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B. Michael Brackett
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June 25, 2012

HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED

JUN 25 2012

S.C. Supreme Court

Re: Breakfield, as Attorney-in-Fact v. Woods
2011-CP-12-0291 (Appeal from Magistrate's Court)
Our File No. 12085.3

Dear Mr. Shearouse:

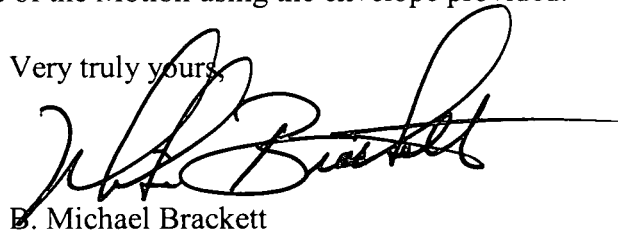
Enclosed for filing please find the original and six copies of Respondent's Motion to Dismiss Appeal or to Transfer Appeal to the Court of Appeals, and Motion to Strike Appellant's "Narrative" from the Notice of Appeal. My check in the amount of \$25.00 is enclosed for the motion fee.

By copy of this letter, a copy of the enclosed motion is being served upon the Appellant, personally, who has appeared pro se throughout these proceedings.

The authority supporting the motion is set forth in the motion, so I am not filing a separate Memorandum of Law.

Please return a clocked copy of the first page of the Motion using the envelope provided.

Very truly yours,



B. Michael Brackett

BMB/Ita

cc. Robert H. Breakfield, Esquire
Mell Woods

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JUN 25 2012

2011-CP-12-0291

S.C. Supreme Court

Robert H. Breakfield, as attorney in fact for John D. Hinson,
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford
as Personal Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr. Respondent,

v.

Mell Woods Appellant.

Respondent's Motion to Dismiss
Appeal or to Transfer Appeal to the Court of Appeals,
and to Strike Appellant's "Narrative" from
the Notice of Appeal

This is an appeal from the Chester County Court of Common Pleas which was sitting as an appellate court for Appellant's appeal from the Chester County Magistrate's Court. Appellant has filed his appeal directly with the South Carolina Supreme Court on the ground that his appeal involves a challenge to the constitutionality of the summary eviction statute, S. C. Code Ann. §27-

37-20. However, Appellant's appeal does not involve the constitutionality of a statute and has wrongly been filed in this Court, as will be demonstrated hereinbelow. The appeal should be dismissed or, alternatively, transferred to the Court of Appeals.

Additionally, Respondent moves the Court to strike the "narrative" that accompanied Appellant's Notice of Appeal on the grounds that (1) it constitutes argument, (2) it is argument on a subject not preserved for review in this Court or in the court of appeals, and (3) such a narrative is not permitted by Rule 203(e), SCACR.

Appeals from Circuit Court must be filed in the Court of Appeals, unless a direct appeal is mandated by statute or rule. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 13 (2d ed.2002). Appellant purports to use Rule 203(d)(1)(A)(ii) to support his filing the Notice of Appeal in the Supreme Court. (See Appellant's transmittal letter to the Clerk of the Supreme Court dated June 21, 2012.)

As the records from the lower courts show, the subject of the constitutionality of summary eviction statutes was not preserved for appellate review in Appellant's appeal to Circuit Court and therefore is not preserved for appellate review by higher appellate courts.

Background

Respondent commenced an eviction action in the Chester County Magistrate's Court to evict Appellant. (Complaint attached as Exhibit A.)

The Magistrate's Court issued a Rule to Vacate or Show Cause. (Exhibit B.)

The verified Complaint and Rule to Vacate or show Cause were served on the Appellant. (Exhibit C.)

Appellant filed a verified Answer that included a Motion to Dismiss and a counterclaim. (Exhibit D.)

Respondent filed a Motion to Dismiss Appellant's counterclaim. (Exhibit E.)

Appellant filed an Amendment of Counterclaim. (Exhibit F.)

The Magistrate's Court held a pretrial hearing on May 12, 2011 at which pending motions were heard. The Magistrate's Court issued its Order dated June 2, 2011. (Exhibit G.)

Appellant filed his Notice of Appeal and Grounds of Appeal to appeal the Magistrate's Court's June 2, 2011 Order to the Circuit Court. (Exhibit H.) Respondent submits that the content of this Notice / Grounds of Appeal to Circuit Court is central to Respondent's motion.

By Order dated January 16, 2012, the Circuit Court affirmed the Magistrate's Court's June 2, 2011 Order. (Exhibit I.)

Appellant filed a Rule 59(e) Motion for reconsideration. (Exhibit J.)

Respondent filed his Return to Appellant's Rule 59(e) motion. (Exhibit K.)

By Order dated April 23, 2012, the Circuit Court denied Appellant's Rule 59(e) Motion. (Exhibit L.)

Argument on Subject of Appellant Having Not Preserved Issue of

Unconstitutionality of Statute for Appellate Review

In his Answer/Motion to Dismiss (Exhibit D) Appellant raised a challenge to S. C. Code Ann. §27-37-20 "on federal constitutional grounds." (Exhibit D, p. 3, l. 13-20.) This statute provides that upon the filing of an appropriate application, the magistrate "shall" issue a rule to vacate or show cause. The Answer does not challenge the constitutionality of any other statute. The statute governing service of the Rule (and not a summons) is S. C. Code Ann. §27-37-30, a statute

not challenged on constitutional grounds by the Appellant. The Magistrate's Court denied Appellant's motion to dismiss/ constitutional challenge to S. C. Code Ann. §27-37-20. (Exhibit G, p. 2, l. 19 to p. 3, l. 1.)

Appellant's Notice of Appeal/Grounds of Appeal, filed June 13, 2011, (Exhibit H) identified five separately numbered grounds of appeal. None of the grounds of appeal challenge the Magistrate's Court's ruling that Appellant failed to show that S. C. Code Ann. §27-37-20 is unconstitutional on federal grounds. The Grounds of Appeal do not include the terms "constitutional" or "unconstitutional" or " §27-37-20."

Ground of appeal no. 2 raised the state-law issue of the absence of a summons and questioned if the Magistrate's Court had personal jurisdiction of the Appellant, but that ground relates to S. C. Code Ann. §27-37-30, a statute not challenged on constitutional grounds by Appellant. (Exhibit H, p. 2, ¶ 2.)

The Circuit Court's January 16, 2012 Order Affirming Magistrate Court addressed the issue of personal jurisdiction via a rule to show cause, citing §27-37-20 and the Summary Court Judges Bench Book distributed by the office of South Carolina Court Administration, the administrative arm of the Chief Justice. The Circuit Court's Order did not address the constitutionality of S. C. Code Ann. §27-37-20 because the Appellant did not identify that issue as a ground of appeal and did not preserve that issue for review.

In his Rule 59(e) Motion, Appellant argued that the "South Carolina Statutory Eviction procedure (as practiced) fails to meet federal constitutional muster" and that the issue was "left out" of Circuit Court's January 16, 2012 Order. (Exhibit J, p. 9, l. 4-15.)

Respondent's Return to the Rule 59(e) motion notes that the question of whether S. C. Code

Ann. §27-37-20 meets federal constitutional muster was not preserved for Circuit Court appellate review. (Exhibit K, p. 4, ¶ 7.)

The Circuit Court denied the Rule 59(e) motion without detailed explanation. (Exhibit L.)

Not having preserved a challenge to the constitutionality of S. C. Code Ann. §27-37-20 for appellate review, the appeal has been wrongly filed in the Supreme Court.

Motion to Strike "Narrative" Attachment to Notice of Appeal.

Rule 203(e), SCACR, governs the content of a Notice of Appeal. It does not permit arguments or narrative explanations. Issues on appeal and arguments are reserved for the briefs. Rule 208(b)(B) and (D) and Rule 211(b), SCACR.

Conclusion

The narrative included with the Notice of Appeal should be stricken and the appeal either dismissed or transferred.

A handwritten signature in black ink, appearing to read "B. Michael Brackett", is written over a horizontal line.

B. Michael Brackett
Moses & Brackett, PC
P. O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

June 25, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF CHESTER

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Complaint for Possession of
Real Property/ Application for
Ejectment

Plaintiff-Landlord,

v.

Mell Woods,

Defendant-Tenant.

Plaintiff, complaining of the Defendant, alleges upon information and belief that:

1. Plaintiffs were remaindermen to the life estate held by Reba Hinson in and to certain real property on Fishing Creek Lake in Chester County.
2. The property owned by Reba Hinson's spouse, Levie Hoyt Hinson, contains 97 acres, more or less, and has been identified as Chester County TMS# 158-0-0-003.
3. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of the life estate.
4. By Order of the Chester County Probate Court dated October 15, 2007, it was determined that the above-named persons are the bodily heirs to whom title to the real estate passed upon the death of Reba Hinson on January 3, 2007. A copy of said Order is attached hereto and incorporated herein as **Exhibit A**.
5. During her life estate Reba Hinson leased a lot and residence to the Defendant known as 1537 Hinton Road. The lot is part of the larger parcel known as TMS#158-0-0-003. The

terms of the lease agreement are not clear, except that the Defendant was to pay rent to Reba Hinson.

6. When Reba Hinson died, her life estate terminated by operation of law, and the lease agreement with the Defendant immediately terminated by operation of law, thereby causing the Defendant to become a tenant -at-will on a month-to-month basis.
7. The remaindermen successors to the property immediately became the fee owners of the property, including 1537 Hinton Road, and became landlords of the property occupied by the Defendant.
8. Defendant was delinquent with his rent to Reba Hinson, and has not paid rent since Reba Hinson's death. Defendant has been occupying and using the land (1537 Hinton Road) owned by the remaindermen without paying for said use and occupation, and has lived on said lot for many years without paying fair rental. Attached hereto and incorporated herein as **Exhibit B** are the Defendant's answers to interrogatory nos. 5 and 6 in a related case in which the Defendant expressly admitted that he has not paid rent.
9. Defendant is in breach of lease and has been in breach of lease for many years.
10. Plaintiff is entitled to have the Defendant immediately evicted from the property (1537 Hinton Road) and to have possession of the property returned to its owners.
11. Plaintiff is entitled to a temporary injunction to compel the Defendant to vacate the property, to be determined pursuant to a rule to show cause issued pursuant to S.C. Code Ann. §27-37-20 requiring the Defendant to immediately vacate the premises or show cause within ten days after service of the summons, complaint and rule to show cause why he should not be ejected.

