

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Kevin Schumacher, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Lance Hoover, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

**RECEIVED**

C/A No. 2010-CP-40-06486

OCT 11 2013

**SC Court of Appeals**

**ORDER DENYING PLAINTIFF'S  
 MOTION FOR JNOV AND  
 PLAINTIFF'S RULE 59 MOTION**

2013 OCT -8 AM 11:44  
 RICHLAND COUNTY  
 FILED  
 KENNETH W. McELREATH  
 C.C.P. & G.S.

This matter was tried before the Court on January 3, 4, and 5, 2012. The jury ruled in favor of the Defendant on the Plaintiff's claims and on the Defendant's counterclaims.

After the verdict, the Court heard the parties' arguments regarding the proper form for the award as well as the Court's decisions regarding fees, costs, and damages.

The Court issued an order signed May 22, 2012, and filed May 23, 2012, awarding the Defendant attorney's fees, costs, and damages on his counterclaims.

On approximately May 29, 2012, the Plaintiff moved for an order amending the judgment "on the grounds that the Court's order did not address Plaintiff's motion for judgment notwithstanding the verdict filed on January 17, 2012."

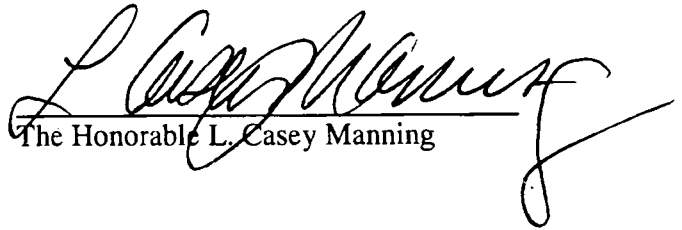
The Plaintiff later appealed this Court's order to the South Carolina Court of Appeals.

The matter is now pending before the Court of Appeals. The Court of Appeals requested by Order filed September 26, 2013, that this Court rule upon the Rule 59 motion.

With this in mind, for the reasons previously stated in open court and in the Court's Order of May 22, 2012, the Court denies the Plaintiff's motion for judgment notwithstanding the verdict and denies the Plaintiff's Rule 59 Motion regarding that same subject matter. The jury

received ample evidence in this matter, the decision was properly put to the jury, and the jury ruled in favor of the Defendant Lance Hoover. For this reason, the Plaintiff's motion for judgment notwithstanding the verdict and the Plaintiff's Rule 59 motion are denied.

AND IT IS SO ORDERED.

  
The Honorable L. Casey Manning

Columbia, South Carolina

October 4, 2013

S. JAHUE MOORE  
J. MARK TAYLOR\*  
DAVID L. THOMAS†  
C. VANCE STRICKLIN, JR.  
JAMES EDWARD BRADLEY  
SHEILA McNAIR ROBINSON  
ROBERT D. HAZEL  
CHRISTIAN G. SPRADLEY††  
C. DAVID SAWYER, JR.††  
WILLIAM H. EDWARDS  
STANLEY L. MYERS  
JANE H. DOWNEY\*\*  
S. JAHUE MOORE, JR.  
JOHN C. BRADLEY, JR.



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MELISSA K. MOORE  
WILLIAM B. FORTINO  
R. NICHOLS "NICK" RILEY, JR.  
M. BROOKS BIEDIGER  
AMBER L. FULMER  
SARAH TAYLOR CASSIDY  
MARGARET "MEG" HAZEL

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†GREENVILLE OFFICE:  
(864) 271-6371

October 1, 2013

The Honorable L. Casey Manning  
Fifth Judicial Circuit  
P.O. Box 192  
Columbia, SC 29202-0192

VIA EMAIL: [cmanningi@sccourts.org](mailto:cmanningi@sccourts.org)

Re: Kevin Schumacher vs. Lance Hoover  
C/A No. 2010-CP-40-06486

Dear Judge Manning:

This letter is in response to the Court of Appeals' Order requesting a ruling on Mr. Schumacher's Rule 59 motion. For your convenience, I attach a copy of that order with this letter. After reviewing that order, I have discussed this matter with Kirby Shealy. I understand Mr. Shealy is submitting a proposed order to you granting his Rule 59 motion.

