STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM SPARTANBURG COUNTY
Shannon M. Phillips, Special Circuit Court Judge

CHRIS KLEIN, pro se)	**C/A NO: 2023-000852**
)	
Appellant,)	
)	**FINAL BRIEF OF APPELLANT**
vs.)	
)	
KAY FAMILY INVESTMENTS;)	
Respondent.)	

FINAL BRIEF OF APPELLANT

Chris Klein, pro se
120 Dogwood Ln, Unit A
Duncan, SC 29334
864-505-1231
cklein37@netzero.com

TABLE OF CONTENTS

TABLE OF CASES AND STATUTES

STATEMENT OF ISSUES ON APPEAL

First Issue: Should a settlement/eviction with outstanding motions be enforced with a new case (did Judge Phillips rule correctly); or be confined to the original case to maintain the rights of both parties?

Second Issue: Judge Phillips made a factual error, asserting Appellant did not want to dismiss this case (R. p. 2, line 1). Is this grounds for dismissal of the case?

Third Issue: Is Appellant under a month-to-month arrangement or no agreement at all, and is the

Respondent at fault for this situation and ensuing litigation between the parties - does a landlord/Respondent have a right to raise rent as much as they want regardless of economic conditions, causing a tenant/Appellant to begin making partial payments of rent and breach their lease agreement, potentially leading to an eviction? Does such conduct constitute unfair or unconscionable contracting?

STATEMENT OF THE CASE

This action commenced on November 14, 2022, when Respondent filed an eviction against Appellant in the Spartanburg magistrate court, case 2022CV4210107516, pursuant to the SC Residential Landlord and Tenant Act, alleging failure to pay rent when due or demanded.

Appellant filed an answer on November 28 and requested a jury trial. The defenses raised:

Appellant made payment consistent with partial payments submitted for multiple months within the previous six months leading to the action; since Respondent accepted those payments, the assertion they submitted with the returned payments - 'we don't accept partial payments' - must be false, and the real, core issue of the matter must be Appellant's contesting of the late fees assessed in the previous month. Also, the contract is unenforceable, as Respondent breached it and all previous agreements, and the agreements contain contradictory language and unconscionable late fees and rent payment increases.

The parties (Respondent being represented by Hub City Law) settled on the date our jury trial was scheduled, on January 18, 2023, before the jury entered the room. The terms of the settlement, ordered by the Judge – Appellant shall pay all months of unpaid rent to date (November, December, and January), plus various fees, by the close of business, amounting to approximately $4,000, and move out of the unit on February 28, 2023. Appellant submitted the settlement payment at Respondent's office on the same day.

The night of the settlement, Appellant discovered new evidence and errantly filed an appeal for relief of the settlement on January 26 (case 2023CP4200360), which was heard on March 27 via Webex and dismissed.

Respondent filed a new case for eviction on March 7 (case 2023CV4210101730). Appellant filed an answer on March 23. This new case was heard in the magistrate court on March 30 with a non-jury trial. Appellant's defense was that the case was redundant and should be dismissed, and judge ruled in favor of Respondent. After the hearing on the same day, Appellant made motions for relief and a new jury trial in the original case, 2022CV4210107516.

Appellant served a notice of intent to appeal case 2023CV4210101730 at Respondent's office on April 5, and filed the appeal with the Circuit Court on April 5 (case 2023CP4201229). Bond to Stay Execution on Appeal for rent payments was set at $1,375 on April 10. The appeal hearing was held May 15, 2023, via Webex. As per the transcript , Respondent argued that Appellant violated the terms of a settlement (R. p. 14, lines 9-17), as well as (falsely) reporting a breach of bond (R. p. 11, lines 21-25).

Appellant argued the matter should be confined to the original case (R. p. 9, lines 18-25, R. p. 5 – p. 6, lines 1-10) and that the eviction is unjust and that Respondent is at fault for the litigation due to their contracting (R. p. 6, line 22-p. 7, line 1), and that the allegation of a bond breach was false (R p. 12, lines 16-17, R. p. 16, line 12-p. 17, line 6).

Master in Equity Judge Shannon Phillips ruled in favor of the Respondent, affirming the lower court, in her order on May 16 (R pp. 1-3). Appellant served the notice of intent to appeal this decision at Respondent's office on May 22 and filed the appeal for the case at hand on May 24.

STANDARD OF REVIEW

There doesn't appear to be any South Carolina or federal case law directly related to the issues in this appeal. The case Simpson vs. MSA of Myrtle Beach, Inc., 373 S.C 14, 25 (2007) is related to the general subject matter of the Third Issue.

ARGUMENT

Appellant hereby appeals the lower Court ruling and requests this Appeals Court to overturn it

based on the following issues and reasons:

1.) *Should a settlement/eviction with outstanding motions be enforced with a new case (did Judge Phillips rule correctly); or be confined to the original case to maintain the rights of both parties?*

In the lower court order, Judge Phillips stated "a party is not required to file a motion to enforce a settlement agreement in the same case." (R p. 1, lines 40-41) This implies Appellant argued that settlements must always be enforced within the same case. This is not so. As the transcript indicates, Appellant merely stated "no one has provided a reason why settlements" (R p. 9, lines 19-21) – or at least this particular one - should be enforced by filing new cases. While Judge Phillips provided a case where it supposedly has happened before, she ignored the reasons listed in Appellant's memorandum (R p. 5-p. 6, line 10) why a new case should not be opened in this particular matter. The contexts of these cases appear quite different and appears to be a misapplication of legal precedent.

