

ORIGINAL

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

RECEIVED

MAY 08 2014

SC Court of Appeals

Derrick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

RECORD ON APPEAL

D. Elliott Tait
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South Carolina Legal Services
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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2100927

Derick Ward	Margaret H Ashbaugh
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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

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

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

CERTIFIED: A TRUE COPY

Amiee Reel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This order ends does not end the case.

ORDER INFORMATION

Additional Information for the Clerk:

FILED
2013 JUN -7 AM 11:27
COMBIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

INFORMATION FOR THE JUDGMENT INDEX

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

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

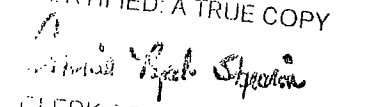
If applicable, describe the property, including tax map information and address, referenced in the order:

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


Circuit Court Judge

2145
Judge Code

6/7/2013
Date

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

For Clerk of Court Office Use Only

This judgment was entered on June 7, 2013, and a copy mailed first class or placed in the appropriate attorney's box on June 7, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

David Elliott Tait 320 South Coit St. Florence, SC 29501

Karl A. Folkens PO Box 6139 Florence, SC 295026139

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

The Honorable
R.N. Langley
PO Box 9040
Jannonsville, SC 29555
Court Reporter

Connie Reel-Shearin
Connie Reel-Shearin - Clerk of Court

FILED
2013 JUN -7 AM 11:27
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC


STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Derick Ward,)
)
 -----)
)
 Plaintiff,)
)
 VS.)
)
 Margaret H. Ashbaugh,)
)
 Defendant.)
 -----)

IN THE COURT OF COMMON PLEAS
 FOR THE 12TH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013-CP-21-00927

ORDER DENYING PLAINTIFF'S
 MOTION TO RECONSIDER

The Court issued an Order dated June 7, 2013 affirming the Magistrate's Court's writ of ejectment of Plaintiff Derick Ward. Plaintiff Ward requested the Court Reconsider, Alter, or Amend the Order pursuant to Rule 59(e), SCRPC. The Court has reviewed the Plaintiff's Motion and finds that oral arguments would not assist in this matter and finds that any additional hearing would be redundant and unnecessary. Further, it is apparent from the record before this Court that Plaintiff's Rule 59(e), SCRPC motion contains arguments that were not raised or argued at the June 7, 2013 hearing. Therefore, it is

ORDERED that the Plaintiff's Motion to Reconsider is Denied, and the prior ruling is reaffirmed in toto.



 R. Knox McMahon
 Presiding Judge,
 Eleventh Judicial Circuit

FILED
 2013 JUN 28 PM 4:34
 COURT REEL-SHEARER
 C.C.P. & GS
 FLORENCE COUNTY, SC

Lexington, South Carolina
 June 29, 2013

CERTIFIED: A TRUE COPY
Cornie Red. Spawin
 CLERK OF COURT C.P. &
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

2013CV2110102242
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF 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

FILE COPY

DEFENDANT(S)

TO THE SHERIFF/DEPUTY SHERIFF/CONSTABLE:

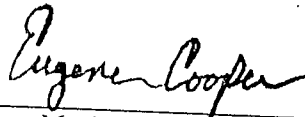
Upon Judgment of this Court, you are hereby Ordered to proceed to the premises located at **2911 E. Effingham Hwy Effingham, SC 29541**, in accordance with S.C Code Sections 27-40-710, 27-40-735, and 27-37-160 as amended.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty four (24) hours to voluntarily vacate the premises. If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

~~If after Tuesday, April 9, 2013 at 10:00 AM~~ the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

April 4, 2013



Florence Magistrate Court

In accordance with the SC Rules for Magistrate Court, B. Graham, certify that:
 I personally served a copy of this Writ on _____, an occupant of the rental unit.
 On 4/2/13 2013, at 10:35 the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise. On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.

Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.

The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.

Informed by Plaintiff that case is settled.