Wherefore, Plaintiff, on behalf of the remaindermen owners, prays for a judgment of the court evicting the Defendant from the property known as 1537 Hinton Road and putting the owners of said property in possession of the premises.

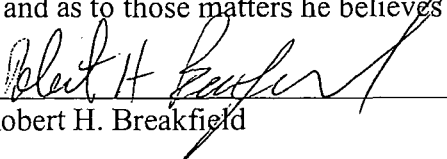


B. Michael Brackett
Moses Koon & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Plaintiff

March // , 2011

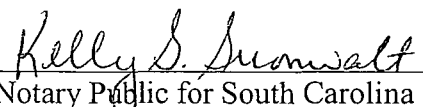
Verification

_____ Personally appeared before me Robert H. Breakfield, Esquire, who being first duly sworn on oath, says that he, in his capacity as attorney-in-fact, is the Plaintiff in the foregoing action and has read the allegations in the foregoing Complaint, and the same are true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.



Robert H. Breakfield

SWORN to and subscribed before me
this 10th day of March, 2011.



Notary Public for South Carolina
My Commission Expires: 1-16-2019

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Kathy H. Huffstickle,

In the Matter of: Levie Hoyt Hinson,

Petitioner.

vs.

Lois H. Griffin,

Respondent.

IN THE PROBATE COURT
SIXTH CIRCUIT COURT

Case No. 1986-ES-12-18

ORDER

PROBATE COURT
CHESTER COUNTY, S.C.

2007 OCT 30 A 11:54

LOIS H. RODDEY
JUDGE OF PROBATE

PROBATE COURT
CHESTER COUNTY, S.C.

2007 OCT 16 A 9:10

LOIS H. RODDEY
JUDGE OF PROBATE

This matter came before the Court on August 9, 2007, for a hearing on the Petition of Kathy H. Huffstickle dated May 23, 2007, seeking to set aside an amended real estate conveyance filed by the Probate Court on March 8, 2007. It appears that Levie Hoyt Hinson died on August 1, 1986, leaving a Last Will and Testament. Item I of Levie Hoyt Hinson's Will reads as follows:

"I will, devise and bequeath unto my beloved wife, Reba P. Hinson all of my personal property of every kind and description including cash money. At her death, the remainder if any, to our beloved children. Name: William C. Hinson deceased his heirs, Lois H. Griffin, John C. Hinson, and Kathy H. Huffstickle, share and share alike."

Item II of the Will reads as follows:

"I will, devise and bequeath unto my beloved wife, Reba P. Hinson all my real estate, in fee simple, as long as she lives then to our bodily heirs forever."

Item II of the Will appears to leave a Life Estate to Reba P. Hinson in all of Levie Hoyt Hinson's real estate then to the bodily heirs forever. The issue in this case turns upon a determination of the intention of Levie Hoyt Hinson in using the language "bodily heirs". It was the contention of the Petitioner that the deceased intended to leave to his bodily heirs the property in question and that Lois H. Griffin was not his bodily heir. It was the contention of Lois H. Griffin that Kathy H. Huffstickle was not a bodily heir of

A TRUE COPY

Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.

EXHIBIT

A

EXHIBIT

WIT: [Signature]

DATE: 5-10-10

URS COURT REPORTING

the parents and that she did not inherit any real estate. It was an alternate contention of Kathy H. Huffstickle that she was the only joint child of Levie Hoyt Hinson and Reba P. Hinson so she is the only bodily heir.

It appears that Levie Hoyt Hinson fathered William C. Hinson and John C. Hinson prior to his marriage to Reba P. Hinson. It appears that Reba P. Hinson gave birth to Lois H. Griffin prior to her marriage to Levie Hoyt Hinson. There was conflicting testimony as to whether or not Kathy H. Huffstickle was the child of Levie Hoyt Hinson and Reba P. Hinson. The defense presented witnesses that Kathy H. Huffstickle was actually a child of the sister of Reba P. Hinson. Kathy H. Huffstickle stated that to her knowledge she was the child of Levie Hoyt Hinson and Reba P. Hinson. A birth certificate was introduced into evidence showing Reba P. Hinson and Levie Hoyt Hinson as the parents of Kathy H. Huffstickle.

Item I of the Will lists each of the children of Levie Hoyt Hinson and Reba P. Hinson. I find that Levie Hoyt Hinson intended to leave the real estate to all of the children listed in Item I and used the term bodily heirs in Item II of the Will interchangeably with the children in Item I of the Will. I further find that he intended to include Kathy H. Huffstickle and Lois H. Griffin as children and bodily heirs.

IT IS SO THEREFORE ORDERED

- A. That the amended real estate conveyance of March 8, 2007, is affirmed,
- B. That the real property consisting of 92 acres referred to in the Petition as tax map no 158-0-0-3 is hereby declared to be owned, as tenants in common, by the bodily heirs of Levie Hoyt Hinson,
- C. That the bodily heirs of Levie Hoyt Hinson are hereby declared to be John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson, and
- D. That the heirs of William C. Hinson are William Levy Hinson, John Daniel Hinson, Charles Jerry Hinson, Robert Harold Hinson, William

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER) SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010-CP-12-00 595

MELL WOODS,

PLAINTIFF,

vs.

JOHN D. HINSON,)
Christine E. Jones,)
John C. Hinson, Kathy)
Huffstickle, Robert H.)
Hinson, Darrell W.)
Hinson, Charles J. Hinson,)
William L. Hinson,)
Elaine H. Hensley,)
William C. Hinson, Jr.,)
John Does, (1-5), Jane)
Does, (1-2),)

DEFENDANTS,)

ANSWERS TO

INTERROGATORIES

NUMBERS 1-11.

CERTIFICATE OF SERVICE:

I hereby certify that I have served the defendant with a copy
of the above documents by serving his counsel of record by U.S. Mail;

This 15 Day of February, 2011.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721



7

5. Did you pay rent to Reba Hinson prior to her death? If so, what was the amount of the rent and when was it paid? *NO*

6. Have you paid rent to anyone in the Hinson family since the date of Reba Hinson's death? If so, how much was paid, to whom was it paid, and when was it paid? *NO*

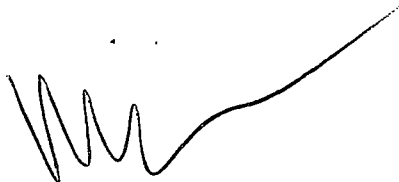
VERIFICATION

**STATE OF SOUTH CAROLINA
COUNTY OF CHESTER**

Mell WOODS, being duly sworn and as affiant herein, hereby states upon his oath that affiant has examined the answers to the Interrogatories propounded by defendant, 1-11, and each answer is correct, affiant makes these statements upon his own personal knowledge.

Further, affiant saith not.

This 15 day of February, 2011.



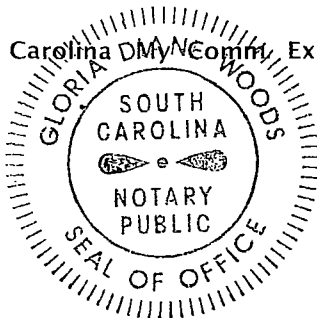
Mell Woods

Sworn to, and subscribed before me,

This 15 day of February, 2011.

Gloria D. Woods Notary Public for South Carolina DMV Comm. Expires 01/08/2018.

Gloria Diane Woods



Page 2

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

2011CV1210100148
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

John D Hinson; Jerry Hinson; John C Hinson
Kathy Huffstickle; Robert H. Hinson
Darrell W. Hinson; Lois Hinson
Tina Jones; George Stanford, PR for Linda Stanford

ATTNY: B. MICHAEL BRACKETT, ESQUIRE
PO BOX 100261
COLUMBIA, SC 29202

PLAINTIFF(S)

Vs

Mel Woods
1537 Hinton Road
Great Falls, SC 29055

DEFENDANT(S)

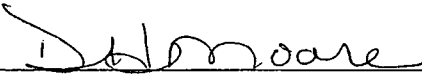
Upon the application of the Plaintiff(s) listed above, which states:

- ☒ TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.
☐ THE TERMS OF THE TENANCY OR OCCUPANCY HAVE ENDED
☐ THE TERMS OR CONDITIONS OF THE LEASE HAVE BEEN VIOLATED.

You the defendant(s) or lessee(s) of the premises located at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the: **Chester Magistrate District 2, 158 Main Street, , Chester, SC 29706, (803) 581-5136**, within ten (10) days excluding date of service, for the purpose of showing why you and all pants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Wednesday, March 16, 2011


JUDGE, Chester Magistrate District 2

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Mel Woods on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	_____	_____
2. _____	_____	_____	SETTLED/DATE	_____
3. _____	_____	_____	VACANT/DATE	_____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

On _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATES COURT
2011 CV 1210 100/48

Robert H. Breakfield, as attorney-in-fact,

Plaintiff,

Supplemental Affidavit of Service

v.

Mell Woods,

Defendant.

Personally appeared before me Sergeant R. E. Lawson of the Chester County Sheriff's Department, who being duly sworn deposes and says that:

This affidavit is supplemental to my original proof of service. On March 16, 2011, I was directed by the Magistrate's Court to serve eviction pleadings on Mell Woods. Specifically, I was provided a copy of the verified Complaint and the original Rule to Vacate or Show Cause, signed by Magistrate Dianne H. Moore on March 16, 2011. I was told that the Defendant Mell Woods would likely be in the Chester County Courthouse for a hearing at 2:00 PM on March 16, 2011.

I took the papers to be served to the main courtroom in the county courthouse. Mr. Woods was there. Once his hearing was concluded, I approached him first in the courtroom and later outside of the courthouse. I was in my deputy uniform, and I identified myself to him and said that I was serving eviction papers on him. He refused to take possession of the papers in the courtroom. I followed him outside where I again told him that I was there to serve eviction papers. He continued to refuse to take the papers. I laid the Rule to Vacate or Show Cause and the verified Complaint at his feet and told him that he was served. I left. I learned afterwards that Mr. Woods left the area and left the papers on the ground and that the papers were later picked up by bailiff Bobby Love who turned them over to Lt. Malcolm Cameron, head of courtroom security.

