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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Case No.: 2023CP2303853

Appellate Case No: 2025-002506

Andrew Barr,

Respondent,

vs.

Dave H. Squalli,

Appellant.

FINAL BRIEF OF APPELLANT

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May 19, 2026

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STATEMENT OF THE CASE

This appeal arises from a landlord-tenant dispute initially commenced in the Magistrate Court for the County of Greenville, South Carolina.

Dave H. Squalli ("Appellant") is the owner of certain real property located at and identified as 400 Mills Avenue, Unit 412, Greenville, South Carolina 29605 ("Subject Property") (*See* Tenant's Complaint - R. pp. 003-006).[1] Appellant and Andrew Barr ("Respondent") entered into an original lease agreement on March 1, 2017 ("Original Lease") (*See* Original Lease - R. pp. 007-009).[2] A second lease agreement was entered into between Appellant and Respondent on March 20, 2020 ("Second Lease") (*See* Second Lease - R. pp. 010-012).[3] Both the Original Lease and Second Lease required Respondent to pay a security deposit of One Thousand Nine Hundred and no/100 Dollars ($1,900.00) ("Security Deposit") (*See* Original Lease and Second Lease - R. pp. 007-012).

On August 19, 2021 Respondent commenced an action against Appellant asserting that Appellant had wrongfully failed to return One Thousand Eight Hundred Seventy-Five and no/100 Dollars ($1,875.00) of the Security Deposit. On September 30, 2021 Appellant filed his Answer and Counterclaim ("Landlord's Answer") asserting that the Security Deposit was properly withheld based on the condition of the Subject Property[4] (*See* Landlord's Answer - R. pp. 013-016).

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[1] Respondent is a member of the South Carolina Bar and filed his initial pleading with the Magistrate Court on his own behalf. While the initial pleading was not identified as a complaint, for simplicity purposes Appellant will refer to the initial pleading filed by Andrew Barr as "Tenant's Complaint."

[2] The Original Lease was identified as Exhibit 1 to Tenant's Complaint.

[3] The Second Lease was identified as Exhibit 2 to Tenant's Complaint.

[4] See Landlord's Answer.

A bench trial was conducted before Magistrate Judge Jonathan A. Horne on June 26, 2023 (*See* Magistrate Court's Order dated June 28, 2023 - R. pp. 203-204).[5] Judge Horne made specific findings of fact and concluded that Respondent (as Plaintiff before the Magistrate Court) was not entitled to the relief requested and ruled that Appellant (as Defendant before the Magistrate Court) was entitled to judgment against Respondent in the total amount of Four Thousand Five Hundred Seventy-Three and 42/100 Dollars ($4,573.42) based on Appellant's counterclaims (*Id.*). Respondent filed a Notice of Appeal seeking to have the Circuit Court review the finding of the Magistrate Court (*See* Notice of Appeal dated July 28, 2023 - R. pp. 205-206).

On appeal, the Circuit Court reversed the Magistrate Court's ruling in its entirety. *See* FORM 4 dated September 30, 2025 and filed on October 1, 2025 ("Form 4 Order")(R. pp. 210-212) and Order of the Circuit Court Reversing Magistrate Court Ruling in its Entirety dated and filed on November 3, 2025 ("Formal Order") (*See* Formal Order - R. pp. 213-218). The Circuit Court further ordered Appellant[6] to return One Thousand Eight Hundred Seventy-Five and no/100 Dollars ($1,875.00) of the Security Deposit to Respondent and awarded Respondent treble damages under S.C. Code Ann. § 27-40-410(b) in the amount of Five Thousand Six Hundred Twenty-Five and no/100 Dollars ($5,625.00) (*Id.*).

Appellant filed a timely Rule 59(e), SCRCP Motion ("Motion for Reconsideration") (*See* Motion for Reconsideration - R. pp. 244-245). By FORM 4 dated November 21, 2025 ("Order Denying Motion for Reconsideration"), the Circuit Court

[5] The Magistrate Court's Order is improperly identified as "Summons & Complaint."
[6] Appellant herein was identified as the Respondent in the Circuit Court's Order.

denied the Motion for Reconsideration (*See* Order Denying Motion for Reconsideration - R., pp. 246-248).

Appellant filed a timely Notice of Appeal related to the Circuit Court's Form 4 Order, Formal Order, and Order Denying Motion for Reconsideration (*See* Notice of Appeal dated December 15, 2025 - R. pp. 249-266).