I attach with this letter a proposed order denying Mr. Shealy's Rule 59 motion for the reasons set forth in your order of May 22, 2012, which was filed May 23, 2012. For your convenience, I attach a copy of that order as well.

Thank you for your consideration. Please have your office contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "James Edward Bradley".

James Edward Bradley

/nh

Enclosures

cc: Kirby D. Shealy, Esquire  
Lance Hoover

# The South Carolina Court of Appeals

Kevin Schumacher, Appellant,

v.

Lance Hoover, Respondent.

Appellate Case No. 2012-212377

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## ORDER

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It has come to this Court's attention that the appellant filed a Rule 59, SCRCP motion that is still pending in the circuit court. At this time, this case is scheduled for oral argument on October 17, 2013. Because the court believes the Rule 59 motion needs to be resolved before consideration of the appeal, we remand the case to the circuit court for the limited purpose of considering the Rule 59 motion and any other pending motions that may potentially affect this appeal. The circuit court shall rule within 20 days of the filing of this order.

FOR THE COURT

BY

  
CLERK

Columbia, South Carolina

cc:

The Honorable Casey L. Manning  
Kirby Darr Shealy, III  
James Edward Bradley  
Margaret Amelia Hazel

**FILED**

*September 26, 2013*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
  
Kevin Schumacher, )  
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 ) Plaintiff, )  
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 ) vs. )  
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C/A No. 2010-CP-40-06486

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received ample evidence in this matter, the decision was properly put to the jury, and the jury ruled in favor of the Defendant Lance Hoover. For this reason, the Plaintiff's motion for judgment notwithstanding the verdict and the Plaintiff's Rule 59 motion are denied.

AND IT IS SO ORDERED.

---

The Honorable L. Casey Manning

Columbia, South Carolina

October \_\_\_\_, 2013

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 Kevin Schumacher, )  
 Plaintiff, )  
 vs. )  
 Lance Hoover, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

C/A No. 2010-CP-40-06486

ORDER

2012 MAY 23 PM 12:05  
 RICHMOND COUNTY  
 CLERK OF COURT  
 FILED

**I. INTRODUCTION**

The Court tried this landlord tenant dispute January 3, 4, and 5, 2012. During the trial of this case, the parties agreed that matters regarding attorney fees and the entry of damages on the Defendant's Counterclaim would be taken up by way of post trial motions. The case was tried to the jury which found against the Plaintiff Kevin Schumacher on his claim for rent and in favor of the Defendant Lance Hoover on his claim for a return of his security deposit.

After the verdict, the Court invited Lance Hoover to submit motions for fees and costs as well as an entry of a monetary judgment on the Defendant's Counterclaim.

After consideration of Lance Hoover's motion for fees, costs and entry of monetary judgment as well as the Affidavit of James Edward Bradley regarding fees and costs in this matter, the Court enters judgment as follows:

1. Attorney Fees \$19,549.20;
2. Costs \$4,161.73; and
3. Damages on Counterclaim \$7,200.
4. Trial judgment against Kevin Schumacher of \$19,549.20 + \$4,161.73 + \$7,200 =

\$30,910.93.



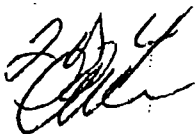
5. Interest is to run from the date of this Order at the rate of 7.25 percent as indicated by the January 4, 2012 Order of Chief Justice Jean Toal.

## II. DISCUSSION

### 1. Attorney Fees

a. An award of attorney fees is proper under the contract and the law.

During the trial of this matter, the parties agreed that any entry of attorney fees would be taken up by the Court after a verdict based upon the evidence presented. In review of the evidence, it appears that the lease entered as Defendant's Exhibit 1 calls for the prevailing party to recover both attorney fees and costs. ~~Paragraph 13 of the Lease reads as follows: "The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorney fees."~~ In addition, the South Carolina Residential Tenant Act makes provisions for the awarding of attorney fees. South Carolina Code Section 27-40-410(b) indicates that when a landlord fails to return a security deposit the tenant may recover reasonable attorney fees. This award is not discretionary but mandatory with a trial judge who must award the prevailing tenant attorney fees. See, *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990). In addition, South Carolina Code Section 27-40-610(b) indicates that if a landlord's non-compliance with a duty imposed upon him by South Carolina Code Section 27-40-440 (landlord to maintain premises) is willful, the tenant may recover reasonable attorney fees. Based upon the contract in this matter, South Carolina Code Section 27-40-410(b), South Carolina Code Section 27-40-610(b), and *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990), the Court finds that an award of attorney fees is proper to Lance Hoover as the prevailing tenant in this matter.



