

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

Derick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

**REQUEST FOR LEAVE TO FILE RULE 60(b) MOTION
REQUEST FOR STAY OF RULE 211 OBLIGATIONS**

The Appellant, through his undersigned attorney, hereby requests that this honorable Court grant him leave to file a motion under SCRCP Rule 60(b).

This action was initiated by the Respondent, Ashbaugh, on March 26, 2013, who petitioned the Florence County Magistrate's Court for a Writ of Ejectment against the Appellant, Ward. In her *pro se* petition – which is in the form of a sworn affidavit – Ashbaugh stated that she was the “landlord/lessor of the premises.” (App. for Eject., filed March 26, 2013.) Ward filed a *pro se* Answer, alleging that he was renting-to-own the mobile home. (Ward's Ans., filed March 28, 2013.) A hearing was held before the magistrate on April 4, 2013, at which both parties appeared without legal representation. Both parties testified that they had an oral agreement whereby Ward would purchase the mobile home from Ashbaugh in installments. (Mag. Ret. 2, filed April 11, 2013.) Ashbaugh argued that Ward had missed some installments, while Ward argued that he had fully performed on the agreement and owed no more money. (Id. at 5.) The magistrate ruled for Ashbaugh and issued the Writ of Ejectment against Ward. Ward then retained counsel and timely appealed to the Florence County Circuit Court. Ashbaugh also retained counsel and filed a response. A hearing was held on June 7, 2013, and the

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SC Court of Appeals

circuit court affirmed the magistrate's decision. The circuit court also denied Ward's subsequent motion for an explanation of its holding or a new hearing on the merits on June 17, 2013.

The only party with standing to bring an eviction action is a landlord or her agent or attorney. S.C. Code Ann. §§ 27-37-10, 20. "Landlord" is defined as "the owner, lessor, or sublessor of the premises." S.C. Code Ann. § 27-40-210(6).

In the time since the initiation of this appeal, Ward has discovered new evidence which demands that the lower courts' ruling be vacated. Specifically, Ward performed a title history search with the South Carolina Department of Motor Vehicles on the mobile home which is the subject of this appeal. The title history (attached) shows that Ashbaugh has never had legal title to the mobile home.

Pursuant to Rule 60(b)(2), this evidence, by due diligence, could not have been discovered, as there were previously no issues raised concerning who had legal title to the mobile home. Since the initiation of this action, Ashbaugh has held herself out as the owner and seller of the property, and the subsequent dispute presumed such. Additionally, Ashbaugh has admitted that she issued Ward (via his live-in girlfriend Brandy Blackburn) a Bill of Sale for purposes of having the mobile home moved to a different lot. (Mag. Ret. 2, filed April 11, 2013.) The county office then used the Bill of Sale to issue Ward a moving permit. Now that this new evidence has been discovered, this Court should allow the circuit court to hear Ward's Rule 60(b) motion and vacate its ruling and the Magistrate's ruling, rendering this appeal mute.

Pursuant to Rule 60(b)(3), Ashbaugh has defrauded and/or misrepresented her standing to bring an eviction action, as she does not own, lease or sublease the mobile home. Specifically, in her sworn affidavit and in her sworn testimony at the hearing before the magistrate, Ashbaugh held herself out as the owner and seller of the mobile home. However, the title history shows that this was a fraudulent misrepresentation to the court.

Pursuant to Rule 60(b)(4), the judgment is void because Respondent has no standing to bring an eviction action, as she has no claim to ownership or possession of the property.

Pursuant to Rule 60(b)(5), it is no longer equitable that the judgment should have prospective application, as an individual who has no claim to ownership or possession of a dwelling has no right to seek the eviction of another individual from that dwelling.

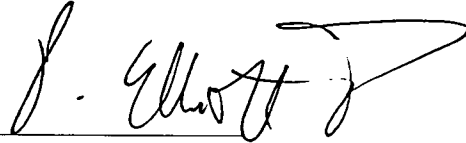
Therefore, Ward prays this Court allow him to move before the circuit court pursuant to Rule 60(b), to allow the circuit court to hear this evidence and make an appropriate ruling to resolve this matter, and to avoid the unnecessary

expenditure of this Court's time and resources on a matter which should be vacated.

Additionally, Ward prays this Court stay the parties' obligations under Rule 211 of the SCACR during the pendency of this motion. Furthermore, if this Court denies this motion, Ward asks that this Court set a new date for completion of the parties' obligations under Rule 211.

Finally, I certify that I have met the requirements as set forth in SCRCP Rule 11.

