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**Aug 14 2023**

**SC Court of Appeals**

**FORM 13  
REPLY BRIEF OF APPELLANT**

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

REPLY BRIEF OF APPELLANT

Donald Eaton  
201 Miracle Mile Dr 13C  
Anderson, South Carolina 29621  
(864) 540-3035  
Appellant (Pro Se)

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## ARGUMENTS

### I. RESPONDENT CONTINUES TO PARROT THEIR NARRATIVE AS UNDISPUTED FACT WHILE REFUSING TO DISCUSS THE ISSUES ON APPEAL

#### **i. Respondent fails to address the issue on appeal and attempts to redirect attention to facts that were never in controversy at all.**

Respondent DBC has repeated their argument that three undisputed facts exist in the case *ad nauseum*. This has been their recurring response to the Appellant's arguments but fails completely to address the issue on appeal. By asserting repeatedly that three undisputed facts exist, they have thus far managed to redirect attention away from the existence of an accord made between Eaton and his family and DBC that was established after those undisputed facts.

The agreement between the parties was made after the "three undisputed facts" that the Respondent asserts. That agreement renders those "three undisputed facts" moot for the purposes of the eviction claim. That agreement bars DBC's action for eviction. Even with positive light given to DBC, the existence of such an agreement is in contention and remains an issue for a fact finder.

#### **ii. Respondent's erroneous assertion that an existing obligation prevents the formation of a subsequent agreement fails when presented without the confusion of repeated claims of past due rent.**

Respondent DBC asserts that "past due rent" constitutes an existing obligation that would render the agreement between the parties incomplete. The existence of "past due rent" is an issue that is in contention and remains an issue for a fact finder. Instead, DBC and the lower courts have treated DBC's claim of "past due rent" as an undisputed fact when it is not. The existence of a balance between the parties has been contested by the Appellant and his family since the beginning of this

action, with their assertion “Defendants did not, and do not at this time, agree that Plaintiff’s alleged debts are valid.” (*R. pg. 20, paragraph 19, R. pg 30, paragraph 19*). While the Respondent is correct in their analysis that an existing obligation is not sufficient consideration if that obligation is uncontested, the existing obligation DBC alleges is contested and their application of that analysis in this case is incorrect.

**iii. Respondent’s discussion on consideration ignores that modification and subsequent contracts are an accepted and common-sense part of contract law.**

Even giving Respondent the benefit of an argument that being holdover tenants means an existing obligation to pay rent exists, the ability of parties to modify contracts or create subsequent contracts still renders their claim of an existing obligation disingenuous. Extensions of residential leases are common and usually include modifications to both expiration dates and rental amounts and are not rendered incomplete by an existing obligation under holdover clauses.

Additionally, Respondent’s attempt to “tak[e] the Appellant’s argument to the logical extreme” (*Brief of Respondent, pg.12*) is laughable. To support that argument, the Respondent cites a case that is only related to this one by being a matter of Landlord and Tenant; in the matter cited, the Tenant argued that a lease provision only allowed the Tenant, and not the Landlord, to terminate the lease. The Respondent’s selective use of quotations from an opinion without proper context is the actual absurdity.

**iv. Respondent asks this court to disregard material designated in the Record on Appeal while also designating that matter to be included themselves.**

Respondent DBC argues that this Court should disregard audio recordings that were not presented to the Magistrate prior to the hearing that resulted in Summary Judgment. However,

Appellant Eaton has not requested that this Court consider those recordings. Instead, Eaton has requested that this Court consider Judge Murphy's Return that acknowledges that he was aware of the existence of the recordings but did not consider them (*R. pg. 70*). If it was the intention of the Respondent to request that the Return itself be disregarded, it is notable that they have also designated the Return to be included in the Record on Appeal.

The judgment by Judge Murphy to award Summary Judgment is far from viewing evidence in the light most favorable to the non-moving party. The recordings in question were not on the record owing to the Summary Court's refusal to facilitate proper Discovery. Instead, and as discussed in Appellant's Brief (*Brief of Appellant, pg. 7*), Respondent DBC was given both the benefit of secrecy to any evidence they may have entered and the benefit of a judgment in their favor when Eaton did not make special effort to volunteer his own without even a request from DBC. Given Judge Murphy's awareness of the existence of further evidence, a Continuance of the Motion hearing to allow for proper submission and review of that evidence would have been the most appropriate ruling at that time.

## II. RESPONDENT'S BRIEF ENGAGES IN INTENTIONAL CONTEXTOMY AND MISDIRECTION

### **i. Respondent references statements in the Transcript in ways that deliberately recontextualizes statements to fit their narrative.**

Respondent DBC engages in blatant and calculated partial references to the Transcript. With specificity, Respondent's Brief reads as follows (*Brief of Respondent, pg. 8*):

*Tenants claim that a verbal discussion occurred in March 2022 between Tenants and a property manager of Respondent wherein Tenants agreed to "make reasonable efforts to secure a grant from a charitable organization" to pay rent in*

*exchange for Respondent's agreement to refrain from filing an eviction and to "establish a new written lease." (Tr. p. 8, lines 1–2, 12–13).*

This quotation references statements made by Eaton, but purposefully removes a substantial portion of Eaton's statements in the middle of cherry-picked phrases. The Respondent's intentional misrepresentation of the Appellant is abhorrent at best and arguably unethical.

**ii. Respondent's discussion on the Civil Conspiracy claim is only intended for misdirection.**

Respondent DBC begins their Brief with discussion of the Civil Conspiracy claim that was withdrawn by the Appellant and his family. Appellant Eaton has not made any argument that could be confused as appealing the dismissal of the Civil Conspiracy claim. The Respondent's opening focus on a non-issue is a strawman intended to create the perception that the remainder of their brief is strong.

**iii. Respondent's argument to execute judgment on Kristy Drees and Logan Drees is a blatant attempt at pettiness.**

The Respondent's argument that a Writ of Ejectment is enforceable against Kristy Drees and Logan Drees is ill-conceived and frivolous. Neither the Summary Court nor the Circuit Court have issued Writs of Ejectment against Eaton or his family and the Order that would allow DBC to seek those writs is the subject of this appeal. Furthermore, the Respondent has already attempted this tactic in one of their previous actions, by way of their former counsel. At that time, Judge Murphy, the same Magistrate whose opinion they now wish to have affirmed, ruled that such a request was pointless and would not be entertained. Just as before, an issuance of a Writ against Kristy Drees or

Logan Drees will simply result in Appellant Eaton, who has filed this appeal, allowing the remaining members of his family to stay as his invited guests.

Respectfully submitted,

**/s/Donald Eaton**

June 26, 2023

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**FORM 16  
CERTIFICATE OF COUNSEL**

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**CERTIFICATE OF COUNSEL**

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

August 14, 2023

**s/Donald Eaton**

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