RE Lawson

R.E. Lawson

Sergeant, Chester County Sheriff's Department

Sworn to before me this 22 day
of March, 2011.

Barbara H. Cameron

Notary Public for South Carolina

My Commission Expires: 1/29/2019

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE COURT

John D. Hinson,

Case # 2011CV1210100148

and Robert Breakfield , et.al.,

Plaintiffs,

VERIFIED MOTION TO
DISMISS FOR LACK OF
JURISDICTION

vs.

Mell Woods,

Defendant.

COPY

Verified Answer of Defendant

FIRST DEFENSE:

Defendant has not been properly served; on Wednesday, March 16, 2011, plaintiffs hired a Chester County Deputy to stalk, observe, and intimidate defendant while present in Chester County Courthouse, in the Court of Common Pleas, in attendance of civil matters, all the time while the court was in session; such conduct is not proper; plaintiffs created the situation out of malice; when the deputy tried to serve the eviction papers herein, defendant informed the deputy that it was not proper to attempt to serve papers while the court was in session and that the papers should be served at a residence in accordance with S.C. Statute 27-30-30;

had the deputy been armed with a civil summons as required by SCRCF 4(d), (personal service), the result could be different, but the deputy possessed only a so-called, "Rule to Show Cause", causing the deputy stand naked in front of the law, then and now, in trying to serve papers with Circuit Court in session; defendant has an English Common Law Right to be immune from service of process in going to, returning from, or attending a South Carolina Circuit Court; defendant asserts his right to be free of process while in circuit court and does not voluntarily appear herein;

SECOND DEFENSE:

Defendant respectfully shows that all South Carolina Magistrate Courts lack both subject matter jurisdiction and personal jurisdiction of defendant based on the following reasons:

COUNT I

Plaintiffs have failed to serve a summons and complaint on defendant as required by Rules 5 and 6 South Carolina Magistrate Rules to commence a civil action in a magistrate

court; this factor standing alone deprives the Chester County Magistrate Court of both subject matter jurisdiction and personal jurisdiction of the defendant;

IN ADDITION, there is no landlord-tenant relationship between DEFENDANT, and the purported landlord(s); defendant has never agreed in any way to be a tenant of, or under, plaintiffs;

Rule 5 SCMR as set up by the Supreme Court mandates that a case shall begin by filing a complaint showing what the plaintiff's case is about, AND THEN, Rule 6 SCMR mandates that a summons issue and a defendant be allowed 30 days after service of the summons to answer;

Plaintiffs have failed to have a summons served on defendant in order to acquire personal jurisdiction of a defendant in a civil action as required by Rule 6, SCMR, a "Rule to Show Cause" is just not good enough, and although there is a statute cited by plaintiffs, South Carolina 27-37-20, which purports to sanction summary eviction, defendant, here and now, attacks the cited statute on federal constitutional grounds, and insists on being

properly served;

The South Carolina Supreme Court has ruled that a court, (any court), can acquire jurisdiction of a defendant ONLY AFTER a summons and complaint is filed and served, BB&T v. Taylor, 369 S.C. 548, (2006);

THIRD DEFENSE:

Defendant comes now in a special appearance, and DENIES the following paragraphs of the plaintiff complaint:

Note: Defendant's denials are made upon personal knowledge after having examined each and every page of the court records and are therefore made upon personal knowledge, and sworn to as the truth; plaintiff allegations are only made upon "information and belief", and in the end, only the "beliefs" of affiant Robert Breakfield, and as such are not worthy of belief;

Response to allegation one:

Number one is false; Mrs. Hinson held a fee estate, and full ownership estate, not a "Life Estate" as stated;

Response to allegation two:

Number two is not responded to;

Response to Number three:

It is not true that the will in question created a "Life Estate"; the will granted a fee simple estate (read the will), ANY words added after fee simple are simply "super-added" words, and do not mean anything;

Response to Number four:

Early during year 2007, defendant notified the Chester County Probate Court that defendant had an interest in the Hinson Estate and wanted to be notified of any proceedings; defendant was not notified, and thus any order entered in the estate is a nullity.

Response to Number five:

As stated earlier, Mrs. Hinson had full ownership of all of the property formerly owned by her husband, Mr. Levie Hoyt Hinson; the agreement defendant had with Mrs. Hinson was a type of land contract, and when fulfilled, defendant will be the owner of the land where the building sits;

Response to Number six:

Number six is not true either, the court order plaintiffs refer to in Exhibit A was obtained by fraud;

Response to Number seven:

Number seven is a false assertion of the true facts; Mrs. Hinson's will needs to be probated, and at that time the true owners will emerge;

Response to Number eight:

Number eight is at most a half-truth, if plaintiffs had included interrogatory answer No. 7, as follows, numbers 5 and 6 would make more sense:

7. Do you own the real estate on which the structure you live in is located?

Answer to No. 7:

Mrs. Hinson agreed to sell the small amount of the land where the present building sits provided improvements were made and the improvements still existed after ten years, and for plaintiff to pay double the amount of all monies paid in during ten years in one lump sum at the end of ten years; plaintiff saw Mrs. Hinson record this agreement in her notes, and if the notes are ever found, and plaintiff performs his part of the bargain, then plaintiff would own the small amount of real estate where the building is;

Response to Number nine:

Number nine is denied;

Response to Number ten:

Ten is false, there are no owners, the Hinsons have filed in Common Pleas court a petition to PARTITION the land in issue here, this is an active case; until the partitioning is over there will not be a clear owner of the Hinson property, the Case number is 2008CP1200475, and part of the filing entries are shown

below:

Robert H. Hinson VS. Lois H. Griffin			
Case Number:	2008CP1200475	Court/Agency:	Common Pleas
Case Type:	Common Pleas	Case Sub Type:	Partition 440
Status:	Referred To Master	Assigned Judge:	Clerk Of Court C P, G S, And Family Court
Disposition:		Disposition Date:	
Original Source Doc:		Original Case Number:	
Judgment Number:			

Parties	Judgments	Actions	Associated Cases	Tax Map Information
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Actions

Name	Description	Action Type	Begin Date	Completion Date
Hinson, Robert H	REPLY TO COUNTERCLAIMS	Filing	10/27/2008 - 00:00:00	10/27/2008 - 00:00:00
Griffin, Lois H	CERT OF SERVICE	Filing	10/27/2008 - 00:00:00	10/27/2008 - 00:00:00
Griffin, Lois H	ANSWER TO CROSS CLAIM DARRELL WAYNE HINSON	Filing	11/13/2008 - 00:00:00	11/13/2008 - 00:00:00
Hinson, Robert H	CONSENT ORDER OF REFERENCE	Filing	01/08/2009 - 00:00:00	01/08/2009 - 00:00:00
Hinson, Robert H	CERTIFICATE OF SERVICE	Filing	01/16/2009 - 00:00:00	01/16/2009 - 00:00:00
Hinson, Robert H	PROOF OF SERVICE	Filing	02/17/2009 - 00:00:00	02/17/2009 - 00:00:00
Hinson, Robert H	PROOF OF SERVICE	Filing	02/17/2009 - 00:00:00	02/17/2009 - 00:00:00
D'Agostino, Daniel Dominic	Notice of Case Roster Publication Sent	Amount	07/31/2009 - 11:46:19	
D'Agostino, Daniel Dominic	Notice of Case Roster Publication	Amount	07/31/2009 -	

Response to Number eleven:

Plaintiffs have filed a sham legal proceeding; in eleven, plaintiffs imply that defendant has been provided with a summons, which defendant has not seen;

A counter-claim is filed herein which exceeds the monetary jurisdiction of the Magistrate Court; plaintiff demands trial by jury of twelve persons; plaintiff moves that this action be either dismissed, or moved to the Chester County Court of Common Pleas for trial;

COUNTERCLAIM

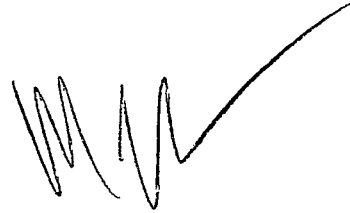
Defendant hereby sues Robert Breakfield, and the listed Hinsons for filing a sham legal proceeding; and claims \$450,000.00 (four fifty thousand) in actual damages, plus punitive damages to be determined by a jury of 12 persons;

ARTICLE 11 Proceedings when Title to Real Estate is Involved

Defendant pleads S.C. Statutes 22-3-1110, and 23-3-1120 and also 22-3-1130 which requires that an action be discontinued where the title to the real estate is in question; plaintiff has sworn that plaintiffs have no current title to the land in question, and hereby delivers the \$100.00 cost bond required to discontinue the present action.

Respectfully submitted,

This 24 day of March, 2011.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE COURT

John D. Hinson,

Case # 2011CV1210100148

and Robert Breakfield, et.al.,

Plaintiffs,

VERIFIED MOTION TO
DISMISS FOR LACK OF
JURISDICTION

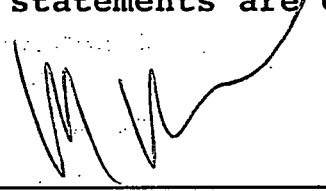
vs.

Mell Woods,

Defendant.

VERIFICATION

Mell Woods, being duly sworn and as affiant herein, hereby states upon his oath that affiant has examined the within and foregoing pleading entitled Verified Motion To Dismiss for Lack of Jurisdiction, and Answer of Defendant, and UPON HIS OWN PERSONAL KNOWLEDGE, swears that all allegations and statements are correct, and the truth.



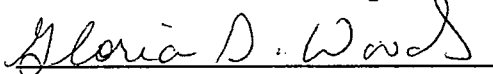
Mell Woods

Sworn to, and subscribed before me,

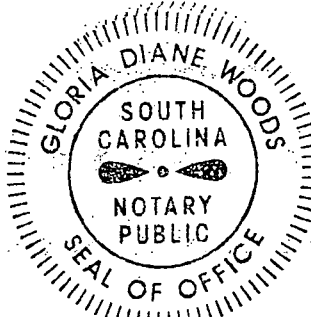
This 24 day March, 2011.