Date: _____, 20____

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE MAGISTRATES COURT

Margaret Ashbaugh,

FILED
APR 11 2013

2013CV2110102242

2013-CP-21-927

Plaintiff,

Magistrate's Court

BOND/UNDERTAKING TO STAY
EXECUTION ON APPEAL
TO CIRCUIT COURT

v.

Derrick Ward

Defendant

ORIGINAL

2013 APR 12 AM 11:35
CONNIE REEL-SHEPHERD
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

Now comes the Defendant in the above entitled action, through his undersigned attorney and respectfully shows the Court that a judgment of ejectment was issued against the Defendant and for the Plaintiff on the Fourth day of April, 2013, by the Magistrate. Defendant is appealing the judgment to the Circuit Court.

Pursuant to the findings of the magistrate, the tenant is obligated to pay rent in the amount of \$200 per month, due on the ~~5th~~ ¹² day of each month.

Tenant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the court and moves the circuit court to stay execution on the judgment for ejectment until this matter is heard on appeal and decided by the circuit court.

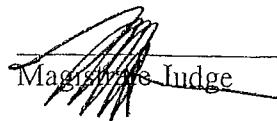
This the 11th day of April, 2013



Derrick Ward, Defendant

Upon execution of the above bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the circuit court. If tenant fails to make any rental payment within five days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant.

This the 11 day of April, 2013


Magistrate Judge

CERTIFIED: A TRUE
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

MV
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2013CV2110102242
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

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

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

2013CV2110102242
CIVIL CASE NUMBER

MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

*Set out
4/9 - 4/1*

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

PLAINTIFF(S)

FILE COPY

Vs

Derick Ward
2911 E. Effingham Hwy
Effingham, SC 29541

DEFENDANT(S)

Upon the application of the Plaintiff(s) listed above, which states:

TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.

You the defendant(s) or lessee(s) of the premises located at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the: **Florence Magistrate Court, 180 North Irby Street (M S C-W), Florence, SC 295013456, (843) 665-0031**, within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Wednesday, March 27, 2013

Eugene Cooper

JUDGE, Florence Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Derick Ward on:

DATE	TIME	INITIALS	DATE OF SERVICE
1. _____	_____	_____	<u>3/27</u>
2. _____	_____	_____	<u>2:15</u>
3. _____	_____	_____	_____
			SETTLED/DATE _____
			VACANT/DATE _____

Sworn to and subscribed before me

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

This 27 day of Mar, 2013.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

On _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
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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 ALMST \$,000.00 WORTH OF COST TO MOBILE HOME OR IT WOULD HAVE BEEN LOST, LANDLORD DENIED FIN. RESPONS. YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS WE TRUD TO PAY SHE REFUSED 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]
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:

843-758-2046

Current Mailing Address:

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

STATE OF SOUTH CAROLINA)
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 COUNTY OF FLORENCE)
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 Derick Ward,)
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 -----)
 Appellant,)
)
)
 -vs-)
)
 Margaret H. Ashbaugh,)
)
)
 Respondent.)
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IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL DISTRICT

Common Pleas No.: 2013-CP-21927
 Magistrate's Court No.: 2013CV2110102242

NOTICE OF CIVIL APPEAL
 (Appeal from Magistrate's
 Court of Florence County)

FILED
 2013 APR -8 PM 3:08
 CONNIE REEL-SHEARER
 CLERK OF COURT
 FLORENCE COUNTY, SC

YOU MUST PLEASE TAKE NOTICE that the Appellant, Derick Ward, through his undersigned attorney, hereby gives notice of appeal from the judgment of the Magistrate's Court in the above action, to the Circuit Court of Common Pleas, in the county of Florence.

While Appellant's objections to the judgment of the Magistrate are set forth below, Appellant reserves the right to amend and further delineate these objections once the transcript of record is completed.

