THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

CoA
Appellate Case No. 2012-212377

Kevin Schumacher, ... Petitioner,

v.

Lance Hoover, ... Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on January 27, 2014.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in affirming the trial court's denial of directed verdict on whether Respondent breached the lease agreement by failing to give Petitioner fourteen days to remedy the mold condition on the rental premises?

II. Did the Court of Appeals err in affirming the trial court's order finding that Respondent is entitled to his security deposit, treble damages, and attorneys' fees?

STATEMENT OF THE CASE

This case arises out of a lease agreement between the parties that arose in April 2010. Kevin Schumacher ("Schumacher"), the landlord, commenced this action against Lance Hoover ("Hoover" or "Dr. Hoover"), the tenant, by the filing of a summons and complaint on September 17, 2010. In the complaint, Schumacher sought damages arising out of Hoover's alleged breach of the parties' one-year residential lease agreement pursuant to the South Carolina Residential Landlord Tenant Act ("RLTA"), S.C. Code Ann. § 27-40-10, *et seq*. Hoover filed an answer on November 15, 2010 and an amended answer on June 6, 2011.[1] In these pleadings, he asserted counterclaims for breach of contract, negligence/gross negligence, and a return of his security deposit pursuant to the RLTA. The case was called to trial on January 3, 2012.

At the close of Hoover's case-in-chief, Schumacher moved for a directed verdict on the grounds that there was no genuine issue of material fact in the evidence presented, and the case only presented a question of law for the Court to decide in Schumacher's favor. (R. p. 416, lines 6-24.) The trial court denied the motion and submitted the case to the jury. (R. p. 420, lines 23-24.) The jury returned a verdict for Hoover on his counterclaim for return of his security deposit. (R. p. 478, lines 22-24.) At the close of trial, the court granted the parties ten days to file post-trial motions. (R. p. 481, lines 19-22.)

On January 17, 2012, both parties submitted post-trial motions: Hoover filed a motion for entry of attorney's fees and damage award and Schumacher filed a motion for

[1] Hoover's wife purported to join the litigation as a counterclaimant by adding her name and a "third-party complaint" to Hoover's initial answer and counterclaim. Schumacher moved to dismiss and/or strike Mrs. Hoover's name and claims from the pleadings on December 14, 2010. This motion was granted by order dated May 17, 2011, and Hoover filed an amended answer and counterclaim that did not include Mrs. Hoover's claims.

judgment notwithstanding the verdict. Schumacher argued that the evidence presented at trial indicated that Schumacher was not given fourteen days to correct a problem with the leased premises as required by S.C. Code Ann. § 27-40-610(a)(1) (Rev. ed. 2007), which meant that Hoover wrongfully breached the parties' lease agreement and was not entitled to a return of his security deposit, treble damages, or attorney's fees. Schumacher therefore requested that the trial court set aside the jury's verdict for Hoover, that judgment be entered in Schumacher's favor, and that the trial court order a new trial to determine Schumacher's damages.

The court entered an order on May 23, 2012 granting Hoover's motion for entry of attorney's fees and damage award, awarding damages in the amount of $30,910.93. The court did not make a specific ruling as to Schumacher's motion for judgment notwithstanding the verdict. On May 30, 2012, Schumacher filed a motion to amend the trial court's order pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure* on the grounds that the trial court's order did not address Schumacher's post-trial motion. On June 28, 2012, Schumacher timely appealed the trial court's presumed denial of his post-trial motion.[2]

The Court of Appeals issued its decision on November 29, 2013 affirming the trial court. Petitioner timely filed his Petition for Rehearing on December 10, 2013. The Court of Appeals denied Petitioner's Petition for Rehearing on January 27, 2014.

