Anderson County Summary Court disposed by Judge Carey B. Murphy on October 31, 2022. A brief hearing with the Circuit Court was held on January 18, 2023, with each party making oral arguments and each party submitting a Memorandum of Law. Judge McIntosh's ruling was issued on January 23, 2023, and this appeal was subsequently filed on January 27, 2023.

The original matter with the Summary Court began as a Rule to Vacate or Show Cause filed on May 23, 2022, by the Respondent, DBC Anderson Cove LP (henceforth "DBC"). Appellant Donald Eaton (henceforth, "Eaton"), and his family members cohabitating at the residence in

question, filed an Answer, Counterclaim, and Motion to Dismiss on June 3, 2022. DBC filed an Answer to the Counterclaim on July 3, 2022.

On July 8, 2022, Eaton and family requested a Jury Trial; that request was granted. A pre-trial hearing was held on July 20, 2022, to determine whether the parties had reached an agreement and to inform the parties of the procedure for jury trials in the Summary Court. This included an expected timeline and notice from the Chief Magistrate that Discovery was not available within the Summary Court. Eaton and family's Motion to Dismiss was not heard at that time.

On July 26, 2022, Eaton and his family filed an Amended Counterclaim to provide further clarity to their original Relief Requested.

On September 1, 2022, Notices of Appearance by attorneys John H. Scully and Daniel B. Eller were filed, followed by a Motion for Summary Judgment on September 16, 2022. A hearing was held on September 29, 2022, where all outstanding Motions in the case were heard before Judge Murphy. At that time, Eaton and family dismissed their Motion to Dismiss. Following oral arguments and review of submitted Motions, Judge Murphy found for Summary Judgment in favor of DBC on all claims that were not dismissed.

STANDARD OF REVIEW

Summary Judgment is appropriate when "there is no genuine issue as to any material fact" and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "The

purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868 (2001). Summary judgment is a drastic remedy, but summary judgment is warranted when "further discovery [is] unlikely to create any genuine issue of material fact." *Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433 (2003). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d. 801, 802 (2009).

FACTS

The case at hand is the most recent in a series of legal proceedings between the parties.

DBC's first attempt to raise suit against Eaton and his family occurred near the end of 2020. That suit was subsequently dismissed owing to DBC's failure to comply with South Carolina Statutes regarding registration of their Foreign Limited Partnership with the Secretary of State's office.

Several months after the first action, on September 24, 2021, DBC attempted to raise suit against Eaton and family again, this time alleging overdue rent that varied in amounts from approximately $1,000.00 to an amount exceeding $12,000.00 during oral arguments. During the months between their first and second actions, DBC had managed to reach compliance with the laws of South Carolina. Eaton and his family requested a jury trial in the second action and DBC sought counsel who filed a Motion for Summary Judgment. That Motion was denied and on March 4, 2022, DBC voluntarily dismissed its action.

Following that dismissal, the property manager for the residence in question approached Eaton and his family requesting a meeting. Eaton and his mother attended that meeting on March 9, 2022. Over the course of a conversation, the parties came to the consensus that while there was a dispute as to the amount of balance, if any existed, an amicable resolution could be reached. The property manager claimed that the balance was approximately $3,000.00; this balance was attributed to various alleged fees, including late fees resulting from payments withheld by the Anderson Housing Authority outside of any action or decision involving the family. Eaton and his family did not believe that any balance was owed, as they had fulfilled their rent obligations, but were interested in reaching a resolution to the situation. At the conclusion of the meeting, it was decided that Eaton and his family would file applications with charitable organizations that helped with overdue rent; in return, DBC would enter into a new lease agreement for the family's continued residency. It was also decided that during this process, neither DBC nor Eaton and his family would begin any further court proceedings.

Eaton and his family began the process of applying to the relevant organizations. Despite that, DBC's property manager informed the family on April 15, 2022, that the property owner was no longer interested in complying with the terms to the agreement made the month before. On April 21, 2022, the property manager posted a 30-Day Notice to Vacate on the family's door. On May 23, 2022, the property manager filed the Rule to Vacate or Show Cause that is at issue now.

ARGUMENTS

1. SUMMARY JUDGEMENT WAS INAPPROPRIATE BECAUSE EVIDENCE SUFFICIENT TO MEET THE "SCINTILLA" STANDARD EXISTS AND WAS KNOWN BY THE SUMMARY COURT.

Summary Judgment is appropriate when, and only when, there exists no triable issue of fact. In this matter, Eaton and his family pled from the inception of the case that a subsequent and superseding contract had been formed between the parties that would render the expiration date of the lease contract irrelevant (*R. p. 30, paragraph 19*). As stated above in *Hancock*, defeating a Motion for Summary Judgment requires a mere "scintilla" of evidence and that evidence must be considered in the light most favorable to the non-moving party.

DBC was awarded Summary Judgment at the hearing on September 29, 2022, on the basis that the terms of the written lease between the parties had expired. (*R. p. 8*). This ruling outright disregards Eaton and his family's stated defense that a superseding contract existed between the parties which would render that expiration irrelevant (*R. p. 30, paragraph 18*).