FACTUAL BACKGROUND

Appellant and Respondent are nephew and aunt, respectively. In December 2011, the two entered into an oral contract for the sale of Respondent's mobile home. The parties agreed that Appellant and his girlfriend Brandy Blackburn would purchase the mobile home in installments over time, paying \$200 a month until they paid the total purchase price of \$7,500. Furthermore, the use of the land where the mobile home sat would continue under the Respondent's rental agreement with the third-party landowner.

In August 2012, the third-party landowner required the Respondent to move the mobile home off of the land. However, the Respondent did not have the money to do so, and feared losing the mobile home. Therefore, the Appellant, Ms. Blackburn and the Respondent all agreed

CONNIE REEL-SHEARER
 CLERK OF COURT
 FLORENCE COUNTY, SC
 10
 COPY

that if the Appellant and Ms. Blackburn would pay to move the mobile home off of the land, the Respondent would deduct the moving costs from their balance. Additionally, the Respondent would issue the Appellant and Ms. Blackburn a Bill of Sale for the mobile home. Pursuant to their agreement, the Appellant and Ms. Blackburn spent about \$5000 to move the mobile home and set it up for use on another lot, which was being rented to Ms. Blackburn by a third party. The Respondent then issued to Ms. Blackburn of Bill of Sale. Soon thereafter, the Appellant and Ms. Blackburn tendered payment-in-full for the remaining balance of the mobile home to the Respondent. However, the Respondent refused to accept payment, and brought a Rule to Vacate action in the Magistrate's Court.

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

FOR A FIRST EXCEPTION

Failure to state a claim upon which relief can be granted – the Respondent is not a landlord

1. SC Code § 27-37-10 allows for the ejectment of a tenant by a landlord for nonpayment of rent.
2. SC Code § 27-40-210 defines "landlord" as "the owner, lessor, or sublessor of the premises," and further defines "owner" as "one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises."
3. Pursuant to their agreement, in August 2012 the Respondent issued to Ms. Blackburn a Bill of Sale for the Fleetwood mobile home.

4. The Respondent does not have any interest or title to the mobile home, and is therefore not an "owner" or a "landlord" under the statute and cannot pursue an action for ejectment.

~~5. Because the Appellant and Ms. Blackburn were purchasing the mobile home, they~~
are not tenants. Instead, as evidenced again on the Bill of Sale, they are buyers.

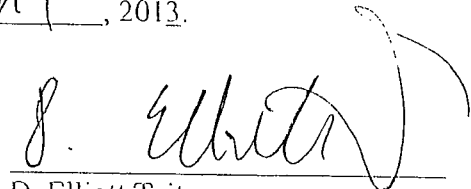
6. Because no landlord/tenant relationship existed between the parties in this matter, the Appellant cannot be evicted under SC Code § 27-37-10 et seq.

REQUEST FOR RELIEF

Based on the aforementioned, Appellant respectfully requests that this honorable Court grant to him the following relief:

- a. Reverse the Magistrate's Court Order of Ejectment; and
- b. Such further or other relief deemed just and proper by this Court.

Respectfully submitted this 8th day of April, 2013.



D. Elliott Tait
SOUTH CAROLINA LEGAL SERVICES
Bar No.: 100772
320 S. Coit St.
Florence, SC 29501
(843) 413-9500
elliotttait@sclegal.org

Attorney for Appellant

Florence, South Carolina.

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
CONNIE 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

CERTIFIED: A TRUE COPY
13
CONNIE REEL
CLERK OF COURT
FLORENCE COUNTY, S.C.

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.

29 **Elements of Common Landlord-Tenant Problems 1. Generally. The relationship**
30 **of landlord and tenant is always based upon a contract, whether oral or written,**
31 **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
9 absence, nonuse and abandonment, §27-40-730. Always consult the statute before
10 acting. For specific grounds for ejectment under the Manufactured Home Park Tenancy
11 Act, see §27-47-530.