I SO MOVE:



D. Elliott Tait
Attorney for Appellant
320 South Coit Street
Florence, South Carolina 29501
(843) 413-9500
(843) 413-1013 (fax)

Signed in Florence, South Carolina

May 5, 2013



TITLE HISTORY

VIN: NGFLT41A3537ZEW11 Year: 1996 Make: FLEE Model: EDGE BS: MBH
New/Used: Empty Weight: 0

Title Number: 00000028912260A Status: CURRENT TITLE Dup:N Salvage %: 0
Purchase Date: 08/10/1999 Issue Date: 08/10/1999 Print Date: 08/10/1999
Odometer: 0 Legend: EXEMPT

Vehicle Brands:
None.

Owner Number: 25985374
Owner Name: VARNER, SAMUEL MAURICE II
Owner Relationship: 1240 WINDHAM TOWN RD LAMAR SC, 290699050
Owner Address: PO BOX 144 LAMAR SC, 290690144
Mailing Address:

Lien No: 1
Lien Holder Name: GREEN TREE FINANCIAL SERVICES CORP
Lien Holder Address: PO BOX 25009 COLUMBIA SC, 29224-5009
Lien Date: 06/28/1999 Lien Satisfaction Date:

End of Report

APPLICATION FOR CERTIFICATE OF TITLE/REGISTRATION

S.C. Department of Public Safety
 Division of Motor Vehicles
 P.O. Box 1498
 Columbia, S.C. 29216

STAPLE HERE ONLY	
Original Title	_____
Duplicate Title	_____
Purchase Tag	_____
Transfer Tag	_____

PLEASE READ INSTRUCTIONS

If you intend to operate this vehicle, you MUST purchase a license plate or transfer a license plate. Please see instructions "A" or "C" below.