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[2] Schumacher filed his notice of appeal even though no express ruling was issued as to his Rule 59(e) motion because of uncertainty as to whether the trial court's May 30, 2012 order constituted a *de facto* denial of his post-trial motion, notwithstanding the absence of an explicit ruling to that effect. Schumacher did not want to run the risk of allowing his right of appeal to expire. *See Quality Trailer Prod., Inc. v. CSL Equip. Co., Inc.*, 349 S.C. 216, 562 S.E.2d 615 (2002). While the appeal was pending before the Court of Appeals, it remanded the case to the trial court for an express ruling on Schumacher's motion by order filed September 26, 2013.. The trial court's order denying Schumacher's motion was entered on October 8, 2013. This order was not included in the original Record on Appeal.

STATEMENT OF THE FACTS

In early 2010, Dr. Hoover and his wife, Mrs. Monica Hoover ("Mrs. Hoover"), began searching the Internet for a home to purchase in Columbia because they were planning on moving from San Antonio, Texas to South Carolina. (R. p. 91, lines 21-25, p. 92, lines 1-3.) Through their Internet search, Dr. and Mrs. Hoover identified a home located at 4120 Kilbourne Road ("the Kilbourne property"). (R. p. 92, lines 4-8.) Schumacher owned the Kilbourne property and contracted with Terrell Bishop, Jr., a real estate agent at RE/MAX Advantage Group, to market it for sale. (R. p. 225, lines 4-7; p. 226, lines 3-11.)

Hoover contacted Todd Beckstrom, a real estate agent at ERA Wilder Realty, to make an offer on the Kilbourne property, even before he and his family visited the house in person. (R. p. 92, lines 9-17; p. 159, lines 11-15.) Although the property was marketed for sale, Hoover was only interested in a lease that gave him the option to purchase the home. (R. p. 258, lines 2-17.) The parties signed a one year lease with option to purchase on April 30, 2012. (R. p. 92, lines 15-19; p. 93, lines 19-20. *See also* R. pp. 484-485.)

Only two months after moving into the Kilbourne property, the Hoovers noticed that the electric bills for the months of June and July were over $500 apiece. (R. p. 163, lines 6-20.) In early August, Dr. Hoover and his wife realized that the ceiling and wall near the stairwell were constantly wet. (R. p. 105, lines 4-18; p. 106, line 10 – p. 107, line 10.) Hoover admitted that he saw the moisture on the ceiling and wall for a period of time before any mold had formed and that he did not take any steps to investigate the source of the problem or notify Schumacher. (R. p. 106, line 15 – p. 107, line 2.)

On or around August 13, 2010, Schumacher came to the Kilbourne property. (R.

p. 296, lines 18-25.) When Schumacher arrived at the home with the letter, Mrs. Hoover brought up the energy bill issue and showed Schumacher the mold that had begun to form near the stairwell. (R. p. 107, lines 11-20; p. 163, line 22 – p. 164, line 4.) Schumacher was immediately concerned and went into the attic to try and identify the source of the moisture and resulting mold. (R. p. 298, lines 3-6.) Schumacher also asked a licensed contracting company, Johnny Housewright, to come to the Kilbourne property and identify and repair the source of the condensation. (R. p. 298, line 3 – p. 300, line 3.)

Just a day or two after the Hoovers notified Schumacher of the mold and high energy bills, Schumacher and Mike O'Neill, president of Johnny Housewright, identified the source of the moisture. (R. p. 298, lines 5-18.) Additionally, Schumacher and O'Neill determined that the attic fan door, a three-by-six or four-by-eight foot opening in the ceiling leading to the home's attic, had been left open since being unsealed at Dr. Hoover's request in June, which had allowed warm, moist air from the attic to enter the home. (R. p. 299, lines 9-23.) O'Neill believed that the opening of the attic door was the primary cause of the Hoovers' high energy bills and was furthermore causing the moisture and mold to appear near the stairwell. (*Id.* at lines 23-25.) This opinion was corroborated by Hoover's expert, Ancel A. Hamilton, at trial. (R. p. 399, line 25 – p. 400, line 13.)