Gloria D. Woods Notary Public for South Carolina My Comm. Expires

01/08/2018



Gloria D. Woods



2011CV1210100148
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Chester

IN THE MAGISTRATE'S COURT

John Hinson Robert Breakfield
PLAINTIFF(S)

BOND UNDERTAKING
AND ORDER

VS.

MELL Woods
DEFENDANT(S)

MELL Woods, plaintiff/defendant (circle one) desires to give an undertaking
for the purpose of:

In order to comply S.C. Statute 22-3-1120, defendant
will at all times render himself amenable to the process
of the Court and abide by any judgment; IN ADDITION if
the plaintiff should decide to continue on in circuit
court, defendant will admit service if plaintiff will
serve its papers on the magistrate Judge,

as provided by Section 22-3-1120, Code of Laws (1976), in the amount of \$ 100.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

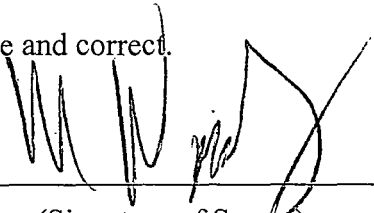
Name

MELL Woods
Box 2603
VCaster
-29721

UNITED STATES POSTAL SERVICE
POSTAL MONEY ORDER
Serial Number 18744567254
Year, Month, Day 2011-03-21
Post Office 29720
U.S. Dollars and Cents \$100.00
Amount ONE HUNDRED DOLLARS & 00/100 *****
Pay to
Address
Memo
7000080021
SEE REVERSE WARNING - NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS
18744567254

I declare under penalty of perjury that the foregoing is true and correct.

(Signature of Surety)



(Signature of Surety)

ORDER

The above undertaking by surety(iés) is hereby approved by this court.

Dated: _____

MAGISTRATE

EXHIBIT E

STATE OF SOUTH CAROLINA

IN THE MAGISTRATES COURT

COUNTY OF CHESTER

2011CV1210100148

Robert H. Breakfield, as attorney-in-fact,

Plaintiff,

v.

Plaintiff's Motion to Dismiss
Defendant's Counterclaim

Mell Woods,

Defendant.

TO: Defendant Mell Woods.

Please take notice that Plaintiff, through his undersigned attorney, moves the Court to dismiss Defendant's counterclaim. The motion is made pursuant to Rule 12(b)(6), SCRCP, made applicable to Magistrates Court by Rule 81, SCRCP, on the ground that the counterclaim fails to allege facts sufficient to constitute a cause of action. The allegation that Plaintiff's action herein is a "sham legal proceeding" does not state a cause of action and is actually a form of relief that must be sought by post-trial motion pursuant to S. C. Code Ann. §15-36-10 et seq. (the South Carolina Frivolous Civil Proceedings Sanctions Act.) If this action terminates in favor of the Defendant, the Defendant may move for sanctions under the Act. And, if Defendant can satisfy his burden of proof under the Act, the Court may award relief as provided for in the Act. Defendant cannot convert a post-trial proceeding into an affirmative cause of action/counterclaim for the purpose of defeating the magistrates court jurisdictional damages limitation.

This motion will be supported by all matters of record herein and by relevant authorities of this and other jurisdictions. The undersigned certifies that prior consultation with the Defendant on the subject of this motion would serve no useful purpose.

A handwritten signature in black ink, appearing to read "B. Michael Brackett", written over a horizontal line.

B. Michael Brackett
Moses Koon & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Plaintiff

March 28, 2011

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE COURT

Case 2011 0002 Rossville

John D. Hinson,
and Robert Breakfield, et.al.,

vs.

Mell Woods,

Defendant.

AMENDMENT OF COUNTER-CLAIM:

Mell Woods, defendant above named, comes now within thirty-five days of being served by mail with a 12(b)(6) motion attacking the original counter-claim which was filed and entitled "Counter-claim for filing a Sham legal proceeding", and files the following amendments:

1.

Each time defendant files any pleading which B. Michael Brackett cannot find in a form book, Bracket Files SCRCF 12(b)(6) motions against the pleading;

2.

SHAM is a term denoting dishonesty; sham is also a term used by the South Carolina a Supreme Court in describing dishonest conduct by licensed attorneys; where sham is a good enough term to be used by the South Carolina Supreme Court, it is a good enough term for this litigant to use when describing dishonesty;

3.

SRCP 12(b)(6) motions are supposed to be reserved for clear cut cases, an example of which would be a case filed past the statute of limitation, in an incorrect jurisdiction, or trying to sue someone using a repealed law;

4.

SHAM in this context is actually an abuse of process claim; nomenclature does not matter;

5.

It is abuse of process because BRACKETT fails to inform the Court that the exact same case was put up last year, and then dismissed by the Honorable Diane Moore; NOTHING has changed since last year; the parties are the same, the TITLE to the land is still unclear, all rulings obtained in the related cases in the circuit court and probate court are either under appeal, or have not been ruled on by the court;

6.

The ruling referred to by BRACKETT in his complaint in which he claims that the Hinsons were awarded the land by the probate court is false, since the same is under appeal; BRACKETT's conduct constitutes the furnishing of false information to a tribunal;

7.

The counter-claim is further amended to allege a count for Civil Conspiracy against Danny Hinson, BRACKETT, and Breakfield, who swore to the lies when verifying the papers;

8.

Defendant hereby claims \$300,000.00 in additional damages for the tort of civil conspiracy;


Mell Woods

P.O. Box 2603
Lancaster SC 29721

CERTIFICATE OF SERVICE:

I hereby certify that I have served the attorney of record for defendants by placing a copy of the above pleading in the U.S. Mail with sufficient stamps, and addressed to Brackett.

This 02 day of May, 2011.

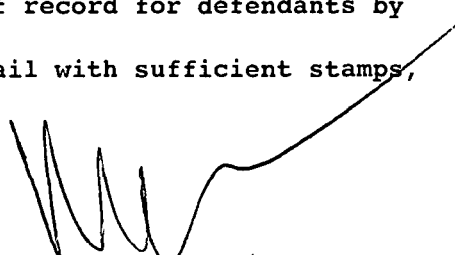

Mell Woods

EXHIBIT G

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
Robert H. Breakfield,)
as attorney-in-fact,)
)
Plaintiff,)
)
-vs-)
)
Mell Woods,)
)
Defendant.)
_____)

IN THE MAGISTRATES COURT
2011CV1210400002
formerly 2011CV1210100148

Cert. filed Copy of original
June 3, 2011
[Signature]

ORDER ON MOTIONS

This matter came before me for a pre-trial hearing on May 12, 2011 during which pending Motions and other pre-trial matters were taken up. The Plaintiff appeared with his attorney, B. Michael Brackett. The Defendant appeared pro se. A Court Reporter was present, prearranged by the Plaintiff inasmuch as this is not a Court Of Record.

Following the hearing, Mr. Brackett offered to prepare an Order for the Court whereupon the Court made provision for the Defendant to review the proposed Order and respond regarding its drafting before the Order would be signed. The Defendant subsequently provided to the Court a letter dated May 19, 2011 (Thursday) in which he indicated he was attaching a copy of the first page of Mr. Brackett's proposed Order and stated that several things had been omitted from it. The Defendant asked the Court wait until Monday, which was May 23, 2011 for him to "deliver a more detailed proposed Order to the Clerk." A copy of the Defendant's letter is attached hereto and incorporated herein by reference. More than a week has passed since the

93-#1

Defendant's proposed deadline for delivery of his modifications. To date nothing more has been received from him. The Court, having waited long enough for the Defendant, has determined it is in the interest of justice to proceed and to draft and issue its own Order, precluding any proposed modifications, the Defendant having failed to timely provide them.

The Defendant's Motion To Dismiss upon the grounds that a Summons and Complaint were not served upon him was denied. This Action was commenced with a Rule To Show Cause, a procedure authorized by Statute, this being an Eviction proceeding. The Defendant's Motion To Dismiss upon the grounds that he was not properly served the Rule was denied. The Affidavit of Service and Supplemental Affidavit of Service executed by the Deputy who served it demonstrates timely and effective service in keeping with the Rules. The Defendant prepared and filed an Answer and Counterclaim and an Amended Counterclaim along with his Motions thereby making a general appearance and effectively asking the Court to take personal jurisdiction. Furthermore, the Defendant appeared and actively participated in this hearing such that the Court acquired Personal Jurisdiction with respect to him. The Defendant's Motion to Dismiss upon the grounds that the South Carolina Statutes underlying this eviction/ejectment proceeding are unconstitutional was denied as was the Defendant's Motion to remove this matter to the Court of Common Pleas. The Defendant failed to demonstrate the alleged unconstitutionality of the Statutes he was

93. #2

challenging. Per Statute, this Court has concurrent Jurisdiction with the Court of Common Pleas regarding this type of proceeding.

The Plaintiff's Motion To Dismiss the Defendant's Counterclaim and Amended Counterclaim was granted. This is a special proceeding specifically authorized by Statute, which proceeding makes no provision for counterclaims of any type. As this Action is before the Court pursuant to the special proceedings provided by Statute, this Court currently lacks Jurisdiction over the subject matter of any counterclaims herein such that the Defendant's Counterclaims must be dismissed without prejudice. It is noted that this Action was not commenced with a Summons and Complaint

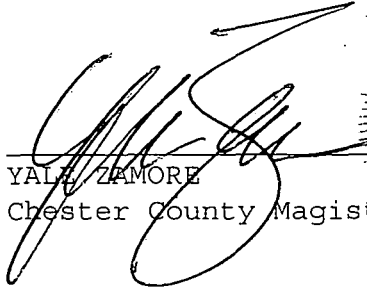
The Defendant requested a Jury trial in this case and this request was granted. Jury trials are specifically provided for by Statute in eviction/ejectment matters upon the request of either party. It is noted that a Magistrates Court jury consists of six rather than twelve people and the Defendant's request for a twelve person jury was therefore denied.