<p>A. IF LICENSE TAG IS TO BE PURCHASED:</p> <p>(1) Complete Sections 1, 2, 4, 5*, and 6 of this application and submit:</p> <p>(2) a. Manufacturer's Statement of Origin or title** properly assigned to new owner. (If out-of-state title is held by lienholder, submit out-of-state registration).</p> <p>b. Certified Odometer Mileage Statement for each sale.</p> <p>c. Paid property tax receipt from county of residence for vehicle being registered.</p> <p>d. Fee - See Fee Schedule (Casual Excise or Use Tax is not included***).</p> <p>(3) If applying by mail, use zip code 29216-0019.</p>	<p>FEE SCHEDULE</p> <p>Personal checks accepted in applicant's name only DO NOT SEND CASH.</p> <p>Passenger cars - \$24.00 fee (Persons 65 years of age or older or persons who are disabled: \$20.00 upon proof by driver's license number, department issued identification card number or social security number.)</p> <p>Date of Birth: _____</p> <p>If disabled, attach a statement from a medical doctor as to the permanency of the disability: Platcard # _____</p> <p>Motorcycles - \$10.00 fee</p> <p>Utility or Camper Trailers - \$10.00 fee</p> <p>Trailers with empty weight in excess of 2500 lbs. - \$20.00 fee</p> <p>Trucks, Truck Trailers and Road Tractors (All Property Carrying Vehicles)</p> <p>GROSS VEHICLE WEIGHT FEE</p> <table border="1"> <tr><td>0001-4000</td><td>\$30.00</td></tr> <tr><td>4001-5000</td><td>\$40.00</td></tr> <tr><td>5001-6000</td><td>\$60.00</td></tr> <tr><td>6001-7000</td><td>\$70.00</td></tr> <tr><td>7001-8000</td><td>\$80.00</td></tr> <tr><td>8001-9000</td><td>\$90.00</td></tr> </table> <p>(Schedule of fees for over 9000 lbs. furnished upon request)</p> <p>Transfer - \$3.00 fee (Additional fees may be due when transferring a plate to a truck.)</p> <p>Title - \$5.00</p> <p>PENALTY FEES - (In addition to regular fees)</p> <p>Failure to register within 45 days is as follows:</p> <table border="1"> <tr><td>46 to 75 days</td><td>\$ 5.00</td></tr> <tr><td>76 to 135 days</td><td>\$10.00</td></tr> <tr><td>Over 135 days</td><td>\$25.00</td></tr> </table> <p>Additional information only if applicable: ** S.C. Title dated prior to June, 1989 must be signed over on back and be accompanied by a Bill of Sale. *** 5% of selling price (\$300.00 maximum)</p>	0001-4000	\$30.00	4001-5000	\$40.00	5001-6000	\$60.00	6001-7000	\$70.00	7001-8000	\$80.00	8001-9000	\$90.00	46 to 75 days	\$ 5.00	76 to 135 days	\$10.00	Over 135 days	\$25.00				
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76 to 135 days	\$10.00																						
Over 135 days	\$25.00																						
<p>B. IF APPLYING FOR DUPLICATE TITLE:</p> <p>Original title was (check one only)</p> <p>Lost _____ Stolen or _____ Mutilated _____</p> <p>(1) Complete Sections 1, 6, and 7* of this application.</p> <p>(2) If title has been mutilated, title must be submitted.</p> <p>(3) Submit fee of \$5.00.</p> <p>(4) If applying by mail, use zip code 29216-0024.</p>	<p>DMV USE ONLY</p> <table border="1"> <tr> <th>CLASS</th> <th>RATED BY</th> </tr> <tr> <td>76</td> <td>G</td> </tr> <tr> <td>19 LIC. FEE</td> <td>_____</td> </tr> <tr> <td>19 LIC. FEE</td> <td>_____</td> </tr> <tr> <td>Use of Excise Tax</td> <td>_____</td> </tr> <tr> <td>Penalty</td> <td>_____</td> </tr> <tr> <td>Wt. Increase</td> <td>_____</td> </tr> <tr> <td>Transfer 19</td> <td>_____</td> </tr> <tr> <td>Title</td> <td>_____</td> </tr> <tr> <td>Gift of Life Fund</td> <td>_____</td> </tr> <tr> <td>Total</td> <td>_____</td> </tr> </table>	CLASS	RATED BY	76	G	19 LIC. FEE	_____	19 LIC. FEE	_____	Use of Excise Tax	_____	Penalty	_____	Wt. Increase	_____	Transfer 19	_____	Title	_____	Gift of Life Fund	_____	Total	_____
CLASS	RATED BY																						
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Wt. Increase	_____																						
Transfer 19	_____																						
Title	_____																						
Gift of Life Fund	_____																						
Total	_____																						
<p>C. IF LICENSE TAG IS BEING TRANSFERRED (Same Owner's Name):</p> <p>(1) Complete Sections 1, 2, 4, 5*, and 6.</p> <p>(2) Submit the following:</p> <p>a. Title** or Manufacturer's Statement of Origin properly assigned to new owner.</p> <p>b. Certified Odometer Mileage Statement from previous owner.</p> <p>c. Previous registration in same registered owner's name.</p> <p>d. Fee - See Fee Schedule.</p> <p>(3) If applying by mail, use zip code 29216-0019.</p>	<p>D. IF APPLYING FOR ONLY A TITLE:</p> <p>(1) Complete Section 1, 3*, 4*, 5*, 6 and 7* of this application.</p> <p>(2) Previous title** properly assigned (lien properly satisfied).</p> <p>(3) Submit fee of \$5.00 (Casual Excise or Use Tax is not included***).</p> <p>(4) If applying by mail, use zip code 29216-0026.</p> <p>NOTE: A copy of this application for a mobile home must be filed with the County Auditor's Office in which the mobile home is titled.</p>																						

SECTION I - ENTIRE FORM TO BE TYPED OR PRINTED IN BLACK INK

Make of Vehicle Aerwood	Year Make 1996	Title Number (DO NOT WRITE IN THIS BLOCK) 28-912280		Vehicle Tag No. A	Tag (Validation) No.
Model No. Edgewood	New <input checked="" type="checkbox"/> Used <input type="checkbox"/>	Vehicle Identification Number NC-F141A35312-EW11		Exp. Date of Tag	Grms Wgt.
Body Style MBH	Veh. Wgt.	Odometer Mileage	Surrendered Title No. MSO	Date Brought Into S.C./Date Established Residency	Date Acquired
Name of Owner(s) Samuel M. Varner					
Street Address (For Special Mailing, use lower right corner) 1510 Hwy 521 South					
City Sumter State SC Zip Code 29154 County Sumter					
Vehicle is subject to the following liens: Date: 01-28-1991					
Lien Item GREEN TREE FINANCIAL SERVICING CORPORATION					
Address P.O. DRAWER 25009					
City COLUMBIA, SC 29224-5009 State _____ Zip Code _____					
Date Item _____ Date: _____					
Address _____					
City _____ State _____ Zip Code _____					
Special Mailing Address of New Owner GREEN TREE FINANCIAL SERVICING CORPORATION					
Address P.O. DRAWER 25009					
City COLUMBIA, SC 29224-5009 State _____ Zip Code _____					

TITLE & REGISTRATION

SECTION 2

INSURANCE CERTIFICATION

Under penalty of perjury, I declare that this vehicle is insured with the company named below and I will maintain liability insurance throughout the registration period.