STANDARD OF REVIEW

Section 18-7-170 governs the standard of review applicable in this matter. This code section states:

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. S.C. Code Ann. § 18-7-170.

STATEMENT OF FACTS

Dave H. Squalli ("Appellant") is the owner of certain real property located at and identified as 400 Mills Avenue, Unit 412 , Greenville, South Carolina 29605 ("Subject Property") (*See* Tenant's Complaint).[7] On or about March 1, 2017, Appellant and Andrew Barr ("Respondent") entered into an original lease agreement ("Original Lease")(R. pp. 007-009).[8] A second lease agreement was entered into between Appellant and Respondent on March 15, 2020 ("Second Lease")(R. pp. 010-012).[9] Both the Original Lease and Second Lease required Respondent to pay, a security deposit of One Thousand Nine Hundred and no/100 Dollars ($1,900.00) ("Security Deposit"). Paragraph 14 of the Second Lease (R. p. 011) reads in pertinent part as follows:

> At the termination of this Agreement, all of above items in this provision shall be returned to OWNER in clean and good condition except for reasonable wear and tear and the premises shall be free of all personal property and trash not belonging to the OWNER. It is agreed that all dirt, holes, tears, burns, and stains of any size or amount in the carpets, drapes, walls, furnishings, fixtures, furniture and/or any other part of the premises, do not constitute reasonable wear and tear.

Respondent vacated and surrendered possession of Subject Property on June 30, 2021 (*See* Magistrate Court's Order dated June 28, 2023 - R. pp. 203-204).[10] Respondent failed to return a gate access card and main door key to Appellant (*Id.*).

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[7] While the initial pleading filed with the Magistrate Court was not identified as a complaint, for simplicity purposes Appellant will refer to the initial pleading filed by Andrew Barr as "Tenant's Complaint."

[8] See the Original Lease which was identified as Exhibit 1 to Tenant's Complaint.

[9] See the Second Lease which was identified as Exhibit 2 to Tenant's Complaint.

[10] The Magistrate Court's Order is improperly identified as "Summons & Complaint."

ARGUMENT

I. THE LOWER COURT ERRED IN FAILING TO APPLY THE CLEAR AND UNAMBIGUOUS TERMS/PROVISIONS OF THE SECOND LEASE.

As is set forth in greater detail below, the lower court failed to apply the clear and unambiguous language contained in the Second Lease. "When a contract is unambiguous a court must construe its provisions according to the terms the parties used; understood in their plain, ordinary, and popular sense." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499, 649 S.E.2d 494, 502 (Ct. App. 2007) (citing *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) and *Blakeley v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976)). During the trial before the Magistrate Court, both parties acknowledged that the issue to be decided was what constituted reasonable wear and tear to the subject property (R. p. 124, ln. 20-21; p. 125, ln. 5-6 and p. 128, ln. 4-11). Based on the evidence and testimony presented during the trial held on June 26, 2023, the Magistrate made the following findings of fact:

> — An established landlord/tenant relationship existed between the Defendant and Plaintiff from March 1, 2017 until June 30, 2021 with an initial lease, a subsequent lease, and a second lease agreement. The second lease agreement was signed by both the Plaintiff on March 15, 2020 and the Defendant on March 20, 2020.
>
> — The Defendant allowed the Plaintiff to paint the entire unit upon his moving in on March 1, 2017;
>
> — The Plaintiff paid the Defendant a security deposit of $1,900.00 during the second lease agreement thereby extending the Plaintiffs lease an additional year from June 1, 2020 until June 30, 2021;
>
> — The Plaintiff moved out June 30, 2021 and delivered possession of the

rental unit to the Defendant;

— The Defendant did not return the Plaintiff's security deposit of $1,900.00;

— The Plaintiff did not return a gate access card ($10.00) and a main door key ($15.00) to the Defendant upon his moving out;

— ***Both the Plaintiff and the Defendant acknowledged the wording of the second lease in Paragraph 14 under Condition of Premises and it includes the following***: " ... At the termination of this Agreement, all of above items in this provision shall be returned to OWNER in clean and good condition except for reasonable wear and tear and the premises shall be free of all personal property and trash not belonging to the OWNER. It is agreed that all dirt, holes, tears, burns, and stains of any size or amount in the carpets, drapes, walls, furnishings, fixtures, furniture and/or any other part of the premises, do not constitute reasonable wear and tear."