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

14 f. Appeal of the Verdict

15 Either party may appeal the decision (§ 27-37-120) but if the tenant does so, he must
16 post an appeal bond, the amount of which is determined by the magistrate. The tenant
17 must post this bond within five days after the service of the notice of appeal or the
18 appeal should be dismissed by the magistrate. (§ 27-37-130). In an appeal from a
19 residential ejectment, please see §27-40-800 concerning posting a bond, signing an
20 undertaking and paying rent pending the outcome of the appeal. A tenant who is
21 wrongfully dispossessed may bring an action for damages against the landlord. (§ 27-
22 37-140). However, if the tenant is dispossessed as a result of an unreversed judgment
23 in an ejectment action, he will be estopped from claiming damages, except for the use
24 of excessive force.

25 § 19-1 Contract - Defined

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

For an agreement to be legally enforceable, the parties must manifest, by way of an offer to enter an
agreement by one party and an acceptance of this offer by the other, an intention to enter a contract under
terms which are completely understood by each party. This is sometimes referred to as a "meeting of the
minds." The "meeting of the minds" required to make a contract is not based on secret purpose or
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 The parties must manifest their mutual assent to all essential terms of the contract in order for an
3 enforceable obligation to exist. If one of the parties has not agreed, then a prerequisite to formation of the
4 contract is lacking. To constitute a valid and binding contract, it is essential that both parties assent to the
same thing in the same sense.

5 **§ 19-2 Contract - Breach of Contract - Defined**

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

10 **§ 19-7 Contract - Rules of Construction**

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

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

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

20
21 A contract is ambiguous when the terms of the contract are inconsistent on their face, or are
22 reasonably susceptible of more than one interpretation. A contract is ambiguous only when it may fairly
23 and reasonably be understood in more ways than one. An ambiguous contract is one that can be
24 understood in more ways than just one or is unclear because it expresses its purpose in an indefinite
25 manner.

26 **ANSWER**

27 As indicated by the testimony and appeal filings of the parties, there was much conflict as to the terms of
28 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

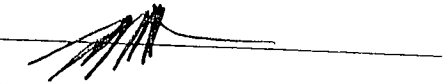
1 rent. The Tenant also did not deny that he had only paid \$1648 total including the electric bill and made
2 only 4 payments and this all went to the electric bill leaving approximately \$50 remaining on electric
3 payments and none paid on the home itself. The Plaintiff and Defendant both testified at the Hearing that
4 the purchase price was \$7000 but in his appeal the Defendant alleges the price was \$7500. Mrs.
5 Blackburn was present at the Hearing but never testified and the case was only filed against Mr. Ward.
6 No Bill of Sale was ever produced at the Hearing even though the Defendant alleges in his appeal that this
7 was presented to the Magistrate. The Plaintiff alleges the Bill of Sale was given to the Defendant only so
8 that he could get the permit to move the home while the Mrs. Blackburn alleges in the appeal that the Bill
9 of Sale was made to her after the home was moved and set up at the new location. The Plaintiff testified
10 she never agreed to pay for the home being moved by allowing the cost to be deducted from the purchase
11 price and the Defendant did not testify in court that she had agreed to this but in his appeal he alleges that
12 he, Mrs. Blackburn and the Respondent all agreed that if he would pay to have the home moved, she
13 would allow him to deduct this from the purchase price.