On or about the same day, Schumacher asked O'Neill "to cut out [the] moldy part of the ceiling and replace it and seal the attic fan so that [Hoover and his family] don't have air conditioning running constantly and then get rid of th[e] condensation problem." (R. p. 300, lines 6-11.) Additionally, Schumacher "called an air conditioner repairman . . . to reinsulate[] th[e] entire area of ductwork so that . . . [there wasn't] any more condensation." (*Id.* at lines 12-16.) Schumacher testified that he believed O'Neill and

the air conditioner repairman went to the Kilbourne property "to seal the attic door and . . . to reinsulate the pipe" within the same week. (*Id.* at lines 18-22.) After a week, however, Schumacher discovered that O'Neill had never cut the moldy portion of the ceiling after the air conditioner repairman reinsulated the pipe. (R. p. 300, lines 4 – p. 301, line 18.)

Schumacher and O'Neill immediately set out to contact the Hoovers and work to resolve the problem. (R. p. 301, lines 7-9.) However, Hoover and his wife were either non-responsive to telephone calls regarding the scheduling of the necessary repairs or refused to allow Schumacher or his repairmen into the home. (*Id.* at lines 10-18.) Starting August 26, Schumacher contacted his friend Andrew Hackney regarding hiring Mold Solutions, a mold remediation company recommended earlier by Hackney to Schumacher, to clean up the mold at the Kilbourne property. (R. p. 304, lines 21-22.)

In the meantime, however, without consulting Schumacher, Hoover hired another mold remediation company, Biotek, to inspect the home, provide a report and propose a plan of remediation. (R. p. 170, lines 9-16.) Hoover did not notify Schumacher that he had hired Biotek until after its inspection was performed. (R. p. 304, lines 5-18.) Shortly before Biotek issued its report, Hoover asked Schumacher if he would pay for the report and inspection, and Schumacher declined. (*Id.*; *see also* R. pp. 500-503.) Schumacher stated in an email dated September 1 that he did not want to pay Biotek for the remediation because it did not guarantee its work. (R. p. 303, lines 10-12; *see also* R. pp. 500-503; p. 520.)

On September 1, 2010, Biotek sent its inspection report to Hoover. (R. p. 170, lines 17-23; p. 171, lines 7-13; *see also* R. p. 486.) On September 3, Beckstrom forwarded a copy of the Biotek report to Schumacher and notified Schumacher that

Hoover was terminating the lease at the end of the month. (R. p. 113, lines 2-9; p. 170, lines 19-21; *see also* R. p. 486.)

After receiving Hoover's written notice of termination of the lease, Schumacher immediately made several attempts to contact Mold Solutions but was unsuccessful because it was the Friday before Labor Day weekend. (R. p. 305, lines 11-18.) However, by September 5, Schumacher had scheduled an appointment for Mold Solutions to remediate the mold condition on September 6, the Labor Day holiday. (R. p. 305, line 19 – p. 306, line 1; *see also* R. p. 505.) On September 5, 2010, Mrs. Hoover emailed Schumacher to confirm the substance of their phone conversation that day: that Mold Solutions would not disturb the mold in the home in any way during the clean-up that was scheduled for September 6. (R. p. 378, lines 2-13; *see also* p. 505.) However, on September 6, 2010, Mrs. Hoover canceled the appointment because her child was at home and feeling sick. (R. p. 188, lines 11-24; *see also* R. p. 526.)

On September 7, 2010, after receiving a quote from Mold Solutions to remediate the issue, Schumacher arranged to have remediation take place on or about September 12. (R. p. 306, lines 15-17.) On September 8, Schumacher notified Beckstrom that he was making steps to repair the condition and offered to pay for Hoover and his family to stay at the Whitney Hotel in Columbia while the remediation process took place. (R. p. 307, lines 13-19; p. 189, lines 8-14; *see also* R. p. 520.) ("I have made a tentative reservation at the Whitney in a [two] bedroom, [two] bath suite for the family for these few days. This is the best accommodation I could find for them. I felt the family would want to stay in a large single unit as opposed to two separate rooms.") However, on September 12, 2010, only seven days following Hoover's written notice of termination, Schumacher went to the house to speak to Hoover about getting the remediation performed

immediately, but Hoover told him that his family was leaving and would not honor the lease. (R. p. 307, lines 9-25; *see also* R. p. 527.) Hoover would not allow Schumacher to enter the home for remediation purposes until after his family had moved. (R. p. 527.)