(*See* Magistrate Court's Order dated June 28, 2023 - R. pp. 203-204) (emphasis added).[11]

Based on the foregoing, the Magistrate Court correctly found that Appellant "rightfully withheld the Plaintiff's security deposit in order to cover damages exceeding that of 'reasonable wear and tear' as expressly defined in the parties lease agreement." (*See* Magistrate Court's Order dated June 28, 2023 - R. pp. 203-204).

Both parties acknowledged the terms of Paragraph 14, Condition of Premises, and what was expressly excluded from the phrase reasonable wear and tear in their agreement. Respondent, as a licensed attorney, certainly understood and had an opportunity to negotiate the material terms of the Second Lease. The damages that were presented by the Appellant at the Magistrate Court hearing – holes in the wall, etc. – fall within the exclusions of reasonable wear and tear as set forth in the clear and unambiguous language of the Second Lease (R. pp. 017-109 and p. 145, ln. 4-20). Appellant presented invoices and evidence at the trial of the case to support the damages award of the Magistrate Court, including an affidavit of attorney's fees which were permitted pursuant to

[11] The Magistrate Court's Order is improperly identified as "Summons & Complaint."

the terms of the Second Lease as well (*See* Photographs provided by Appellant - R. pp. 017-109; Invoice No. 1284 from All Pro Painting, LLC dated July 23, 2021 - R. p. 117; Spreadsheet listing total cost of repairs - R. p. 118; and Attorney Fee Affidavit - R. p. 119).

The Circuit Court (as the initial appellate court in this instance) had the ability to make its own findings of fact if it found errors of fact. Appellant submits that there were no errors of fact by the Magistrate Judge. During the trial before the Magistrate Court, the parties agreed, on the record, that paragraph 14 of the Second Lease contained a specific list of damages that were excluded from the definition of reasonable wear and tear (R. p. 124, ln. 20-21; p. 125, ln. 5-6 and p. 128, ln. 4-11). The Circuit Court's FORM 4 dated September 30, 2025 and filed on October 1, 2025 ("Form 4 Order") indicates that the agreed upon/acknowledged language was ambiguous – it is not! (*See* Form 4 Order - R. pp. 210-212).

The lower court failed to apply and enforce the clear and unambiguous terms of the Second Lease, which the parties acknowledged on the record at the trial of the case. "The purpose of all rules of contract construction is to determine the parties' intention." *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977). "To give effect to the parties' intentions, the court will endeavor to determine the situation of the parties and their purposes at the time the contract was entered." *U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 205 (Ct. App. 2009). "In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs.*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). "If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect." *Id. at 499, 649 S.E.2d at 502.* "When a contract is unambiguous a court must construe its provisions according to the terms the parties

used; understood in their plain, ordinary, and popular sense." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 428 S.E.2d 705 (1993). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. *Id.* Appellant and Respondent both agree that they entered into the Second Lease and that the same is a valid and enforceable contract.

Paragraph 14 of the Second Lease, in clear and unambiguous terms, indicates that "**all** dirt, holes, tears, burns, and stains **of any size or amount** in the carpets, drapes, walls, furnishings, fixtures, furniture and/or any other part of the premises, **do not constitute reasonable wear and tear**." (Emphasis added). The lower court failed to apply the terms as agreed upon when the Second Lease was entered into between the parties. Instead, the lower court ignored and/or rewrote the terms of the Second Lease. *See Crenshaw v. Erskine Coll.*, 432 S.C. 1, 25, 850 S.E.2d 1, 13 (2020) ("No jury—nor any judge—is permitted by law to rewrite a contract to impose liability based on some vague personal sense of what is fair."). The record before the Magistrate Court and Circuit Court established that there were in fact holes in the walls that required painting, replacing a window shade battery, replacing two broken towel bars and then the key/cards (which were acknowledged by Respondent). These issues are NOT and CANNOT be construed as reasonable wear and tear under the terms the Second Lease.