9 Because of all of the conflicting testimony and lack of any written contract, the court had to determine, as
10 best it could the facts, based upon the greater weight of the evidence and the reliability of the witnesses.
11 In a normal "rent to own" contract, the owner retains full ownership until all of the payments are made
12 and should the purchaser/tenant fail to make the payments as required, the payments revert to rent and the
13 tenant can be evicted. In this case there was apparently no discussion as to what would happen if the
14 purchaser failed to make the payments or failed to pay the lot rent, electricity and taxes. On its face it
15 would seem highly unlikely that the Plaintiff would have agreed to deduct the cost of moving the home
16 from the purchase price of the home as this would leave her with almost no money from the deal. Also
17 since the Defendant caused the home to have to be moved by not paying the lot rent, it would seem
18 unlikely and unfair for the Plaintiff to agree or be expected to agree to incur the cost of the move. Also
19 the owner of any home would be expected to pay for his own move and the Defendant alleges he owns
20 the home. As to title to the home, the Defendant alleges they have a Bill of Sale, but apparently have
21 never taken it to the Highway Department to have it transferred and also there was testimony that the
22 Plaintiff was unable to obtain a title in her name since the home was bought as a repossession and the
23 company that sold the home went out of business two days after selling the home and the proper paper
24 work was never completed. No evidence was offered to the court of the agreement to purchase,
25 agreement to move or any other agreement except oral testimony. The agreement to rent to own was
26 between the Plaintiff Ashbaugh and the Defendant Ward and no mention was made of Mrs. Blackburn but
27 the alleged Bill of Sale was between Ashbaugh and Blackburn. Obviously there was no meeting of the
28 minds where the terms of the agreement were completely understood by the parties. The Defendant says
29 he was evicted from the home by the third party landlord after four months, which would have been
30 January or February but in his appeal says he did not move the home until August of 2012.

31 Based upon the law and evidence and lack of evidence, this court could only conclude that the Plaintiff
32 was the actual owner of the home and that any agreement to rent to own was breached by the failure of
33 the Defendant to make the payments as required and therefore the Plaintiff had a right to evict the
34 Defendant.

35 Respectfully submitted this 9th day of April, 2013.

36 FLORENCE SUMMARY COURT

37 

38 R. N. Langley, Magistrate

RETURN ON APPEAL - 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL DISTRICT
COMMON PLEAS NO.: 2013-CP-21-927
MAGISTRATE'S COURT NO. 2013-CV-21-10102242

DERICK WARD,)
)
APPELLANT,)
)
Vs.)
)
MARGARET H. ASHBAUGH,)
)
RESPONDENT.)

RESPONSE TO CIVIL APPEAL

FILED
2013 MAY 24 PM 3:58
CORNELL BEECHER
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Respondent responds to the Notice of Civil Appeal as follows:

1. Appellant misstates the factual background. Appellant was renting the mobile home and only upon the payment of Seven Thousand Five Hundred and no/100 (\$7,500.00) Dollars would the Bill of Sale be fully consummated. Appellant's statements that the agreed-upon sales price would be reduced by any amounts to move and set up the mobile home are in error. The Magistrate rejected this illogical position by Appellant.

2. The Magistrate was aware that the Bill of Sale was utilized by the parties in order for the mobile home to be moved, and would only be filed of record once the \$7,500.00 was paid.

3. The Magistrate correctly concluded that the \$7,500.00 had not been paid. Therefore, the contract to sell was never consummated.

4. In the absence of a bona fide contract of sale, the relationship between Appellant and Respondent remained as landlord and tenant.

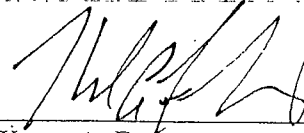
5. The Magistrate correctly found that in the absence of the payment of rent,



CERTIFIED: A TRUE COPY
Cornelia Beecher
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Respondent was entitled an eviction.

WHEREFORE, Respondent requests that this Court uphold the Magistrate Court's
Order of Ejectment and grant such other and further relief as it deems just and proper.



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Florence, SC 29502
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(843) 665-0500 (fax)

ATTORNEY FOR RESPONDENT

May 24, 2013
Florence, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

TWELFTH JUDICIAL DISTRICT

Derick Ward,)

Common Pleas No.: 2013-CP-21-927

Appellant,)

Magistrate's Court No.: 2013CV2110102242

-vs-)

NOTICE OF MOTION AND
MOTION UNDER RULE 59

Margaret H. Ashbaugh,)

Respondent.)