While one can certainly appreciate the need to expedite judicial proceedings, summary judgment is a drastic remedy that must be invoked cautiously. This caution is of the utmost importance to prevent a loss of proper adjudication of disputes. Judge Murphy's ruling is in direct contradiction to the interests of justice and gives inequitable credence to an affidavit of an agent of DBC, favoring the statements of an agent of one party, one who was not present, over the statements of the other parties, who were present and available for further questioning or clarification. In addition, those statements by DBC's agent were placed at higher value than other evidence beyond sworn statements.

As discussed in Judge Murphy's Order (*R. pp. 10-11*), the decision that there was no genuine issue of material fact was based solely on an affidavit submitted by DBC from their agent, Josette Anderson. That Order also states that Eaton and his family offered no affidavit in opposition. Instead, Eaton and his family were present at the hearing and attested to the existence of the verbal agreement (*R. p. 70*) (see *Facts*) that would render the expiration date of the written lease irrelevant.

Beyond statements made before Judge Murphy, sufficient evidence to defeat a Motion for Summary Judgment was also on record. Eaton and his family had already submitted to the record their application to Sunbelt Human Advancement Resources (*R. pp. 56-65*), demonstrating their performance under the verbal agreement made on March 9, 2022.

While the above-mentioned evidence is more than sufficient to meet the "scintilla" standard to defeat Summary Judgment, Eaton also confirmed at the hearing that further evidence was available, in the form of an audio recording (*R. p. 70*). Judge Murphy's Return (*R. pp. 67-70*) confirms the Summary Court's knowledge of that evidence and intentional disregard of the same when it was submitted. There is an argument to be made that such evidence should have been on the record for the Court's consideration in DBC's Motion; however, any such argument fails when scrutinized against decisions of this very Court, such as "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Schmidt v. Courtney*, 357 S.C. 310, 319, 592 S.E.2d 326, 331 (Ct. App. 2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. Pship*, 354 S.C. at 468, 581 S.E.2d at 501 (Ct. App. 2003); *Baril v. Aiken Regl Med. Ctrs*., 352 S.C. 271, 280, 573 S.E.2d 830, 835 (Ct. App. 2002); *Trivelas v. South Carolina Dept*

of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001) ; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); *Bayle v. South Carolina Dept of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *Vermeer Carolinas, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).

In choosing to ignore Eaton and family's statements that such evidence existed, refusing to review that evidence when it was submitted immediately following a hearing (*R. p. 70*), and denying Discovery to the parties, the Summary Court effectively required one party to play with their cards on the table while the party moving for Summary Judgment was allowed to maintain the veil of secrecy.

Even without the evidence not on the record, tangible evidence and sworn statements by the non-moving parties more than exceeded the standard of a "scintilla" and Judge Murphy's award of Summary Judgment was in error.

2. THE FINDING BY THE MAGISTRATE JUDGE THAT THERE WAS NO CONSIDERATION TO CONSTITUTE A CONTRACT WAS IN ERROR.

Judge Murphy's ruling on October 31, 2022 (*R. pp. 6-12*), attempts to justify a finding that Summary Judgment was appropriate by stating that there was not consideration to meet the required elements of a contract in the verbal contract made on March 9, 2022. This aspect of the ruling is far from viewing the record in "the light most favorable to the non-moving party," instead choosing to

provide that beneficial light to the moving party, DBC. Eaton and his family, as with their statement that an agreement had been reached by the parties, have been clear and unwavering since the onset of the matter that they did not agree that an outstanding balance existed between the parties (*R. p. 30, paragraph 19*)(*R. p. 20, paragraph 9*). For its part, DBC also failed to allege that any such balance existed, only opting to make such allegations during oral arguments. At bare minimum, the dispute between the parties as to whether any balance existed, or the amount of that balance, creates sufficient dispute that the verbal agreement would represent an accord and satisfaction.

DBC also argues that because a pre-existing obligation to pay rent existed under the terms of a month-to-month lease, any agreement to apply to organizations that offer rental assistance would fall under that same pre-existing obligation and, thus, would not satisfy the requirements of new or additional consideration. This fails on the surface because while an obligation to pay rent under the month-to-month lease does exist, that obligation does not extend to whatever performance that DBC may unilaterally decide to require. Eaton and his family made clear that any claimed balance was in dispute and agreed to perform above and beyond their pre-existing obligation by spending time, energy, and costs to file applications with organizations to resolve the dispute between the parties.

DBC has parroted their claim of a pre-existing duty ad nauseum, and while rulings by the Summary Court and the Circuit have been favorable to those claims, they do not withstand any scrutiny when removed from the favorable light unjustly given to them.

CONCLUSION

For the reasons stated above, this Court should reverse and remand the rulings in this matter, including the ruling of the Summary Court which necessitated it. This Court's remand should also

include instructions that the required elements of a contract have been in the issue of the superseding verbal contract. This Court should also award the cost of filing fees incurred by Appellant Donald Eaton, totaling $434.00 for filing and transcript fees resulting from this appeal.

Respectfully submitted,

/s/ Donald Eaton
August 14, 2023
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CERTIFICATE OF COUNSEL

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CERTIFICATE OF COUNSEL

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

August 14, 2023

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