It should be noted that the Respondent requested, and received, certain amendments to the Second Lease, specific to the cabinets (Transcript from Magistrate Court Hearing dated June 26, 2023). Respondent did not object to the inclusion of Paragraph 14 in the

Second Lease. In addition, during the Magistrate Court trial, the Respondent stated on the record multiple times that the issue to be decided is what was considered reasonable wear and tear – Appellant submits that the clear and unambiguous language of the parties' agreement sets forth what is to be considered reasonable wear and tear and what is not to be considered reasonable wear and tear. Respondent further acknowledged that he/his wife did make holes in the wall during their tenancy (Transcript from Magistrate Court Hearing dated June 26, 2023). Respondent also stated at the Magistrate Court trial that he did nothing to repair the holes in the wall that he created during his tenancy (Transcript from Magistrate Court Hearing dated June 26, 2023). The Respondent further did not object to the painting invoice/summary that was introduced in evidence at the trial of this case.

II. THE LOWER COURT ERRED IN AWARDING RESPONDENT TREBLE DAMAGES UNDER S.C. CODE ANN. § 27-40-410(B).

The lower court erroneously concluded that the Appellant's failure to return the security deposit was "willful and improper" giving rise to treble damages under S. C. Code Ann. § 27-40-410(b).[12] Section 27-40-410(b) reads as follows:

> If the landlord fails to return to the tenant any prepaid rent or security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees.

The record does not support a finding that the Appellant's decision to withhold the security deposit was willful, improper, or wrongful. "A willful act is defined as one 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey

[12] See paragraph (2) of the Order of the Circuit Court Reversing Magistrate Court Ruling in its Entirety dated November 3, 2025.

or disregard the law.'" *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) quoting *Black's Law Dictionary* (5th Ed. 1979). The term "willful" implies a purposeful or malicious effort to bring about a particular result rather than simply a knowing violation of duty. *See generally State v. Garrard*, 390 S.C. 146, 149-51, 700 S.E.2d 269, 271-72 (Ct. App. 2010) (collecting cases defining the term "willful" and explaining a person's actions meet the definition when he "voluntarily and intentionally" commits an act with "a consciousness of wrongdoing"); *Willful*, Black's Law Dictionary (11th ed. 2019). As is set forth in greater detail above, based on the clear and unambiguous language of the Lease entered into by the parties, the Appellant believed that he had a right to withhold the security deposit (R. pp. 110-112). As reflected in the record, the Magistrate Court agreed with the Appellant's argument.[13]

The Appellant had a good faith argument that was supported by the terms of the Second Lease entered into between the Appellant, as landlord, and Respondent, as tenant (R. pp. 110-112). As such, Appellant's acts cannot logically be construed as purposeful or malicious. Asserting a colorable legal argument should not be considered willful or wrongful even if said argument is later rejected on appeal.

The lower court emphasis on how long the Appellant retained the security deposit is misplaced. Until the lower court issued its Order on November 3, 2025, the Appellant had no reason to believe that he was not entitled to retain the security deposit given the condition of the property and the agreed upon exclusion to "reasonable wear and tear."

Even if the Circuit Court's position as to the issue of "wear and tear" was correct, the award of treble damages under these circumstances is unduly harsh. Appellant would further note that such a ruling will have a chilling effect on landlords in similar circumstances who will be

[13] See Order of Magistrate Judge Jonathan A. Horne dated June 28, 2023.

forced to weigh the options of protecting their rights under the applicable lease against the risk of being held to have violated S.C. Code Ann. § 27-40-410(b) if some court later disagrees with the landlord's position. The case before the bench does not reflect a situation where a landlord without a good faith argument and/or legal justification withheld a security deposit. Instead, the Appellant's decision to withhold the security deposit is and was consistent with the clear and unambiguous language of the Second Lease (R. pp. 010-012).

Based on the foregoing, the lower court erred when it concluded that the Appellant violated S.C. Code Ann. § 27-40-410(b) and found that the Respondent was entitled to the treble damages.

CONCLUSION

The clear and unambiguous language in the Second Lease entered by the parties that is at issues in this matter is:

> It is agreed that all dirt, holes, tears, burns, and stains of any size or amount in the carpets, drapes, walls, furnishings, fixtures, furniture and/or any other part of the premises, do not constitute reasonable wear and tear. (R. p. 11).

The evidence and testimony presented in this case leads to only one conclusion – the parties both acknowledged this provision of the Second Lease and all damages sought by the Appellant at the Magistrate Court trial, and awarded to him therein, are related to matters that **ARE NOT** reasonable wear and tear per the terms of the parties' agreement (R. pp. 010-012). As such, Appellant had a right to withhold the Respondent's security deposit.

Based on the foregoing, the lower court's ruling should be reversed in full and the Magistrate Court's Order dated June 28, 2023 should be reinstated.

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