2013 JUN 17 PM 2:06
CLERK OF COURT
FLORENCE COUNTY, SC

TO: The above named Respondent, Margaret Ashbaugh, and her attorney:

PLEASE TAKE NOTICE that the undersigned attorney for the Petitioner will move before this Court as soon as permitted for a new hearing on the merits or, alternatively, for this Court to alter or amend its judgment. The grounds for this motion are as follows:

THIS COURT DID NOT SPECIFICALLY RULE AS TO WHY AND HOW THE LOWER COURT HAD JURISDICTION

This case came before this Court as an appeal of the Magistrate's Court's decision to grant a writ of ejectment against the Petitioner. The specific legal issue before this Court was whether or not the Magistrate's Court had subject matter jurisdiction to issue the writ of ejectment. This Court ruled that the lower court did have jurisdiction, and affirmed the decision. However, this Court did not rule as to why and how the Magistrate had jurisdiction. Specifically, this Court did not rule as to whether or not there was a landlord-tenant relationship. Therefore, the Petitioner requests that this Court issue a decision (1) explaining its ruling that the lower court had jurisdiction, and (2) specifically deciding if there was a landlord-tenant relationship between the Petitioner and the Respondent, per SCRCP Rule 59(e).

CERTIFIED: A TRUE COPY

Connie Beal-Steph 20

CLERK OF COURT
FLORENCE COUNTY, SC

THIS COURT DID NOT ALLOW FOR THE ADMISSION OF EVIDENCE

Because the issue of whether or not a landlord-tenant relationship existed is a question of fact, this Court will need to support its decision with factual information provided by the parties. However, at the hearing before this Court on June 7, 2013, this Court heard only legal arguments from the attorneys representing the Petitioner and Respondent – no evidence, testimony or otherwise, was taken by this Court. Instead, the only factual information was provided by the Magistrate is his Return. Because the summary of the factual information provided by the Magistrate was incomplete and misleading, the Petitioner requests that he have the opportunity to present testimony and other evidence in support of his argument that this was not a landlord-tenant relationship, per SCRCF Rule 59.

Furthermore, because the Magistrate's Court is not a court of record, and because this Court's record contains no evidence, there is no evidentiary record with which to support an appeal to a higher court. Therefore, this Court must hold another hearing on the merits to take testimony and other evidence.

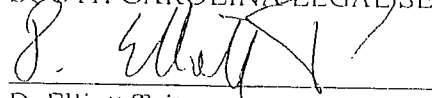
WHEREFORE, the Petitioner requests this Court take the following action:

- a. Issue a decision explaining its holding, as described above;
- b. Grant the Petitioner another hearing on the merits;
- c. Such further or other relief deemed just and proper by this Court.

(Signature block on following page)

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES



D. Elliott Tait

Attorney for the Petitioner

Bar No.: 100772

320 S. Coit St.

Florence, SC 29501

(843) 413-9500

elliotttait@sclegal.org

June 17, 2013
Florence, South Carolina.

1 THE COURT: All right. 2013-CP-21-927, Ward v
2 Ashbaugh.

3 All right. Mr. Ward? You're represented by Mr.
4 Tait?

5 MR. WARD: Yes, sir.

6 THE COURT: All right. Thank you, you may be
7 seated.

8 And Mr. --

9 MR. NETTLES: I'm Louis Nettles for the
10 defendant -- I mean actually the plaintiff or rather the
11 respondent.

12 THE COURT: All right. Mr. Nettles for the
13 respondent. All right.

14 All right. Mr. Tait, this is Mr. Ward's appeal.
15 I'll be glad to hear from you.

16 MR. TAIT: Thank you, Your Honor. Again, my name
17 the Elliot Tait. I'm an attorney with legal services
18 representing Mr. Ward, the appellant, in this matter. This
19 matter was originally initiated by the respondent in this
20 matter. She had applied for a writ of ejectment in the
21 magistrate's court. A hearing was heard on the merits
22 before judge Langley, magistrate and judge for Florence
23 County. He did grant the writ of ejectment against my
24 client and we're appealing that matter.