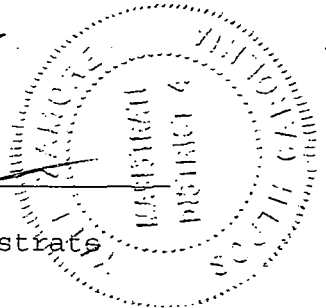
No rent has been paid by the Defendant and no specific amount was requested by the Plaintiff. It is in the interest of justice to require the Defendant to pay something as bond upon rent with the money to be collected by the Court while this case is pending. Inasmuch as the month of May was nearly over, the Court found it appropriate to require payment of \$100.00 for the remainder of May, and to require payment of \$200.00 per month, due by the 5th of each month until this matter is resolved in this Court. The

9.3 #3

Defendant was instructed by the Court that failure to pay on time would result in an Order of Ejectment being issued by the Court without further process. The Defendant was advised that his Jury trial would in that event be conducted as scheduled, but he would in the meanwhile be put out of the premises in question. The Jury trial was scheduled to be held at 2:00 p.m. at the Rossville District Magistrate Court of Chester County at the Great Falls War Memorial Building, 401 Dearborn Street, Great Falls, South Carolina 29055. Much of the Court's reasoning was explained by the Court on the record of the case.

AND IT IS SO ORDERED.


YALE ZAMORE
Chester County Magistrate



Great Falls, South Carolina

June 2, 2011

9.3. #4

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE COURT
ROSSVILLE

Robert H. Breakfield,
as attorney-in-fact,

Case Number 2011CV1210400002

Plaintiff,

vs.

Mell Woods,

Defendant.

COPY

FILED

2011 JUN 13 PM 4:30

CLERK OF COURT
CHESTER CO S.C.

Notice of Appeal

Defendant hereby gives notice of appeal from an order of the magistrate court granting plaintiff relief which alters the mode of trial which defendant is entitled to under the various statutes, published rulings of South Carolina Courts, and the South Carolina Constitution, as follows:

GROUND FOR APPEAL

1. Defendant excepts to the ruling of the magistrate judge which granted plaintiff's SCRP 12(b)(6) motion; the granting of the motion affects a substantial right under South Carolina statute 14-4-330(2), by striking two of defendant's counterclaims against plaintiff, and others;

COPY

2. Defendant excepts to the order of the magistrate judge which specifically rules that there was no summons or complaint served in the action, only "a rule to show cause", which the magistrate court asserts is enough; such is not defendant's position however, since the South Carolina Supreme Court has ruled that a court, (any court), can acquire jurisdiction of a defendant ONLY AFTER a summons and complaint is filed and served, BB&T v. Taylor, 369 S.C. 548, (2006);

3. Defendant excepts to the rulings of the magistrate court which proceed with the case in the face of proof that title to the real property is in question contrary to South Carolina Statute 22-3-10(2) which statute is jurisdictional; this is especially so since the magistrate judge was furnished with a *Notice of Lis Pendens* which was prepared for filing on the day of the hearing, and has in fact been filed, and further, the complaint to clear title to the land in question is being filed in the Chester County Court of Common Pleas before June 17, 2011;

4. Defendant excepts to the rulings of the magistrate judge which have allowed the magistrate court action to proceed where the jurisdictional limit of the magistrate court has been exceeded many times over;

5. Defendant excepts to the rulings of the magistrate judge which attempt to turn the magistrate court into a land court; any issue affecting the title to land is a substantial right and defendant has a right to a jury trial in common pleas court, and hereby asserts the right to an immediate appeal, Creed v. Stokes, 285 S.C. 542;

Respectfully submitted to the Chester Court of Common Pleas, this 13 day of June, 2011.

COPY

Mell Woods

P.O. Box 2603
Lancaster SC 29721

Certificate of Service

I hereby certify that I have served the plaintiff with a true copy of the within and foregoing pleading by placing a copy of the pleading in the U.S. Mail, with sufficient stamps addressed to counsel of record for plaintiff.

This 13 day of June, 2011.

COPY

Mell Woods

EXHIBIT I

COPY

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
2011-CP-12-0291

On Appeal from Magistrates Court
2011CV1210400002
formerly 2011CV1210100148

Robert H. Breakfield, as attorney-in-fact,

Plaintiff - Respondent,

v.

Order Affirming Magistrate Court

Mell Woods,

Defendant- Appellant.

FILED
2012 JAN 18 A 10:56
CLERK OF COURT
CHESTER CO S.C.

This is an appeal from the Chester County Magistrate's Court in an eviction action. Arguments were heard on January 4, 2012. In attendance were the Appellant, appearing *pro se*, and the Respondents' attorney, Mike Brackett.

From the Magistrates Court's Return and the submissions and arguments of the parties, it is made to appear to this Court that Attorney Robert Breakfield, as attorney-in-fact for the 11 remaindermen, as the Plaintiff in the Magistrate's Court (the Respondent on appeal), filed an eviction proceeding pursuant to S. C. Code Ann. §27-37-10 *et seq.* The premises at issue is the single lot, known as 1537 Hinton Road, on which Appellant's residence is located. Respondent's principals claim ownership of the lot of land from the Estate of Levie Hoyt Hinson. The residence on the premises is owned by the Appellant.

Respondent filed and served a verified Complaint for Possession of Real Property/Application for Ejectment. The Magistrate's Court issued its Rule to Vacate or Show Cause which was also served on the Appellant.

Appellant filed and served an Answer, dated March 24, 2011, that included a First Defense (more accurately appearing top be a motion to dismiss for lack of personal jurisdiction because Appellant was served at a time and place that he claims gave him immunity from service of process); a Second Defense (more accurately appearing to be a motion to dismiss because of lack of jurisdiction on the ground that the proceeding was not commenced by the filing and service of a Summons); a Third Defense (a general denial); a Counterclaim alleging a “sham legal proceeding” and what appears to be a motion to discontinue the magistrate court proceedings because the Appellant has raised the issue of superior title to the subject premises, citing §22-3-1110, 22-3-1120 and 22-3-1130.

Respondent served a Rule 12(b)(6) motion to dismiss the counterclaim on the ground that a “sham legal proceeding” does not state a cause of action, and the remedy, if any is due, is the South Carolina Frivolous Proceedings Act, §15-36-10 et seq.

Appellant served an “Amendment of Counterclaim” denominating the Counterclaim as a claim for abuse of process rather than a sham legal proceeding. The Amendment also pled a new counterclaim for civil conspiracy. The entire allegation for civil conspiracy reads: “The counterclaim[sic] is further amended to allege a count for Civil Conspiracy against Danny Hinson, Brackett, and Breakfield, who swore to the lies when verifying the papers. Defendant hereby claims \$300,000 in additional damages for the tort of civil conspiracy.”

The Magistrates Court held a pre-trial hearing on May 12, 2011 at which, in addition to routine pre-trial matters, Appellant’s Motion to Dismiss for lack of personal jurisdiction (absence of Summons); Appellant’s Motion to Dismiss for lack of personal jurisdiction (alleged defective service of process);and Respondent’s Rule 12(b)(6) Motion to Dismiss Appellant’s counterclaims

were heard.

By Order dated June 2, 2011 the Magistrates Court denied Appellant's motion to dismiss for lack of a Summons, and denied Appellant's motion to dismiss for improper service of process. Respondent's motion to dismiss the counterclaim and amended counterclaims was granted. This appeal followed.

Appellant's Notice of Appeal sets out five grounds of appeal:

1. the dismissal of Appellant's counterclaims;
2. the denial of Appellant's motion to dismiss for lack of a Summons;
3. the Magistrate's Court's refusal to dismiss the eviction when superior title to the real property is at issue;
4. the Magistrates' Court's refusal to remove the matter to Circuit Court because the alleged damages exceed the jurisdictional limit of the Magistrate Court;
5. the Magistrate's Court's refusal to remove the matter to circuit court because title to real property is at issue and Appellant claims that he has "a right to a jury trial in common pleas court." (Grounds of Appeal 3 and 5 are, in effect, the same.)

Appellant first objected to going forward with the hearing because the Magistrates Court's Return to the Circuit Court did not include the original records in the Magistrate's Court, only copies. Appellant argued that the governing statute requires the Return to contain original records from the lower court. S.C. Code Ann. §18-7-60 does not require original documents in the return, but Rule 75, SCRPC, does provide that appeals to the circuit court shall be made upon the original record in the lower court. Nevertheless, the Appellant could not satisfactorily identify any prejudice to him from the return containing copies rather than originals. He did not claim or demonstrate that

documents were missing or that copies in the return were incomplete or inaccurate. Finding no prejudice, the Appellant's motion to continue the appeal hearing (oral argument) was denied.

The lower court's dismissal of Appellant's counterclaims is affirmed. At common law, the only defense to a petition to remove a tenant for nonpayment of rent was by proof of payment of rent.

5 Thompson on Real Property, Second Thomas Edition §40.09(c)(1) (2007). While some statutes in other jurisdictions enable tenants to assert affirmative defenses in summary eviction proceedings, South Carolina's statutes do not. Accordingly, whatever defenses or claims the tenant might have against the landlord would have to be asserted in a separate action. Otherwise, the very purpose for the summary eviction proceeding could be defeated by allowing the tenant to bring all manner of issues before the court and delaying the ultimate resolution of the central question, namely gaining possession of the premises. Summary eviction proceedings are not proceedings involving title to land. Nesbitt v. Marshall, 24 S. C. 507 (1884); Sywgert v. Goodwin, 32 S.C. 146 (1890). Additionally, neither of the counterclaims speak to the Appellant's right of possession. Abuse of process and civil conspiracy seek money damages and can be pursued in a separate action. Classic damage claims should not be allowed to impede the summary possession procedure. And, the civil conspiracy claim was properly dismissed because of pleading deficiencies. Civil conspiracy is a "special damages" action, and when items of special damage are claimed, they shall be specifically stated in the pleading. Rule 9(g), SCRCF. A bare allegation that special damage has been suffered with an allegation of a particular pecuniary amount is insufficient and does not satisfy Rule 9(g). Isuzu Motors Ltd. v. Consumers Union of U.S., Inc., 12 F.Supp2d 1035, 1047 (C.D. Cal. 1998).

