THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-06486

Kevin Schumacher, ... Appellant,

v.

Lance Hoover, ... Respondent.

PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240 of the *South Carolina Rules of Appellate Procedure*, Appellant Kevin Schumacher ("Appellant") respectfully files this Petition for Rehearing regarding this Court's decision filed November 27, 2013.

Rule 221(a), SCACR, authorizes a party who believes the Court overlooked or misapprehended points of law and/or fact to petition for rehearing. *See also Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933). Here, Appellant raised two issues on appeal with supporting law and facts that the Court failed to substantively address in its decision. *See* Opinion (filed November 27, 2013). In its opinion, the Court cites various statutory provisions within the South Carolina Residential Landlord-Tenant Act ("RLTA"), including S.C. Code Ann. §§ 27-40-410(b), -440(a)(2), 610(a), and -

530(a) (Rev. ed. 2007), and applicable case law regarding the standard of review for a directed verdict. In particular, the Court's citation to S.C. Code Ann. § 27-40-530(a) is telling with respect to its misapprehension of the points raised by Appellant. This situation involved a matter of health and safety and also concerned repairs specifically requested by the tenant. In that situation, when § 27-40-610 calls for the termination of a rental agreement if repairs are not made within fourteen days of the notice described in the statute, a tenant cannot "reasonably" deny access to the landlord to make such repairs if doing so means that the Landlord will be unable to meet his obligations within the statutory timeframe. If that were the case, landlords like Appellant would be placed in an impossible situation, unable to even attempt to remedy a problem that, by statute, leads to the termination of the lease if not remedied in 14 days.

The evidence in this case was uncontradicted that Respondent refused Appellant access to the residence during the 14 day period, and even after that period had expired. Because Respondent refused to allow Appellant access to the inside of the residence to remedy the noncompliance with § 27-40-440, Respondent's termination of the lease was improper as a matter of law.

Respondent first provided Appellant with written notice of termination as required by the RLTA on September 3, 2010, which came in the form of an email from Respondent's real estate agent to Appellant. (R. p. 305, lines 9-11; pp. 489-490; p 113, lines 2-9; p. 272, lines 2-8.) There was no other evidence of any other writing that would create a genuine issue of material fact as to the date and form of the written notice required by law. Accordingly, Appellant had fourteen days to remedy the problem, beginning on September 3, 2010. Additional evidence revealed that from September 3

until the running of the fourteen-day time period, Respondent refused to allow Appellant to enter the premises when Appellant attempted to repair the noncompliance. (*See* R. p. 188, lines 22-24; pp. 505, 520, 521, 526, 527.)

The Court's opinion cites statutory provisions of the RLTA requiring that a landlord make "all repairs reasonably necessary to keep premises habitable," (S.C. Code Ann. § 27-40-440(a)(2)); that the landlord, upon notice, has fourteen days to remedy the breach of a lease agreement or it may be terminated by the tenant (S.C. Code Ann. § 27-40-610(a)); and that a tenant shall not withhold consent unreasonably for a landlord to enter premises to make repairs (S.C. Code Ann. § 27-40-530(a)). Appellant agrees that each of these cited statutes generally applies to this case, but they are not dispositive, in and of themselves, without reference to the facts in the record. Those facts yield but one conclusion: Respondent would not allow Appellant to enter the premises to remedy the noncompliance, and Respondent's termination of the lease was unwarranted.

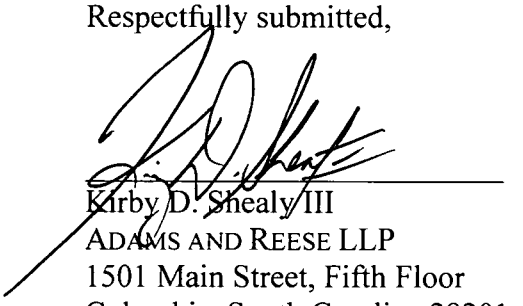
Were this a situation in which the jury was faced with determining whether the measures Appellant undertook from September 3, 2010 until September 17, 2010 were sufficient to satisfy his burden of making "all repairs *reasonably necessary*" (Court's emphasis) to fulfill his obligation to his tenant under S.C. Code Ann. § 27-40-440(a)(2), then a jury question would most certainly have been presented. There was no such question for the jury to consider here, because Appellant was prevented from taking such measures *by Respondent*.

There is no indication in this Court's opinion that it considered the legal arguments made by Appellant or the uncontradicted facts in the record. The statutory and case law cited in the Court's opinion provides no indication of how such law, when

applied to the facts of this case, compels an affirmation of the trial court's decision.

Appellant is informed and believes that this Court has overlooked or misapprehended the issues on appeal because it has failed to provide any substantive basis for its opinion affirming the trial court in this case. For the reasons stated above, this Court should grant Appellant's Petition for Rehearing in this case.

Respectfully submitted,



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December 12, 2013.

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2012-212377

Kevin Schumacher, ... Appellant,

v.

Lance Hoover, ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing on Respondent, Lance Hoover, by depositing a copy of the document in the United States Mail, postage prepaid, on December 12, 2013, addressed to his attorney of record, James Edward Bradley, Esquire, and Margaret A. Hazel, Esquire, of Moore, Taylor & Thomas, P.A., P.O. Box 5709, West Columbia, South Carolina 29171.

December 13th, 2013.

Liz Davison

Liz Davison – Legal Assistant