The case Judge Phillips referenced - Vista Antiques and Persian Rugs, Inc. v. Noaha, LLC et al, 425 S.C. 413 (S.C. Ct App., Oct 17, 2008) - doesn't appear to contain a completely new action to enforce a settlement. It appears to be a series of appeals attacking the amount of the settlement.

Furthermore, the Defendants in 'Vista v Noaha' actually attempted to fulfill the settlement, only attempting to amend an amount due. In our action, Appellant is attempting to nullify the settlement altogether and revert the action back to the jury trial originally requested of case 2022CV4210107516, based on discovery of new evidence. No new evidence was discovered in 'Vista v Noaha'.

Furthermore, it appears Appellant's approach to the settlement is actually consistent with the approach the Georgia Court instructed in 'Vista v Noaha' - "*the proper method for attacking a foreign judgment file in Georgia under the Uniform Act is a motion to set aside...*".

Thus, no one still has proven why a settlement should be enforced with a new claim.

2.) *Judge Phillips made a factual error, asserting Appellant did not want to dismiss this case. Is this grounds for dismissal of the case?*

The order also contains an erroneous assertion. Judge Phillips asserted that "Appellant further argues this matter should not be dismissed..." (R p. 2, line 1). This assertion is erroneous. Appellant motioned for dismissal in the final paragraph of the memorandum (R p. 7, lines 9-10).

3.) *Is Appellant under a month-to-month arrangement or no agreement at all, and is the Respondent at fault for this situation and ensuing litigation between the parties - does a landlord/Respondent have a right to raise rent as much as they want regardless of economic conditions, causing a tenant/Appellant to begin making partial payments of rent and breach their lease agreement, potentially leading to an eviction?*

STANDARD OF REVIEW: Simpson vs. MSA of Myrtle Beach, Inc., 373 S.C 14, 25 (2007)

Judge Phillips referenced Appellant's 'admission' that the rental agreement was month-to-month (R p. 2, line 1), therefore implying that Respondent was free to evict. Again, this is an argument that can and should be made in the original case and subject to a jury trial as requested by Appellant, but if this Court chooses to consider this argument and rule based on it, Appellant makes the following counterarguments.

Appellant made the assertion that the parties were under a month-to-month agreement for strictly pragmatic purposes. Appellant did not want to sign a one-year lease that further raised the already extreme rental rate. Technically, Appellant considered the parties under no agreement at the point of eviction as Respondent was in violation of every agreement the parties ever signed, making the month-to-month term and every clause in the contract null and void. This would make the tenancy subject to

Section 27-40-310(b) (and Appellant requests the Court to order this situation and an appropriate rent payment in the Conclusion). Perhaps the law should be refined to account for this situation. There is no stipulation in law that requires a tenant be evicted when a landlord violates their rental agreement, and/or raises the rent to an extreme level, and the tenant refuses to renew (nor should there be such a law), but perhaps some governance of this situation should be pursued.

Respondent is at fault for all litigation between the two parties. Appellant's historical rental contracts in the designation of matter indicate Respondent's rental rate increases were extreme and are not consistent with reasonable and fair market value increases in the South Carolina upstate region. The rate increases within two year spans in the following communities in the upstate ranged from $20 to $70: The Haven at Barry Shoals, 2010 - 2012 - $650 to $722, or $72 per month; Auston Woods, 2012 - 2013 - $615.00 to $615.00; and Parkwest - 2015 - 2016 - $600 to $620, or $20 per month.

Appellant believes, along with other evidence, this constitutes unconscionable contracting, an unfair trade practice (currently being litigated in 2023CV4210102606) and caused the partial payments that inspired this action.

The South Carolina Supreme Court ruled in Simpson vs. MSA of Myrtle Beach, Inc., 373 S.C 14, 25 (2007) that contracts involving essential services be held to a different standard than contracts for other services. In the case of renting, apparently without exception as indicated by the aforementioned rental contracts, contracts are commonly based on a revenue generating strategy – leverage - rather than economic conditions or necessity; that strategy being - 'raise the rent with each renewal no matter what simply because the tenant is unlikely to uproot their life'. The rates rarely stay the same or go down from

one agreement to a renewal. Is there any other service or industry that does this? Appellant has evidence that this assertion is precisely the approach the Respondent made in luring Appellant to their unit and arbitrarily unfairly raising rent to an extreme level, leading to the partial payments that caused this eviction case; evidence which is being introduced and argued in case 2023CV4210102606 ; the claim being - Respondent lured in Appellant with a rate of $1,100 with the intent to incrementally raise it, via manipulative contracting, to a rate of ~$1,500. The evidence - Appellant noticed an internet ad after moving in that listed a rate of or approximately $1,500. Within two years of tenancy, Appellant is now paying a rate of $1,375 on a contract that would be $1,475 on a month-to-month term should the lease not be renewed. Ostensibly, Respondent intended from the beginning to raise their rate to an extreme, unreasonable level, regardless of economic conditions, and knowing Appellant was likely to pay that rate rather than uproot his life; and a rate at which Appellant may not have even qualified for at move-in.