On or about September 15, 2010, only twelve days after his written notice of termination, Hoover and his family vacated the Kilbourne property. (R. p. 173, lines 3-21.) Just one day before Hoover vacated the Kilbourne property, Schumacher emailed Beckstrom providing notice to Hoover that he intended to sue Hoover and "pursue all legal means necessary to collect all monies owed as reflected in the lease." (R. p. 527.) Accordingly, three days later, on September 17, 2010, after being notified that Hoover had vacated the premises, Schumacher initiated this action against Hoover for breach of the parties' lease agreement and sought all available remedies under the RLTA. *See generally* Complaint.

Even after the Hoover family vacated the premises, they continued to frustrate Schumacher's attempt to fix the mold problem. Mold Solutions attempted to remediate the mold at the property after the family had vacated the home, but Hoover informed Schumacher that he would not allow the company into the home while the Hoovers' furniture was still in the house. (R. p. 308, lines 6-15; *see also* R. p. 504.) When Mold Solutions arrived at the Kilbourne property to remediate the condition, its workers were told that "[Hoover] didn't really want the mold being disturbed while they were moving their things out." (R. p. 278, lines 3-8; *see also* R. p. 504.) Beckstrom, Hoover's real estate agent, admitted that "no one wanted the mold disturbed until the end of September," even though Hoover and his family were completely moved out of the Kilbourne property by the middle of the month. (*Id.* at lines 16-20.)

Eventually, Schumacher paid Mold Solutions to remediate the problem and the clean-up was successful. (R. p. 308, line 21 – p. 309, line 11.) A third-party inspector was hired to certify that the remediation was complete. (*Id.* at lines 12-25; *see also* R. pp. 494-499.)

ARGUMENT

The Court of Appeals overlooked or misapprehended points of law and/or fact. *See also Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933). Petitioner 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 cited various statutory provisions within the 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. However, the Court provided no substantive analysis of how these RLTA provisions relate to the particular facts and issues discussed by Appellant.

I. The Court of Appeals erred in affirming the trial court's denial of Petitioner's motion for directed verdict regarding whether Respondent breached the lease agreement by failing to give Petitioner fourteen days to remedy the mold condition on the rental premises.

The South Carolina General Assembly adopted the Uniform Residential Landlord Tenant Act ("RLTA") in 1986. *See* 1986 S.C. Acts 336. The preamble to the RLTA provides, *inter alia*, that the Act is "to provide for landlord obligations, liability and remedies." *Id.* Importantly, section 27-40-50 provides that, "(a) the remedies provided by this chapter must be so administered that an aggrieved party may recover appropriate damages," and further that, "(b) [a]ny right or obligation declared by this chapter is enforceable by action *unless the provision declaring it specifies a different and limited*

effect." (Emphasis added.)

Section 27-40-440 is the principal statute that imposes affirmative duties upon landlords. It provides: "A landlord shall . . . make all repairs and do whatever is reasonably necessary to . . . keep the premises in a fit and habitable condition; . . ." S.C. Code Ann. § 27-40-440 (Rev. ed. 2007). Section 27-40-610 outlines the mechanism by which a tenant may terminate a residential lease prior to its natural expiration as a result of a landlord's failure to comply with his duties. *See* S.C. Code Ann. § 27-40-610(a)(1)(i-ii) (Rev. ed. 2007).

This case involves a matter of health and safety and also concerns repairs specifically requested by Respondent, 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 written 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 Petitioner 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.