**b. Lance Hoover is the prevailing party.**

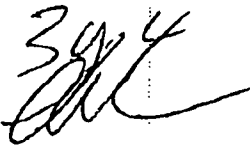
The Court finds that Lance Hoover is the prevailing party. This matter was brought by Kevin Schumacher to enforce a lease alleging a breach of lease and breach of contract. In response, Lance Hoover alleged that Kevin Schumacher had failed to properly maintain the premises in a fit and habitable condition and had failed to return the security deposit. The jury found against Mr. Schumacher and in favor of Lance Hoover on his Counterclaim. For this reason, the Court finds that Lance Hoover is the prevailing party in this matter and entitled to an award of attorney fees.

~~a. The fees requested are reasonable.~~

The Court has closely reviewed the motion for attorney fees as well as the Affidavit of James Edward Bradley. The Court finds that an award of attorney fees is appropriate in the amounts requested. The Court finds upon review of the entire affidavit that the amounts requested are reasonable in nature and amount. Mr. Bradley has submitted a detailed hourly invoice showing charges at the rate of \$200 an hour which the Court finds is a fair and reasonable rate prevailing in Richland County for litigation of this sort. The Court finds that the fees and costs are reasonable in this matter and awards fees in the amount of \$19,549.20 and costs in the amount of \$4,161.73.

**2. Counterclaim for Deposit**

In addition, Lance Hoover prevailed in his Counterclaim for a wrongful withholding of the security deposit. The evidence presented in trial shows the security deposit was \$2,400, and the security deposit was not returned. The jury found that Lance Hoover was entitled to a return of his security deposit. Under South Carolina Code Section 27-40-410(b) "[i]f the landlord fails to return to tenant any prepaid rent or security/rental deposit ... the tenant may recover the



property and money in an amount equal to three times the amount wrongfully withheld...." The word 'may' in this sentence has been found to be mandatory as an election of remedies to the tenant. *See, Provatto v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990). For this reason, it is proper to enter a judgment in accord with the jury's verdict. The jury found that Lance Hoover's \$2,400 security deposit was wrongfully withheld. For this reason, the Court enters judgment on that verdict in the amount of three times \$2,400 or \$7,200.

### III. CONCLUSION

For the reasons indicated above, the Court enters judgment in favor of Lance Hoover as follows:

Attorney Fees \$19,549.20;

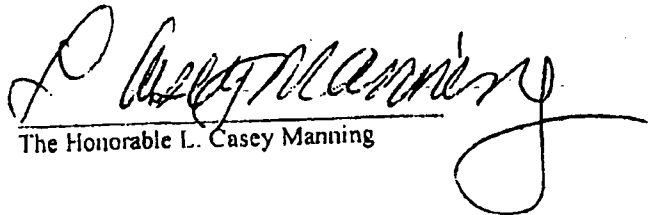
Costs \$4,161.73;

Statutory Damages \$7,200;

Total: \$30,910.93

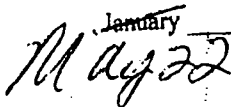
This amount is to draw interest at the rate of 7.25 percent from the date of this Order as indicated in the January 4, 2012 Order of the Honorable Jean Toal.

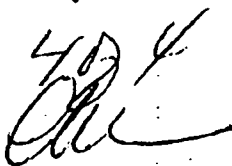
AND IT IS SO ORDERED.

  
The Honorable L. Casey Manning

Columbia, South Carolina

January, 2012



404  


STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2010CP4006486

Kevin Schumacher

Lance Hoover

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for:  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
FILED  
2013 OCT 8 AM 11:46  
JEANETTE W. BRADLEY  
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 8 October 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III

Elizabeth Ann Blackwell

James Edward Bradley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. Bradley*