25 And our argument, Your Honor, simply is that the

1 magistrate did not have subject matter jurisdiction to rule
2 against my client to issue the writ of ejectment. I did
3 prepare a memorandum for the Court I'd like to introduce

4 now --

5 **THE COURT:** All right.

6 **MR. TAIT:** -- if I may.

7 **THE COURT:** Thank you, sir.

8 **MR. TAIT:** And just to summarize the memorandum,
9 Your Honor. Summary ejectment is a remedy given
10 exclusively by the South Carolina Resident and Landlord
11 Tenant Act to landlords. The act gives magistrate's court
12 jurisdiction -- subject matter jurisdiction to hear actions
13 for summary ejectment as well; and it says that a landlord
14 is to apply for summary judgment to the magistrate's court.
15 The one case that this court should be aware of, which I
16 briefed in the memorandum is Stewart Jones versus Sheehan.
17 In that case, the Supreme Court held that summary ejectment
18 is quote, Applicable only to a case where the relationship
19 of landlord and tenant actually exists. The Court further
20 upheld that that magistrate must initially quote, Ask was
21 there a contract between the parties, express or implied
22 which created that relationship of landlord and tenant.
23 Without such contract that relation cannot exist, end
24 quote.

25 And this Court really not need look any further

1 than the magistrate's own return on appeal to find that he
2 lacked subject matter jurisdiction. He admits in his
3 return that it was uncontested at the initial hearing that
4 Mr. Ward, my client and Ms. Ashbaugh, the respondent were
5 in a rent-to-own agreement and my client was renting to own
6 the mobile home, that he was making monthly payments, and
7 those payments were going towards the balance; and at the
8 end, he would own, out right, this mobile home.

9 And a rent-to-own contract is just a simple way of
10 saying it's a seller-financed installment sales contract.
11 That's all it is. It's a sales contract that's seller
12 financed. So this isn't a landlord-tenant relationship,
13 it's a seller-purchaser relationship. Those are very
14 distinct things. In a landlord-tenant relationship, the
15 tenant pays for the use and occupancy of the dwelling unit
16 and at the end of the contract, the tenant leaves, the
17 tenant doesn't get title, the title doesn't pass.

18 In a seller-purchaser relationship, like this
19 relationship, my client is making payments towards the
20 purchase of the home and at the end of the contract, he's
21 going to have title to this mobile home. Those are two
22 distinct things.

23 So on the face of the magistrate's own return, this
24 is not a landlord tenant relationship as required by the
25 Supreme Court case Stewart Jones versus Sheehan. This is a

1 seller and a purchaser relationship.

2 Further more, Your Honor, Ms. Ashbaugh can't
3 establish affirmatively a landlord-tenant relationship. My
4 client and his girlfriend pay the taxes on the mobile home.

5 They make repairs to the mobile home and the magistrate's
6 return also says that Ms. Ashbaugh was selling the mobile
7 home as is. She was not going to make repairs. And in
8 fact my client did make repairs to the home.

9 He paid to have the mobile home moved from one lot
10 to the other. He paid to have it set up. He paid to have
11 it inspected by the county. So my client is conducting
12 himself as the purchaser of the property, not as the
13 tenant; and Ms. Ashbaugh was not conducting herself as a
14 landlord. She didn't undertake any of the responsibilities
15 required by the South Carolina Landlord and Tenant Act,
16 Residential Landlord Tenant act. She didn't undertake
17 those obligations, therefore, she shouldn't have the remedy
18 that's exclusively for landlords, namely summary ejection;
19 and therefore, this Court should overturn the decision by
20 the lower court.

21 **THE COURT:** Thank you. Thank you very much, Mr.
22 Tait.