More explanation of the underlying facts giving rise to the special damage is necessary.¹

The lower court's denial of appellant's motion to dismiss on the ground of lack of personal jurisdiction because of the failure to serve a summons was proper and is affirmed. Appellant argues that the Rules of Civil Procedure require the service of a Summons in an ejectment proceeding notwithstanding that the procedure set out in S.C. Code Ann. §27-37-20 (rev. 2007) does not require a summons. The proceeding authorized by §27-37-20 is a special statutory "summary proceeding" designed to protect the interests of both landlords and tenants. The pleading and procedural requirements of §27-37-20 were followed in this case.²

The lower court's denial of Appellant's motion to dismiss the eviction proceeding because of Appellant's allegation of superior title to the premises at issue was proper and is affirmed. A tenant cannot oust the magistrate of jurisdiction in eviction cases by simply asserting a superior title in himself. Metropolitan Life Ins. Co. v. Stuckey, 10 S.E.2d 3 (S.C. 1940). "Otherwise, any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute." Id.

The lower court's denial of Appellant's motion to remove the proceeding to circuit court because Appellant's counterclaims involve sums in excess of the magistrates court jurisdictional limit was proper and is affirmed. As noted above, the counterclaims were properly dismissed, and

¹ An appellate court can affirm any ruling or order upon any ground appearing in the record. Rule 220(c), SCACR.

² It is instructive that the Summary Court Judges Bench Book, created and distributed by the office of South Carolina Court Administration as the administrative arm of the Chief Justice, (Civil Law Chapter; section N-3, Eviction or Ejectment, sub-sections a and b) sets out the procedural requirements for a summary ejectment proceeding. According to the Summary Court Judges Bench Book, a summons is not required.

the sums sought in the counterclaims would not impact the magistrates' court's jurisdictional limit.

Further, S. C. Code Ann. §22-3-10(12) provides that in all actions provided for in this section (actions in magistrate's court) the magistrate's court has jurisdiction over a counterclaim that involves a sum not to exceed seven thousand five hundred dollars, "... **except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land;**" (emphasis added).

The lower court's denial of Appellant's request for a 12 member jury was proper and is affirmed. Appellant is entitled to a six member jury, and the lower court so held. S. C. Code Ann. §22-2-100.

Accordingly, the Magistrate's Court's Order dated June 2, 2011 is hereby AFFIRMED. This appeal is dismissed, and the matter is remanded to the Magistrate's Court for further proceedings according to the governing law and procedure.

IT IS SO ORDERED.

January 16, 2012

Lancaster, SC

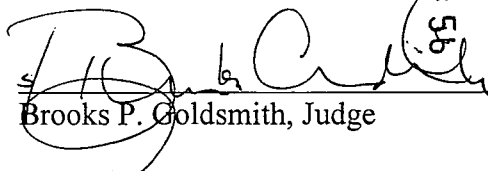
FILED
JAN 18 A 10:56
CLERK OF COURT
CHESTER CO S.C.

Brooks P. Goldsmith, Judge

EXHIBIT J

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
2011-CP-12-0291

Appeal from Magistrate Court
2011CV12100400002, Rossville,
2011CV1210100148, Chester

Robert H. Breakfield,
as attorney-in-fact,

Plaintiff-Respondent,

v.

Mell Woods,

Defendant-Appellant.

Rule 59(e) SCRPC Motion to Alter or Amend Final Order of Court

1. Defendant above named comes now, and within 10 days of being served with written notice of the Court's decision in the above-styled case, and shows:

2. Defendant received written notice of the Court's decision on February 01, 2012, and hereby serves a motion to alter or amend the final order of the circuit court within ten days as required by Rule 59(e) SCRPC;

3. The Court's Order, issued on a State Holiday, January 16, 2012, a day set aside in honor of the Reverend Martin Luther King, Jr., is defective in several particulars as follows:

4. The Court's Order drafted entirely by the plaintiff counsel, without benefit of any transcript of the circuit court proceeding leaves out several items which were ruled on by the court, but not addressed in the written order, dated January 16, 2012, and twists other items to suit the position of plaintiff;

5. Defendant has hand-numbered the court's order in the right hand margin, a total of 15 paragraphs, a copy of the marked order is attached as Exhibit A of this motion;

6. *Paragraph two of the court order* has two "twists" or half-truths; the first is the part about the "remaindermen"; there are no remaindermen who own any property in this litigation; defendant has pending in the circuit court an action seeking to defeat any claim of any so-called remaindermen to the real estate in question; in addition, *court order paragraph two*, last sentence, makes it appear that defendant owns only a building placed on the land of someone else, which is not true either, defendant owns the land also, having purchased the land from Reba P. Hinson, the former owner of the land in question; defendant requests that the Circuit Court clarify and rule on the proper issue instead of the one in the plaintiff counsel's order;

7. *Paragraph four of the court order is inaccurate also,* in that paragraph four only mentions personal jurisdiction, where the pleadings and oral arguments attack the subject matter jurisdiction of a magistrate court when title to land is in question; it is the statutory law of South Carolina that a Magistrate Court is not the proper place to be where the land title itself is in question, Article 11, of Title 22, South Carolina Statutes, Magistrates and Constables, Sections 22-3-1110, through 22-3-1180; this issue was brought up in Magistrate Court, and Circuit Court, but not ruled on in the Circuit Court Order;

8. *Paragraph seven of the court order leaves out the part about subject matter jurisdiction, and makes it sound as if there is no subject matter jurisdiction issue, only one of personal jurisdiction; defendant challenges paragraph seven of the court order as inaccurate;*

9. *Paragraph nine of the court order* has an add-on to catch the unwary; *number nine* appears to be just a recitation of the items contained in the Notice of Appeal -- but this is not why it is included in the court order, down at the bottom is: "(Grounds of Appeal 3 and 5 are, in effect, the same.)" this not true either, and defendant would appreciate this statement being removed from the court order;

10. *Paragraph ten of the court order* recites that S.C. Code Ann 18-7-60 does not require original documents in a magistrate return, but Rule 75 SCRPC does; yes this is true, but SC Statute 18-7-130 mandates that an appeal to circuit court be had upon the original papers, and what good are statutes if statutes are not complied with; in addition the circuit court order states there was no prejudice shown, or claimed; this is not true either, there was lots of discussion about this, and defendant claimed, and continues to claim that ignoring statutes is prejudice, and in addition,

Rule 75 SCRCF, requires that upon receipt of the record from the magistrate court, the clerk of circuit court will give notice in writing to the parties that the record has been filed -- no one was ever notified by the clerk, because the original record as required by the Rules and statutes was never transmitted to the circuit court; defendant would appreciate a ruling from the Court on these points;

11. *Paragraph eleven of the court order consists mostly of ober dictum from the mind of the author of the court order, and not the presiding judge; "At common law, the only defense to a petition to remove a tenant for nonpayment of rent was by proof of payment of rent." defendant says, so what, to start with Mell Woods is not a tenant, but a debtor, paying off a mortgage, and the mortgage is a matter of public record;*

11., continues:

"Accordingly whatever defenses or claims the tenant might have against the landlord would have to be asserted in a separate action." again, so what, defendant Mell Woods is not a tenant, and does not have a landlord; and furthermore the SCRCP did not exist at common law, and there was no Rule 13 SCRCP concerning counterclaims, particularly compulsory ones, in addition to the ones which exceed the jurisdiction of a

court of limited jurisdiction, Rule 13(j) SCRCP; "Summary eviction proceedings are not proceedings involving title to land" yes, this is true, Brackett cites two 1800's cases, but it is now the policy of the State of South Carolina, that a magistrate court is stripped of any authority to evict anyone where there is even a question of title, and if the ongoing proceeding in the circuit court which seeks to obtain a jury trial to settle questions of fact in the pending Trespass to

Title case and the *lis pendens* notice on file in the circuit court against the land in question in the magistrate case is not enough to create at least a question, then will the circuit court please rule as to what a question is;

11., continued response:

"Additionally, neither of the counterclaims speak to the Appellants's right of possession." yes they do too, interfering with contract rights, fraud, and lying are actionable torts; "Classic damage claims should not be allowed to impede the summary possession procedure." (this ruling?) of the court may be true in some circumstances, but not here, where the pleadings show no landlord-tenant relationship, and an extreme question exists as to whether the purported landlords own any land at all; defendant requests a further ruling on these important points; as far as the court's ruling that special damages need to be

pled, is accepted by defendant, but defendant asks to be allowed to amend the claim under Rule 15 SCRPC, and provide a list of the damages;

12. *Paragraph twelve of the court order is objected to and challenged on the ground that the SCRPC call for a summons and complaint to be served before the court has any jurisdiction; Magistrate Rules 5 and 6 call for this also; if there were any lease, or contract, a breach of the contract should be determined first by the court before an order could issue requiring someone to "show cause" why they should not vacate a premise; a "show cause" order should issue only after a court has acquired jurisdiction, and the matter heard in court first, and not in an ex parte manner; defendant*

raised the question that the South Carolina Statutory Eviction procedure (as practiced) fails to meet federal constitutional muster, first in the Magistrate Court, where it was overruled, and then in the Circuit Court, where it was overruled, but left out of the circuit court order of January 16, 2012;

No. 12 continues:

plaintiff lied to try to gain admission to the Magistrate Court to start with in claiming, under oath, that defendant is a "tenant", when in fact, Mell Woods is a debtor who is not default of the sales agreement, and mortgage which grants defendant possession of the premise in question; the 14th amendment guarantees no state shall make or enforce any law that denies a person the equal protection of the laws; in South Carolina, all that is necessary to deny equal protection to a person is to simply label the person a "tenant"; then a default judgment may be entered against a tenant in ten days, where any other person has thirty days to respond;

the equal protection point was squarely brought before the Magistrate Court, and Circuit Court, the record will show the raising of this issue at least two times;

13. *Paragraph thirteen of the court order is objected to and challenged on the same grounds as shown in the response to number seven, (above), before the two rulings in thirteen of the court order, could have an effect, a tenant would have to be the defendant, and Mell Woods is not a tenant, except as being falsely labeled as one in an ex parte proceeding; number thirteen of the court order is a contrivance at best, but not of the trial judge, the author of the court order, the plaintiff attorney, did this;*

14. *Paragraph fourteen of the court order is challenged on the ground that all of the counterclaims were properly filed, and not subject to dismissal simply because the amount exceeded the jurisdictional limit of a magistrate court; in regard to the ruling with emphasis: except that this*

limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land; this is just pure semantics; this is what the author of the court order *wants* everyone to believe, please notice there is no case law in support of this statement from Brackett, and the facts and the record do show that the counterclaims were unrelated to the possession of land; as to the ruling about the twelve person jury, this is just another twist, defendant will be entitled to a twelve person jury in a circuit court trial;

15. Another point not addressed in the court order complained of is the fact that defendant asked the Circuit Court Judge to take judicial notice of the fact that an official recorded plat by a licensed surveyor exists in the deed room of the courthouse directly under the courtroom, which describes the land of defendant, and Mrs. Hinson, without any mention of any so-called "remaindermen;" the

Court agreed to take judicial notice of the plat, and the record when typed will show this, but the court order as drawn up by Mr. Brackett of course does not mention the plat;

Respectfully submitted,

This 11 day of February, 2012.