Name of Insurance Company: _____

SALVAGE PERCENTAGE

Formula for Percentage: _____

Predamaged Value: _____
Estimate for Repairs: _____
Percentage: _____

SECTION 3

SALVAGE VEHICLE INFORMATION

The vehicle described on this application is (Check One) Rebuildable Non-Rebuildable (These vehicles may not be registered)

Furthermore, the vehicle sustained the following damage:

Collision Fire Water Stolen (Recovered) Stolen (Unrecovered)

SECTION 4

ODOMETER MILEAGE STATEMENT

I state that the odometer now reads _____ (no tenths) and to the best of my knowledge this is the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked:

STOP! DO NOT check one of the following unless it applies.

- 1. I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- 2. I hereby certify that the odometer reading is NOT the actual mileage. **WARNING: ODOMETER DISCREPANCY**

WARNING: Federal and state law requires that you state the mileage at commission with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SECTION 5

CASUAL SALES TAX EXEMPTION

Vehicles purchased from individuals and titled in South Carolina are subject to an excise tax unless exempt. The tax is 5% of the sales price up to a maximum of \$100.00 (Mobile homes are calculated differently).

EXEMPTIONS

- Vehicle transferred from: (check one)
 - mother father wife husband son daughter sister brother grandparent grandchild
- This vehicle is transferred to me as: (check one)
 - legal heir beneficiary distributee
- I am a non-resident military person
- Bonafide gift

SECTION 6

SIGNATURE OF OWNER

Under penalty of perjury, I declare that I am the owner of this vehicle and request that a South Carolina certificate of title and/or registration be issued. I further certify that the information on this application is correct to the best of my knowledge. (The vehicle is subject to the liens named and no others.)

Samuel M. Adams

Signature of Owner(s) must be signed in ink by each owner or authorized agent.

SECTION 7

SATISFACTION OF LIENS

SATISFACTION OF FIRST LIEN
This is to certify that the lien against the vehicle has been fully satisfied on _____.

SATISFACTION OF SECOND LIEN
This is to certify that the lien against the vehicle has been fully satisfied on _____.

NAME OF LIENHOLDER _____

NAME OF LIENHOLDER _____

By _____

By _____

Title _____

Title _____

SECTION 8

Do you wish to donate \$1.00 to the Gift of Life Trust Fund? Yes No

Amount: _____

CERTIFICATE OF ORIGIN FOR A VEHICLE

FLEETWOOD

DATE

01/03/96

INVOICE NO.

021721

VEHICLE IDENTIFICATION NO.

NCFLT41A35372-EW11

YEAR

1996

MAKE

EDGEWOOD

BODY TYPE

76' x 13'08" (79' w/hitch, 1038 sq.ft.)

SHIPPING WEIGHT

21,600 lbs.

H.P. (B.A.F.)

n/a

G.V.W.R.

n/a

NO. CYLS.

n/a

SERIES OR MODEL

2763G

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the invoice number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

ACCENT MOBILE HOMES, INC.
6315 N. TRYON ST.
CHARLOTTE, NC 28213

If the vehicle described hereon is a motor home the undersigned certifies that it is equipped with at least four of the following life support systems: cooking, refrigeration or ice box, self-contained toilet, heating and/or air conditioning, a potable water supply system including a faucet and sink, separate 110-115 volt electrical power supply and/or an LP gas supply, all of which meet the ANSI A119.2 standards.

It is further certified that this was the first transfer of such new motor vehicle in ordinary trade and commerce.

FLEETWOOD HOMES OF NORTH CAROLINA, INC.

28912260

SIGNATURE OF AUTHORIZED REPRESENTATIVE

(AGENT)

No. R 0865196

PEMBROKE / NC

CITY - STATE

DISTRIBUTOR DEALER ASSIGNMENT NUMBER

FOR VALUE RECEIVED THE UNDERSIGNED TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO THE PURCHASER(S) **SABAO H. VARNER** ADDRESS **1810 Hwy 521 South Sumter, SC 29154**

AND CERTIFY TO THE BEST OF MY KNOWLEDGE INFORMATION AND BELIEF UNDER PENALTY OF LAW THAT THE VEHICLE WAS NOT BEING REGISTERED IN THIS OR ANY STATE AND AT THE TIME OF DELIVERY THE VEHICLE WAS SUBJECT TO THE FOLLOWING STATEMENTS AND NOTES OTHER AND WARRANT TITLE TO THE VEHICLE