South Carolina courts have held that because the RLTA is in derogation of common law, it should be strictly construed. *See Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). "[W]hen a statute confers a right and a remedy where none existed before, its plain meaning must be given effect." *Id.* (*quoting* 1 Am. Jur. 2d *Actions* § 73 (1962)). Therefore, the plain language of the RLTA, particularly the requirement of written notice of an intent to terminate the lease and the fourteen-day cure period, must be strictly construed in determining whether Hoover was justified in

terminating the lease.

In *Thompson v. CDL Partners, LLC*, 378 Fed. Appx. 288 (4th Cir. 2010) (applying S.C. law), the United States Court of Appeals for the Fourth Circuit held that a tenant's rights do not arise until he has delivered written notice to the landlord "specifying the acts and omissions constituting the breach" and providing the landlord with a reasonable time to act. *Id.* at 292. The Court noted: "[The] consistent interpretation of the SCRLTA by the Court of Appeals convinces us that the South Carolina Supreme Court would require that the tenant provide the landlord notice . . . before liability attaches . . . ." *Id.*; *see also Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (2009). The evidence in this case was uncontradicted that Respondent refused Petitioner access to the residence during the 14 day cure period, and even after that period had expired. Because Respondent refused to allow Petitioner 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 Petitioner 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 Petitioner. (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, Petitioner 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 Petitioner to enter the premises when Petitioner attempted to repair the problem. (*See* R. p. 188, lines 22-24; pp. 505, 520, 521, 526, 527.)

Schumacher was prepared to remedy the problem on or about September 6, 2010, three days after Hoover's written notice of termination, but Schumacher was not allowed to do so because Mrs. Hoover indicated that she and one of her children were sick. (R. p. 188, lines 22-24; *see also* R. p. 526.) Additionally, Schumacher was again prepared to remedy the problem on or about September 12, 2010, nine days after receiving written notice of Hoover's intent to terminate the lease, but Schumacher was not allowed to do so. (*See, e.g.* R. pp. 505, 520, 521, 526, 527.) Schumacher testified that on or around September 12, he was told by Hoover that he would not be allowed in the residence to make the necessary repairs until the Hoover and his family had vacated the premises. (R. p. 308, lines 12-15; *see also* R. p. 527.) Plaintiff's Exhibit 28 further corroborated this testimony, as Hoover did not allow Mold Solutions into the house on September 21, 2010, a full week after Hoover had moved his family out of the Kilbourne property because some of the family's belongings were still inside. (R. p. 504.)

All of the evidence submitted at trial shows that Schumacher made several attempts to remediate the mold within fourteen days after Hoover's written notice of intent to terminate the lease but was prohibited from doing so by either Dr. or Mrs. Hoover. This conduct directly contravenes the duty of good faith imposed upon parties to a residential lease by the RLTA. *See* S.C. Code Ann. § 27-40-220 (Rev. ed. 2007); *see also United States For Use and Benefit of Williams Elec. Co., Inc. v. Metric Constructors, Inc.*, 325 S.C. 129, 134, 480 S.E.2d 447, 449 (1997); *Shannon v. Freeman*, 117 S.C. 480, 109 S.E.406 (1921) (one who has himself prevented performance or tender of performance of a contract cannot take advantage of the delay).

The evidence submitted by Hoover to support his position that Schumacher did nothing to remediate the mold after oral or written notice of the problem as early as

August 13 is irrelevant for purposes of S.C. Code Ann. § 27-40-610. The efforts of Hoover and his wife to frustrate Schumacher's remediation efforts prevented Schumacher from exercising the rights to which he is entitled as a landlord.

There is no evidence from which a jury could conclude that Hoover granted Schumacher the opportunity to correct the mold problem within fourteen days after he notified Schumacher of his intention to terminate the lease in writing. Pursuant to S.C. Code Ann. § 27-40-610(1)(i), "[t]he rental agreement . . . [is] not terminate[d] by reason of the [material nonconformity]" because Schumacher was prepared to "remed[y] the breach before the date specified in the notice of termination" but was prevented from doing so by Hoover's affirmative actions.