COPY


Mell Woods

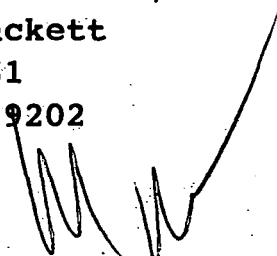
P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

I hereby certify that I have on the eleven day of February, 2012, served the plaintiff-respondent with a true copy of the within and foregoing Rule 59(e) motion by placing a copy of the same in the U.S. Mail with sufficient first class postage addressed to:

Moses Koon & Brackett, PC
B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

COPY


Mell Woods

COPY

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2011-CP-12-0291

COUNTY OF CHESTER

On Appeal from Magistrates Court
2011CV1210400002
formerly 2011CV1210100148

Robert H. Breakfield, as attorney-in-fact,

Plaintiff - Respondent,

v.

Order Affirming Magistrate Court

Mell Woods,

~~Defendant-Appellant~~

2012 JAN 18 A 10 56
CLERK OF COURT
CHESTER CO S.C.

This is an appeal from the Chester County Magistrate's Court in an eviction action.

Arguments were heard on January 4, 2012. In attendance were the Appellant, appearing *pro se*, and the Respondents' attorney, Mike Brackett. ①

From the Magistrates Court's Return and the submissions and arguments of the parties, it is made to appear to this Court that Attorney Robert Breakfield, as attorney-in-fact for the 11 remaindermen, as the Plaintiff in the Magistrate's Court (the Respondent on appeal), filed an eviction proceeding pursuant to S. C. Code Ann. §27-37-10 *et seq.* The premises at issue is the single lot, known as 1537 Hinton Road, on which Appellant's residence is located. Respondent's principals claim ownership of the lot of land from the Estate of Levie Hoyt Hinson. The residence on the premises is owned by the Appellant. ②

Respondent filed and served a verified Complaint for Possession of Real Property/Application for Ejectment. The Magistrate's Court issued its Rule to Vacate or Show Cause which was also served on the Appellant. ③

Appellant filed and served an Answer, dated March 24, 2011, that included a First Defense (more accurately appearing to be a motion to dismiss for lack of personal jurisdiction because Appellant was served at a time and place that he claims gave him immunity from service of process); a Second Defense (more accurately appearing to be a motion to dismiss because of lack of jurisdiction on the ground that the proceeding was not commenced by the filing and service of a Summons); a Third Defense (a general denial); a Counterclaim alleging a "sham legal proceeding" and what appears to be a motion to discontinue the magistrate court proceedings because the Appellant has raised the issue of superior title to the subject premises, citing §22-3-1110, 22-3-1120 and 22-3-1130. ④

Respondent served a Rule 12(b)(6) motion to dismiss the counterclaim on the ground that a "sham legal proceeding" does not state a cause of action, and the remedy, if any is due, is the South Carolina Frivolous Proceedings Act, §15-36-10 et seq. ⑤

Appellant served an "Amendment of Counterclaim" denominating the Counterclaim as a claim for abuse of process rather than a sham legal proceeding. The Amendment also pled a new counterclaim for civil conspiracy. The entire allegation for civil conspiracy reads: "The counterclaim[sic] is further amended to allege a count for Civil Conspiracy against Danny Hinson, Brackett, and Breakfield, who swore to the lies when verifying the papers. Defendant hereby claims \$300,000 in additional damages for the tort of civil conspiracy." ⑥

The Magistrates Court held a pre-trial hearing on May 12, 2011 at which, in addition to routine pre-trial matters, Appellant's Motion to Dismiss for lack of personal jurisdiction (absence of Summons); Appellant's Motion to Dismiss for lack of personal jurisdiction (alleged defective service of process); and Respondent's Rule 12(b)(6) Motion to Dismiss Appellant's counterclaims ⑦

were heard.

By Order dated June 2, 2011 the Magistrates Court denied Appellant's motion to dismiss for lack of a Summons, and denied Appellant's motion to dismiss for improper service of process. Respondent's motion to dismiss the counterclaim and amended counterclaims was granted. This appeal followed.

Appellant's Notice of Appeal sets out five grounds of appeal:

1. the dismissal of Appellant's counterclaims;
2. the denial of Appellant's motion to dismiss for lack of a Summons;
3. the Magistrate's Court's refusal to dismiss the eviction when superior title to the real property is at issue;
4. the Magistrates' Court's refusal to remove the matter to Circuit Court because the alleged damages exceed the jurisdictional limit of the Magistrate Court;
5. the Magistrate's Court's refusal to remove the matter to circuit court because title to real property is at issue and Appellant claims that he has "a right to a jury trial in common pleas court." (Grounds of Appeal 3 and 5 are, in effect, the same.)

Appellant first objected to going forward with the hearing because the Magistrates Court's Return to the Circuit Court did not include the original records in the Magistrate's Court, only copies. Appellant argued that the governing statute requires the Return to contain original records from the lower court. S.C. Code Ann. §18-7-60 does not require original documents in the return, but Rule 75, SCRCPP, does provide that appeals to the circuit court shall be made upon the original record in the lower court. Nevertheless, the Appellant could not satisfactorily identify any prejudice to him from the return containing copies rather than originals. He did not claim or demonstrate that

documents were missing or that copies in the return were incomplete or inaccurate. Finding no prejudice, the Appellant's motion to continue the appeal hearing (oral argument) was denied.

The lower court's dismissal of Appellant's counterclaims is affirmed. At common law, the only defense to a petition to remove a tenant for nonpayment of rent was by proof of payment of rent.

5 Thompson on Real Property, Second Thomas Edition §40.09(c)(1) (2007). While some statutes in other jurisdictions enable tenants to assert affirmative defenses in summary eviction proceedings, South Carolina's statutes do not. Accordingly, whatever defenses or claims the tenant might have against the landlord would have to be asserted in a separate action. Otherwise, the very purpose for

the summary eviction proceeding could be defeated by allowing the tenant to bring all manner of issues before the court and delaying the ultimate resolution of the central question, namely gaining possession of the premises. Summary eviction proceedings are not proceedings involving title to land. Nesbitt v. Marshall, 24 S. C. 507 (1884); Sywgert v. Goodwin, 32 S.C. 146 (1890).

Additionally, neither of the counterclaims speak to the Appellant's right of possession. Abuse of process and civil conspiracy seek money damages and can be pursued in a separate action. Classic damage claims should not be allowed to impede the summary possession procedure. And, the civil conspiracy claim was properly dismissed because of pleading deficiencies. Civil conspiracy is a "special damages" action, and when items of special damage are claimed, they shall be specifically stated in the pleading. Rule 9(g), SCRPC. A bare allegation that special damage has been suffered with an allegation of a particular pecuniary amount is insufficient and does not satisfy Rule 9(g).

Isuzu Motors Ltd. v. Consumers Union of U.S., Inc., 12 F.Supp2d 1035, 1047 (C.D. Cal. 1998).

More explanation of the underlying facts giving rise to the special damage is necessary. ¹

The lower court's denial of appellant's motion to dismiss on the ground of lack of personal jurisdiction because of the failure to serve a summons was proper and is affirmed. Appellant argues that the Rules of Civil Procedure require the service of a Summons in an ejectment proceeding notwithstanding that the procedure set out in S.C. Code Ann. §27-37-20 (rev. 2007) does not require a summons. The proceeding authorized by §27-37-20 is a special statutory "summary proceeding" designed to protect the interests of both landlords and tenants. The pleading and procedural requirements of §27-37-20 were followed in this case. (12)

The lower court's denial of Appellant's motion to dismiss the eviction proceeding because of Appellant's allegation of superior title to the premises at issue was proper and is affirmed. A tenant cannot oust the magistrate of jurisdiction in eviction cases by simply asserting a superior title in himself. Metropolitan Life Ins. Co. v. Stuckey, 10 S.E.2d 3 (S.C. 1940). "Otherwise, any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute." Id. (13)

The lower court's denial of Appellant's motion to remove the proceeding to circuit court because Appellant's counterclaims involve sums in excess of the magistrates court jurisdictional limit was proper and is affirmed. As noted above, the counterclaims were properly dismissed, and (14)

¹ An appellate court can affirm any ruling or order upon any ground appearing in the record. Rule 220(c), SCACR.

² It is instructive that the Summary Court Judges Bench Book, created and distributed by the office of South Carolina Court Administration as the administrative arm of the Chief Justice, (Civil Law Chapter; section N-3, Eviction or Ejectment, sub-sections a and b) sets out the procedural requirements for a summary ejectment proceeding. According to the Summary Court Judges Bench Book, a summons is not required.

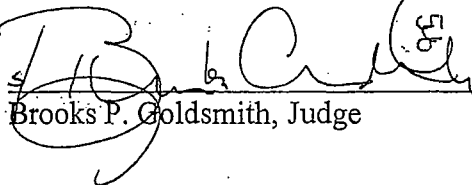
the sums sought in the counterclaims would not impact the magistrates' court's jurisdictional limit.

Further, S. C. Code Ann. §22-3-10(12) provides that in all actions provided for in this section (actions in magistrate's court) the magistrate's court has jurisdiction over a counterclaim that involves a sum not to exceed seven thousand five hundred dollars, "... **except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land;**" (emphasis added).

The lower court's denial of Appellant's request for a 12 member jury was proper and is affirmed. Appellant is entitled to a six member jury, and the lower court so held. S. C. Code Ann. §22-2-100.