FEDERAL REGULATIONS REQUIRE YOU TO STATE THE ODOMETER MILEAGE UPON TRANSFER OF OWNERSHIP

I certify to the best of my knowledge that the odometer reading is _____ and reflects the actual mileage of the vehicle unless one of the following statements is checked 1. The amount of mileage stated is in excess of 99,999 or 2. The odometer reading is not the actual mileage

AMOUNT OF LEND **82293.00** DATE OF LEND **6/28/99** KIND OF LEND **S/A** **GREEN TREE FINANCIAL SERVICES CORPORATION** P.O. DRAWER 25009 COLUMBIA, SC 29224-5009

LEASER'S ADDRESS **Accent Mobile Homes** DEALER **SC** NAME OF DEALERSHIP **Richland** DEALER'S LICENSE NO. BY **Kenn M. Wilkes** AUTHORIZED SIGNATURE OF **Agent** TITLE OR POSITION

State of **Richland** Being duly sworn upon oath each that the statements set forth are true and correct. Subscribed and sworn to me before me this _____ day of _____ 19____

Notary Public **W. S. ...** My Commission Expires November 2, 2008

DISTRIBUTOR DEALER ASSIGNMENT NUMBER

FOR VALUE RECEIVED THE UNDERSIGNED TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO THE PURCHASER(S) _____ ADDRESS _____

AND CERTIFY TO THE BEST OF MY KNOWLEDGE INFORMATION AND BELIEF UNDER PENALTY OF LAW THAT THE VEHICLE WAS NOT BEING REGISTERED IN THIS OR ANY STATE AND AT THE TIME OF DELIVERY THE VEHICLE WAS SUBJECT TO THE FOLLOWING STATEMENTS AND NOTES OTHER AND WARRANT TITLE TO THE VEHICLE

FEDERAL REGULATIONS REQUIRE YOU TO STATE THE ODOMETER MILEAGE UPON TRANSFER OF OWNERSHIP

I certify to the best of my knowledge that the odometer reading is _____ and reflects the actual mileage of the vehicle unless one of the following statements is checked 1. The amount of mileage stated is in excess of 99,999 or 2. The odometer reading is not the actual mileage

AMOUNT OF LEND _____ DATE OF LEND _____ KIND OF LEND _____

LEASER'S ADDRESS _____ DEALER _____ NAME OF DEALERSHIP _____ DEALER'S LICENSE NO. BY _____ AUTHORIZED SIGNATURE OF _____ TITLE OR POSITION

State of _____ Being duly sworn upon oath each that the statements set forth are true and correct. Subscribed and sworn to me before me this _____ day of _____ 19____

Notary Public _____ My Commission Expires _____

DISTRIBUTOR DEALER ASSIGNMENT NUMBER

FOR VALUE RECEIVED THE UNDERSIGNED TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO THE PURCHASER(S) _____ ADDRESS _____

AND CERTIFY TO THE BEST OF MY KNOWLEDGE INFORMATION AND BELIEF UNDER PENALTY OF LAW THAT THE VEHICLE WAS NOT BEING REGISTERED IN THIS OR ANY STATE AND AT THE TIME OF DELIVERY THE VEHICLE WAS SUBJECT TO THE FOLLOWING STATEMENTS AND NOTES OTHER AND WARRANT TITLE TO THE VEHICLE

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AMOUNT OF LEND _____ DATE OF LEND _____ KIND OF LEND _____

LEASER'S ADDRESS _____ DEALER _____ NAME OF DEALERSHIP _____ DEALER'S LICENSE NO. BY _____ AUTHORIZED SIGNATURE OF _____ TITLE OR POSITION

State of _____ Being duly sworn upon oath each that the statements set forth are true and correct. Subscribed and sworn to me before me this _____ day of _____ 19____

Notary Public _____ My Commission Expires _____

USE NOTARIZATION ONLY IF REQUIRED BY TITLING JURISDICTION

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

2013CV2110102242

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

Margaret H Ashbaugh
4168 Olanta Hwy
Timmons ville, SC 29161-8100
(843) 598-3205

PLAINTIFF(S)

Vs

Derick Ward
2911 E. Effingham Hwy
Effingham, SC 29541

ORIGINAL

DEFENDANT(S)

Plaintiff, **Margaret H Ashbaugh**, appearing before me states that s/he is the Landlord/Lessor of the premises within the jurisdiction of the **Florence County Florence Magistrate Court**, which are located at **2911 E. Effingham Hwy, Effingham, SC 29541**, and which are further described as **2911 E. Effingham Hwy, Effingham, SC 29541**, and that a Landlord/Tenant relationship exists between him/herself and the Tenant(s)/Lessee(s), as evidenced by the attached Lease or Other written proof.