Lenders can't raise the housing cost of their customers, nor have they the need to do so. Should landlords be treated better, especially given the fact they have the opportunity to raise rates when a tenant leaves and a new tenant signs a lease, causing no harm to any party?

Furthermore, the housing rental market continuously violates the law of supply and demand. No matter how much supply becomes available, landlords always raise the price of rentals at renewals, explaining why the rental housing market has seemingly a cult-like following and its 'explosion' in production lately. The price of rental housing units has not dropped since at least 2005 (indicated by Appellant's historical rental contracts and renewal offers in the Designation of Matter of record).

Based on this unique and extreme situation, the Residential Landlord and Tenant Act may need

substantial changes to be more consistent with the South Carolina Supreme Court and to provide more reasonable protections for tenants. To avoid extreme hardship on households, rent increases may need to be restricted to fresh tenants or capped, similar to how the Legislature caps interest in Section 34-31-20 or Section 37-10-106, or how the Legislature enacted price gouging laws on gas stations. Perhaps a cap equivalent to no more than the rate of inflation be proposed to the Legislature. In Appellant's case, Respondent rose the rate $75 per month the first annual renewal ($1,100 to $1,175) and then $180 per month ($1,175 to $1,355) at the next annual renewal (attempting a total increase of $255 ($1,175 to $1,375)), and currently $275 after the magistrate set the bond (the contract lists a rate of $1,375 but Appellant continued to pay the month-to-month rate of $1,355, which Respondent accepted without complaint).

Section 27-40-770 of the Residential Landlord and Tenant Act should be repealed, as it puts tenants in an unreasonable predicament, enabling a landlord to attempt to increase rent to whatever rate they want or force the tenant to uproot their life and leave the dwelling unit, as in this case. What's to stop a landlord from doubling rent at renewal under the current traditional rental market?

Ultimately, a productive member of society who makes a good income and pays the rent they signed up for ($1,100) in full and on time should not be evicted because their landlord decided to increase said rent by $255 per month, or $3,060 per year (actively $275 per month, or $3,300 per year), based not on necessity and for seemingly no other reason than to reach a pre-determined desire.

Landlords commonly make an income qualification for their rentals, typically 2-3 times the amount of the rent payment. If this principal is applied to the relationship between the parties of this case, the Respondent increased the rent payment so high within two years that Appellant may not have

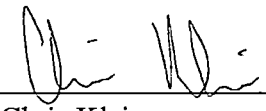
even qualified to rent the unit. The rent rate started at $1,100 and rose to (month-to-month) $1,355 (in Respondent's attempt to renew for a rate of $1,375). The income qualification went from $2,200 (2x) or $3,300 (3x) to $2,710 (2x) or $4,065 (3x). At an income of $17.00/hr , or $2,726 per month, Appellant would barely qualify for the $2,710 qualification and not even closely qualify for the $4,065 qualification. This constitutes unconscionable and/or unfair contracting.

CONCLUSION

Based on its redundancy, the errors of the lower court Order and in the interest of justice outlined by the arguments herein, Appellant asks the Appellate Court to overrule the Circuit Court's decision and quash the writ of ejectment of this eviction case, so the matter can be heard in the aforementioned jury trial. The rights and remedies of both parties can be protected by confining this action to the original case. Appellant loses rights and remedies, plus justice, if the lower court's decision is upheld. No one has provided a reason why this action can't be or shouldn't be confined to the original case and the matter be settled in a jury trial.

Furthermore, whereas Appellant and Respondent are not in an agreement and pursuant to Section 27-40-310 of the SC Residential Landlord and Tenant Act, Appellant requests this Court order Appellant to make rental payments equal to the fair market value of rent payments as determined by an independent appraiser. Appellant requests the cost be covered by the Respondent, as they are at fault for all litigation between the parties.

Respectfully submitted,

BY: 

Chris Klein
120 Dogwood Lane, Unit A
Duncan, SC 29334
864-505-1231
Appellant, pro se

February 6, 2024

STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM SPARTANBURG COUNTY
Shannon M. Phillips, Special Circuit Court Judge

CHRIS KLEIN,	**C/A NO: 2023-000852**
Appellant,	
vs.	
KAY FAMILY INVESTMENTS;	
Respondent.	

CERTIFICATE OF RULE 211(b) COMPLIANCE

I do hereby certify that Appellant's final brief complies with Rule 211(b).

Respectfully submitted,

BY: _____

Chris Klein
120 Dogwood Lane, Unit A
Duncan, SC 29334
864-505-1231
Appellant, pro se

February 6, 2023