Accordingly, the Magistrate's Court's Order dated June 2, 2011 is hereby AFFIRMED. This appeal is dismissed, and the matter is remanded to the Magistrate's Court for further proceedings according to the governing law and procedure.

IT IS SO ORDERED.

FILED
JAN 18 A 10:56
CLERK OF COURT
CHESTER CO S.C.

Brooks P. Goldsmith, Judge

January 16, 2012

Lancaster, SC

EXHIBIT K

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
2011-CP-12-0291

On Appeal from Magistrates Court
2011CV1210400002
formerly 2011CV1210100148

Robert H. Breakfield, as attorney-in-fact,

Plaintiff - Respondent,

v.

Respondent's Return to Appellant's
Rule 59(e) Motion for Reconsideration

Mell Woods,

Defendant- Appellant.

This is an appeal from Magistrate's Court. By Order dated January 16, 2012 the Circuit Court affirmed the Magistrates Court Order being appealed by the Defendant-Appellant. On or about February 11, 2010 Appellant served his Rule 59(e) Motion for Reconsideration. Appellant's grounds are addressed as follows:

1. In paragraph 6 of the motion, Appellant complains that the Order (page 1, 2d paragraph) identified Plaintiff's principals as remaindermen and described the Appellant as only owning the residence on the real property at issue. There is no dispute that the Appellant owns the residence on the disputed land, so the Order is absolutely accurate in this statement of fact. The use of the term "remaindermen" was used to describe the nature of the allegations made in the Magistrate Court eviction proceeding
2. In paragraph 7 of the motion Appellant claims that his pleading raised the issue of the Magistrate Court's subject matter jurisdiction with respect to the question of "the land title itself" and that the Circuit Court's Order did not address the issue. This issue was addressed

on page 5 of the Circuit Court's Order:

The lower court's denial of Appellant's motion to dismiss the eviction proceeding because of Appellant's allegation of superior title to the premises at issue was proper and is affirmed. A tenant cannot oust the magistrate of jurisdiction in eviction cases by simply asserting a superior title in himself. Metropolitan Life Ins. Co. v. Stuckey, 10 S.E.2d 3 (S.C. 1940). "Otherwise, any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute." Id.

3. In paragraph 8 of the motion Appellant complains that the Circuit Court Order, when describing the matters heard in the Magistrates Court, does not make reference to the issue of subject matter jurisdiction. It is true that the Magistrate Court's Order held that "Per statute, this Court has concurrent Jurisdiction with the Court of Common Pleas regarding this type of proceeding." (Page 3, l. 1-2). However, subject matter jurisdiction was not specifically raised as a ground of appeal.
4. In paragraph 9 of the motion Appellant complains that the Circuit Court Order's description of his Grounds of Appeal 3 and 5 being, in effect, the same is inaccurate. Each is based on Appellant's assertion that his claim of superior title ousts the Magistrate Court of subject matter jurisdiction and that he is entitled to a jury trial in circuit court. As such, the statement complained of is true.
5. In paragraph 10 of the motion Appellant claims that the Circuit Court Order does not adequately address the question of the sufficiency of the Probate Court's return to the Circuit Court. (the bottom of page 3 of the Order). The Order accurately describes the requirements of the relevant statute and rule of procedure. The Court concluded in the Order that Appellant did not show prejudice resulting from any perceived deficiency in the Probate

Court's Return, and Appellant asserts that the failure to provide original papers from the probate court is prima facie prejudicial. He cites no authority for his argument. In deciding the question of the Probate Court Return including or not including original documents, the Circuit Court applied the principle of "no harm, no foul." The Order sufficiently addresses Appellant's objection.

6. In paragraph 11 of the motion Appellant objects to the Circuit Court's inclusion of law on the issue of what defenses a tenant may raise in summary ejectment proceedings. This issue was raised by the Appellant in his effort to oust the Magistrate Court of jurisdiction. It is not disputed that the Magistrate Court proceeding is an eviction proceeding, and, nevertheless, Appellant may still contest the proceeding in Magistrate court by offering proof that he is not a tenant. When such claims to title are made in response to Rule to Show Cause or Vacate, the magistrate must first determine at an evidentiary hearing if the relation of landlord-tenant exists between the parties. The procedure is explained in Stewart-Jones Co. as follows:

Hence the question of fact, to be resolved by the magistrate, and to the determination of which he is of necessity limited when the question of title is sought to be raised, is this: was there a contract between the parties, express or implied, which created the relation of landlord and tenant? Without such contract that relation cannot exist. (internal citations omitted) If it does exist as the result of such contract, then the tenant is estopped to deny the title he has contracted to recognize, and may not inject that issue to deprive the magistrate of jurisdiction in a proceeding under the statute.

If the magistrate should determine that the landlord-tenant relationship does not exist, the proceeding should be dismissed and the magistrate's jurisdiction so far as the pending summary proceeding of ejectment is concerned, will be at an end. Baldwin v. Baldwin, 79

S.E.2d 459 (S.C. 1954); see also Calhoun v. Currie, 176 S.E. 324 (S.C. 1934).

Appellant further complains in his paragraph 11 about the Circuit Court Order affirming the dismissal of his tort counterclaims (abuse of process and civil conspiracy). The Order held that counterclaims seeking damages may not be pursued in a statutory eviction proceeding. Appellant apparently disagrees with this statement of the law, but he cites no authority for his argument.

7. In paragraph 12 of the motion Appellant asks this Court to reconsider its ruling that S.C. Code Ann. §27-37-20 (rev. 2007) does not require a Summons. This is a rehash of his prior argument. To the extent that the motion raises the question of whether S.C. Code Ann. §27-37-20 (rev. 2007) “fails to meet federal constitutional muster” because it does not require a Summons, this issue was not a ground for appeal from the Magistrate Court Order and is not preserved for appellate review. (See Appellant’s five Grounds for Appeal dated June 13, 2011.)
8. In paragraph 13 of the motion Appellant complains about the explanation of the law governing eviction proceedings because it implies that he (Appellant) is a tenant when he disputes that fact. As set forth in no. 6 above, the Order is describing the nature of the Magistrate Court proceeding and what, if anything, the alleged tenant can raise as a defense in an eviction proceeding. The Magistrate will be required to first determine if a landlord-tenant relationship exists, and Appellant can offer evidence to show that he is not a tenant.
9. In paragraph 14 of the motion Appellant complains that his counterclaims were dismissed because they exceeded the jurisdictional amount for Magistrate Court, and that Appellant’s counterclaims should have been removed to Circuit Court. Appellant misunderstands the

Circuit Court Order. The counterclaims were dismissed because counterclaims for damages are not permitted in summary eviction proceedings. Further, in proceedings between landlord and tenant, involving counterclaims for damages but not involving eviction, the statute itself, as quoted in the Order, excludes the damages sought in counterclaims from the calculation of the jurisdictional limit of Magistrate Court, meaning that counterclaims seeking damages in excess of \$7,500 do not automatically mean the matter must be sent to Circuit Court.

15. In paragraph 15 of the motion Appellant complains that the Order does not mention that Appellant asked the Court to take judicial notice of a plat that was allegedly on record somewhere in the courthouse. Appellant did not ask the Court to take judicial notice of a plat. The actual exchange between the attorneys and the Court appears on p. 37 and 38 of the hearing transcript. After the undersigned made a hearsay objection to Appellant's attempt to say what Reba Hinson had allegedly said, the Appellant said to the Court:

MR. WOODS: Can I say this? There's a plat down there in the deed room that says "Reba Hinson's land" on it. You can take judicial notice of that or I can go get it and show it to you. (hearing transcript, p. 38, l. 4-7).

Appellant did neither thing. He did not ask the Court to take judicial notice of a specific document and the Court did not rule that it was taking judicial notice. Appellant also did not present a plat to the court to be introduced into evidence. The second page of the hearing transcript confirms that "There were no exhibits marked."

Conclusion

Appellant's Motion to Alter or Amend the January 16, 2012 Order should be denied.

Columbia, South Carolina
March 5, 2012

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Respondent

EXHIBIT L

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Robert H. Breakfield,
as attorney-in-fact,

Plaintiff-Respondent,

vs.

Mell Woods,

Defendant-Appellant.

CASE NO: 2011-CP-12-291

**ORDER DENYING
MOTION TO RECONSIDER**

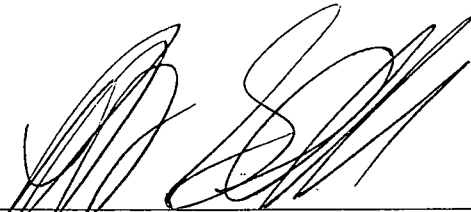
FILED
2012 APR 25 AM 10:54
CLERK OF COURT
CHESTER CO S.C.

This matter came before the Court on Defendant's *Motion to Alter or Amend Final Order of Court* dated February 11, 2012, wherein Defendant requests this Court reconsider that certain Order entitled *Order Affirming Magistrate Court* dated January 16, 2012.

After careful consideration of said motion and memoranda submitted by the parties, the Court finds there is no basis for granting the motion and, therefore, Defendant's *Motion to Alter or Amend Final Order of Court* dated February 11, 2012 is hereby denied.

AND IT IS ALL SO ORDERED.

April 23, 2012
Lancaster SC


BROOKS P. GOLDSMITH, PRESIDING JUDGE
SIXTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

RECEIVED

JUN 25 2012

S.C. Supreme Court

Robert H. Breakfield, as attorney in fact for John D. Hinson,
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford
as Personal Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr. Respondent,

v.

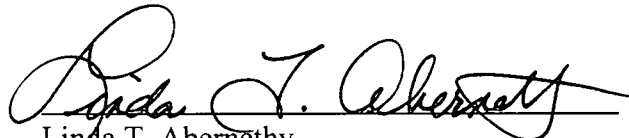
Mell Woods Appellant.

PROOF OF SERVICE

I, the undersigned, Linda T. Abernethy, on behalf of the Law Firm of Moses & Brackett, PC, attorneys for the Respondent, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 25th day of June, 2012.

Served: Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Appellant, pro se

Document(s): Respondent's Motion to Dismiss Appeal or to Transfer Appeal to the Court of Appeals, and Motion to Strike Appellant's "Narrative" from the Notice of Appeal.



Linda T. Abernethy
Paralegal for B. Michael Brackett