Plaintiff, **Margaret H Ashbaugh**, requests by this application that Ejectment Proceedings be initiated against the Defendant(s)/Tenant(s)/Lessee(s) based on the facts described below:

- Such tenant/lessee has failed or refused to pay rent when due or demanded.
- The Term of Tenancy or occupancy has ended.
- The terms or conditions of the lease have been violated.

Sworn to before me on
March 26, 2013

Eugene Cooper

JUDGE or Notary Public
My Commission Expires: _____

Margaret Ashbaugh
Plaintiff/Attorney

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
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)
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2013CV 10102242
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

MC

ANSWER

Margaret H Ashbaugh
4168 Olanta Hwy
Timmonsville, SC 29161-8100
(843) 598-3205

PLAINTIFF(S)

Vs

Derick Ward
2911 E. Effingham Hwy
Effingham, SC 29541

DEFENDANT(S)

On _____ I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer which is hereby filed with the Florence County Summary Court, is as follows:

CHECK ONE:

A. I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. I admit everything in the complaint and do not want a trial.

C. I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. I deny that I am responsible at all because: (use additional pages if necessary)

AS RENTERS (TO OWN) WE HAD TO INCURE AMSGT 5,000.00 \$ WORTH OF
COST TO MOBILE HOME OR IT WOULD HAVE BEEN LOST, LANDLORD DENIED FIN. RESPON.
YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS
WE TRUD TO PAY SHE RUFUSED BALANCE.

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

3.28.2013
DATE



SIGNATURE OF DEFENDANT(S) (OR ATTORNEY)

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Florence Magistrate Court
180 North Irby Street (M S C-W),
Florence, SC 295013456
Phone: (843) 665-0031 Fax: (843) 661-7800

KEEP A COPY OF THIS ANSWER AND BRING IT TO COURT

Current Phone Number:

Current Mailing Address:

843-758-2046

2911 E. EFFINGHAM HWY EFF. S.C. 29541

FILE COPY

FILED
APR 11 2013
Magistrate's Court

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FLORENCE MAGISTRATES COURT
FLORENCE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

MARGARET ASHBAUGH,
Plaintiff,

vs.

DERICK WARD,
Defendant

Case No.: 2013CV2110102242

RETURN ON APPEAL

2013 APR 12 AM 11:36
COMMIE REEL-SHEARIN
Clerk of Court
FLORENCE COUNTY, SC

FILED

HISTORY

This civil case came before the court as a hearing on a Writ of Ejectment on April 4, 2013. The Defendant had been evicted by the Plaintiff for non-payment of rent. The Defendant answered the complaint and alleged they were renters (to own) who had to incur \$5000 worth of cost to the mobile home or it would have been lost. They also allege they attempted to pay the landlord but the payment was rejected. At the Hearing there was conflicting testimony from each side. According to the Plaintiff, the Defendant, who is the nephew of the Plaintiff, agreed to rent to own the mobile home by verbal agreement for a price of \$7000 in "as is condition" in October 2011. The Defendant also agreed to pay the lot rent to a third party in the amount of \$100 per month and make a rent to own payment of \$200 per month on the mobile home and in addition because the Defendant was unable to get the electricity in his name because of credit problems, the Plaintiff allowed the electricity account to remain in her name and the Defendant agreed to pay her for the electric bill each month. According to the Plaintiff, the Defendant also agreed to pay the property taxes. All of the agreement was verbal. The Plaintiff testified that the Defendant failed to keep up the lot rent as required by the third party landlord and was evicted for non-payment of lot rent after three months. The Defendant made a total of four payments on the mobile home and paid all of the electricity except approximately \$50. In total the Defendant has paid \$1648 to the Plaintiff and last paid in April of 2012. The Defendant then testified that he agreed to purchase the mobile home for \$7000 at \$200 per month but after four months he had to move the trailer because the third party landlord wanted him to and he gave no details as to why was required to move the home. He claimed that it cost him \$5000 to move the home but no evidence of that was

RETURN ON APPEAL - 1

CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
Commie Reel
13

1 presented to the court. He also claimed the Plaintiff had given him a bill of sale for the home but this was not
2 presented to the court. The Defendant claimed he quit paying the Plaintiff because he had to incur the cost of
3 moving the trailer and since the Plaintiff refused to cover this cost, he was deducting it from what he owed to her.
4 The Plaintiff agreed that she had given the Defendant a bill of sale but only because he had to have it to get the
5 mobile home moved. The Defendant did not deny that he had only made payment in the amount of \$1648 but
6 claimed he had tried to pay the Plaintiff the balance that he felt was owed on the home and she had refused this
7 amount. The Plaintiff testified that the Defendant never tried to pay her the balance owed on the home.