The Court of Appeals' opinion cites statutory provisions of the RLTA requiring a landlord to 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)). 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 Petitioner 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 Petitioner 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 Petitioner was prevented from taking such measures *by Respondent*.

There is no indication in the Court of Appeals' opinion that it considered the legal arguments made by Petitioner 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. Petitioner is informed and believes that the Court of Appeals' decision should therefore be reversed.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER FINDING THAT RESPONDENT IS ENTITLED TO HIS SECURITY DEPOSIT, TREBLE DAMAGES, AND ATTORNEY'S FEES.

Respondent asserted a counterclaim against Petitioner for the return of his security deposit pursuant to S.C. Code Ann. § 27-40-410(a) and (b). The jury found for Respondent on this claim. Petitioner requested a judgment notwithstanding the verdict on the basis that the RLTA does not allow a tenant to breach a lease agreement and also recover his security deposit, treble damages, and attorney's fees against the landlord. The trial court denied Petitioner's post-trial motion and the Court of Appeals affirmed without any review of the facts or legal arguments supplied by Petitioner. Petitioner asserts the Court of Appeals was in error.

According to the plain language of the RLTA, Section S.C. Code Ann. § 27-40-410 (Rev. ed. 2007) only applies upon "termination of the tenancy," and does not apply in situations where the tenant breaches the lease agreement. Section 27-40-410 should be read in light of S.C. Code Ann. § 27-40-610(a)(1)(i) pursuant to which a lease agreement

does not terminate when either of the exceptions applies. If a lease agreement does not terminate, a tenant is not entitled to a return of his security deposit under S.C. Code Ann. § 27-40-410.

Section 27-40-410 was designed to protect both landlords and tenants. *See e.g. Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012) (landlord entitled to retain security deposit where tenant wrongfully remained on the premises without paying rent according to the terms of the lease agreement); *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990) (tenant protected from a landlord's unjustified or pretextual withholding of the security deposit). The Act allows a tenant to seek treble damages and attorney's fees after the termination of a lease agreement when a landlord does not return the security deposit upon written request and does not provide a written notice of the deductions taken by the landlord. *See* S.C. Code Ann. § 27-40-610(a) and (b).

However, it defies logic, and the purposes of the RLTA, to allow a tenant to breach a lease agreement, prohibit the landlord from repairing any material non-conformities within fourteen days as allowed by S.C. Code Ann. § 27-40-610, and then recover his security deposit, treble damages and attorney's fees. Accordingly, the provision in the RLTA regarding security deposits states that only "[u]pon termination of the tenancy" must the landlord return amounts for accrued rent and damages.

There was no termination of the tenancy in this case because Respondent did not allow Petitioner fourteen days after written notice of termination of the lease agreement to rectify the mold condition. *See supra* Section I; S.C. Code Ann. § 27-40-610(a)(i-ii). The Court of Appeals should have reversed the trial court's decision to deny Petitioner's motion for directed verdict with regard to Respondent's wrongful breach of the parties'

lease agreement and concomitantly, barred Respondent's counterclaim for return of the security deposit, on the same grounds.

The Court of Appeals erred in affirming the trial court's order granting Respondent's motion for attorney's fees and a damages award in the amount of $30,910.93.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue an order granting HIS petition for writ of certiorari in this case.

Respectfully submitted,

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Unpublished Opinion No. 2013-UP-432 (S.C. Ct. App. Filed November 27, 2013)

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v.

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PROOF OF SERVICE

I hereby certify that I served the Petition for Writ of Certiorari upon Respondent, Lance Hoover, by depositing a copy of the document in the United States Mail, postage prepaid, on February 26, 2014, 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.

I hereby further certify that I served the Petition for Writ of Certiorari upon the Clerk of the South Carolina Court of Appeals by placing a copy in the United States mail, postage prepaid, to The Honorable Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals, P.O. Box 11629, Columbia, South Carolina 29211, on February 26, 2014.

Victoria Moody – Paralegal