8 APPEAL

9 The Appeal is based on the Defendant's own factual recollection as neither party was represented by attorney at the
10 Hearing. In his Appeal the Defendant/Appellant represents that he and his aunt, the Plaintiff/Respondent, entered
11 into an oral agreement in December of 2011 for the sale/purchase of Plaintiff's mobile home. The parties agreed
12 that Defendant would purchase the mobile home in installments over time, paying \$200 per month until they paid
13 the total purchase price of \$7500. Furthermore, the use of the land where the mobile home sat would continue under
14 the Respondent's rental agreement with the third party landowner.

15 In August 2012, the third party landowner required the Respondent to move the mobile home off the land. However
16 the Respondent did not have the money to do so, and feared losing the mobile home. Therefore, the Appellant, Mrs.
17 Blackburn and the Respondent all agreed that if the Appellant and Mrs. Blackburn would pay to move the mobile
18 home off the land, the Respondent would deduct the moving costs from their balance. Additionally, the Respondent
19 would issue the Appellant and Mrs. Blackburn a Bill of Sale for the mobile home. Pursuant to their agreement, the
20 Appellant and Mrs. Blackburn spent about \$5000 to move the mobile home and set it up for use on another lot,
21 which was being rented to Mrs. Blackburn by a third party. The Respondent then issued to Mrs. Blackburn a Bill of
22 Sale. Soon thereafter, the Appellant and Mrs. Blackburn tendered payment-in-full for the remaining balance of the
23 mobile home to the Respondent. However, the Respondent refused to accept payment, and brought a Rule to Vacate
24 action in the Magistrate's Court.

25 At the hearing on April 4, 2013 before Judge Langley, Respondent admitted that Appellant and Mrs. Blackburn
26 were purchasing the mobile home from her in monthly installments. Appellant presented the Magistrate with the
27 Bill of Sale issued to Mrs. Blackburn by the Respondent. However, the Magistrate granted the eviction for "non-
28 payment of rent."

LAW

N.

Elements of Common Landlord-Tenant Problems 1. Generally. The relationship of landlord and tenant is always based upon a contract, whether oral or written, which determines the rights and responsibilities each party has and owes to the

1 other. ...If the tenant fails to pay the rent, the landlord can terminate the lease,
2 force the tenant to vacate the premises, and recover any rent due.

3 A landlord may bring an action of ejectment against a tenant in these situations: (1)
4 when the tenant fails or refuses to pay the rent when due, (2) when the term of tenancy
5 or occupancy ends, or (3) when the terms or conditions of the lease are violated. (See §
6 27-37-10). Provisions in the SCRLTA provide the following additional grounds for a
7 residential ejectment: noncompliance with the rental agreement, §27-40-710; failure to
8 pay rent, §27-40-710; noncompliance affecting health and safety, §27-40-720; and
absence, nonuse and abandonment, §27-40-730. Always consult the statute before
acting. For specific grounds for ejectment under the Manufactured Home Park Tenancy
Act, see §27-47-530.

9 Once an action for ejectment is begun for failure to pay rent, the landlord is under no
10 obligation to accept past rent if offered by the tenant.

11 **f. Appeal of the Verdict**

12 Either party may appeal the decision (§ 27-37-120) but if the tenant does so, he must
13 post an appeal bond, the amount of which is determined by the magistrate. The tenant
14 must post this bond within five days after the service of the notice of appeal or the
15 appeal should be dismissed by the magistrate. (§ 27-37-130). In an appeal from a
16 residential ejectment, please see §27-40-800 concerning posting a bond, signing an
17 undertaking and paying rent pending the outcome of the appeal. A tenant who is
18 wrongfully dispossessed may bring an action for damages against the landlord. (§ 27-
19 37-140). However, if the tenant is dispossessed as a result of an unreversed judgment
20 in an ejectment action, he will be estopped from claiming damages, except for the use
21 of excessive force.

19 **§ 19-1 Contract - Defined**

20 A contract is an obligation which arises from actual agreement of the parties, manifested by words, oral or
21 written, or by conduct. A contract exists where there is an agreement between two or more persons upon
22 sufficient consideration either to do or not to do a particular act. Stated another way, there must be an
23 offer and an acceptance accompanied by valuable consideration.

24 For an agreement to be legally enforceable, the parties must manifest, by way of an offer to enter an
25 agreement by one party and an acceptance of this offer by the other, an intention to enter a contract under
26 terms which are completely understood by each party. This is sometimes referred to as a "meeting of the
27 minds." The "meeting of the minds" required to make a contract is not based on secret purpose or
28 intention on the part of one of the parties, stored away in his mind and not brought to the attention of the
other party, but must be based on purpose and intention which has been made known or which, from all
the circumstances, should be known.

If the agreement is manifested by words, the contract is said to be express. If the agreement is
manifested by conduct, it is said to be implied. In either case, the parties must manifest a mutual intent to
be bound. Without the actual agreement of the parties, there is no contract. An express contract, as well as
an implied contract, rests on an actual agreement of the parties to be bound to a particular undertaking.

1
2
3 The parties must manifest their mutual assent to all essential terms of the contract in order for an
4 enforceable obligation to exist. If one of the parties has not agreed, then a prerequisite to formation of the
5 contract is lacking. To constitute a valid and binding contract, it is essential that both parties assent to the
6 same thing in the same sense.

7
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9 **§ 19-2 Contract - Breach of Contract - Defined**

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11 The word "breach," as it applies to contracts, is defined as a failure without legal excuse to perform any
12 promise which forms a whole or a part of a contract, including the refusal of a party to recognize the
13 existence of the contract or the doing of something inconsistent with its existence. When performance of a
14 duty under a contract is due, any nonperformance is a breach. In other words, a party breaches a contract
15 when he does not perform as he agreed to perform under the contract.

16
17 **§ 19-7 Contract - Rules of Construction**

18
19 In construing a contract, you shall use the following rules of construction. In the construction or
20 interpretation of a contract, common sense and good faith are the leading touchstones of the inquiry. All
21 contracts should receive a sensible and reasonable construction and not such a construction as will lead to
22 an absurd consequence. An interpretation which involves the more reasonable and probable contract
23 should be adopted.

24
25 Where one construction makes the provision unusual or extraordinary and another construction
26 which is equally consistent with the language employed would make it reasonable, fair and just, the latter
27 construction must prevail. The rights of the parties must be measured by the contract which the parties
28 themselves made, regardless of its wisdom, reasonableness, or failure of the parties to guard their rights
29 carefully. A contract should be construed so as to give, if possible, full force and effect to every part of it.

30
31 When a provision is ambiguous, the intent of the parties controls. The intent of the parties is a
32 question of fact to be resolved by you, the jury, when the contract is ambiguous. In attempting to ascertain
33 the parties' intention, the situation of the parties, as well as their purposes at the time the contract was
34 entered, must be determined.

35
36 A contract is ambiguous when the terms of the contract are inconsistent on their face, or are
37 reasonably susceptible of more than one interpretation. A contract is ambiguous only when it may fairly
38 and reasonably be understood in more ways than one. An ambiguous contract is one that can be
39 understood in more ways than just one or is unclear because it expresses its purpose in an indefinite
40 manner.

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ANSWER

As indicated by the testimony and appeal filings of the parties, there was much conflict as to the terms of
the agreement and as to the actual performance of the agreement. Both parties agreed there was an
agreement for a rent to own at \$200 per month with the tenant paying the lot rent in addition. The Tenant
did not testify as to the reason he had to move the home nor did he deny that he had failed to pay the lot
RETURN ON APPEAL - 4



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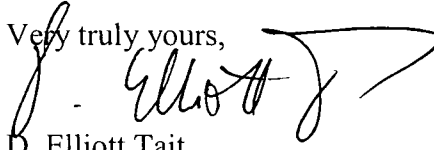
May 5, 2014

Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, South Carolina 29211

Re: Ashbaugh v. Ward
Case No. 2013-CP-21-00927

Dear Ms. Kitchings:

I hope this letter finds you well. Attached please find the original and seven copies of the Motion, and the original and one copy of the Certificate of Mailing. Please file the original (and 6 copies) with your records, and return the stamped copies marked "true copy" to me in the enclosed envelope.

Very truly yours,

D. Elliott Tait
Staff Attorney

Enclosures

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MAY 06 2014

SC Court of Appeals



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

Derick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

CERTIFICATE OF MAILING

I, D. Elliott Tait, do hereby certify that I have this date served one (1) copy of the REQUEST FOR LEAVE TO FILE RULE 60(b) MOTION... upon the Respondent through her counsel by causing said copy to be deposited with the US Postal Service, first class postage prepaid, properly affixed hereto and addressed as follows:

Karl A. Folkens
PO Box 6139
Florence, SC 29502



D. Elliott Tait
Attorney for Appellant
Bar No.: 100772
320 South Coit Street
Florence, South Carolina 29501
(843) 413-9500 (843) 413-1013 (fax)

Signed in Florence, South Carolina
April _____, 2014

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MAY 06 2014

SC Court of Appeals