23 Mr. Nettles?

24 **MR. NETTLES:** Your Honor, please, I don't think --
25 this is, of course, a magistrate court proceeding. Below,

1 it was between pro se parties and they object to the
2 jurisdiction of the court over that, but clearly what was
3 argued before the Court below was a transaction over
4 property having a value of less than \$7500. That's within
5 the scope of the magistrate court jurisdiction. They want
6 to make a technical argument about magistrate's courts,
7 which is really inappropriate given the looseness of the
8 procedure in magistrate's court. You look at the
9 pleadings -- or if you look at the result, this is a result
10 within the jurisdiction of the family court. Justice was
11 done. The judge below had to make a determination of facts
12 over the -- over what was happening and it resulted in a
13 determination that the mobile home -- there was a contract
14 about purchasing the mobile home which was breached by
15 Mr. Ward; and the result of this is -- is that
16 determination that he's not -- that he defaulted in the
17 transaction. I don't think it's appropriate under the
18 procedures and the laws of the South Carolina magistrate's
19 court. It's within the jurisdiction of the magistrate
20 court to overturn the result.

21 **THE COURT:** All right. Thank you, Mr. Nettles.

22 Mr. Tait, do you care to respond?

23 **MR. TAIT:** If I may, Your Honor.

24 **THE COURT:** Yes, sir.

25 **MR. TAIT:** Thank you.

1 The Supreme Court case Stewart Jones says that
2 initially the Court has to ask was there a landlord-tenant
3 relationship. The Court found that this was a rent-to-own
4 contract. Stewart Jones also clearly says that that's a
5 jurisdictional issue of -- the landlord-tenant relationship
6 is jurisdictional.

7 Now, by the Court's own decision, by the Court's
8 own return explaining his decision, the Court admits it's a
9 rent to own. Therefore, this isn't a landlord-tenant
10 relationship, this is jurisdictional.

11 **MR. NETTLES:** Your Honor, please I suspect that --
12 I haven't read the Stewart Jones case, but I suspect that's
13 a case where the magistrate's court can only have
14 jurisdiction over the property given its value if it's a
15 landlord-tenant's relationship. This the personal property
16 having a value of less than \$7500 and it would be within --
17 it would be within the jurisdiction of the magistrate's
18 court.

19 **THE COURT:** Thank you. Didn't you say it's summary
20 ejection of a --

21 **MR. TAIT:** Summary ejectment. That's just a fancy
22 way of saying it basically.

23 **THE COURT:** All right. It's interesting. Yes,
24 sir, I understand. In fact, my position on summary
25 judgment of a trespasser that the magistrate has exclusive

1 All right. Go right ahead, Mr. Tait; I didn't mean
2 to interrupt.

3 MR. TAIT: Thank you, Your Honor.

4 is that what the Court says in this case is that
5 initially the Court has to ask is there a landlord-tenant
6 relationship and the lower court erred by saying this was a
7 landlord-tenant relationship. That's an error of law which
8 is perfectly appealable to this Court and I think that
9 issue is preserved and it's properly before this Court on
10 appeal and this Court can overturn an error of law by a
11 magistrate.

12 THE COURT: Well, this case appears to me to
13 concern the issue brought in a defense by the occupier of
14 the residence that title was actually in the plaintiff,
15 Stewart Jones Company. Sheehan was alleging that Stewart
16 Jones that bought the property from a sheriff's sale was
17 not the owner and did not have title to the property; and
18 therefore, could not be a landlord.

19 Sheehan was alleging that Hankins, whose house and
20 lot it had been and had been attached and sold at a
21 sheriff's sale and purchased by Stewart Jones Company, he
22 questioned their title; and in questioning their title was
23 divesting the magistrate of jurisdiction on title to real
24 property. He was contesting that entirely and this part
25 where was there a contract between the parties expressed or

1 need the magistrate to look at whether or not there was a
2 landlord-tenant relationship. We're not going to worry
3 about title. We're going to look at landlord-tenant
4 relationship because that's what summary ejection
5 requires. And that's what the lower court incorrectly
6 held.

7 **MR. NETTLES:** If Your Honor please, this is
8 magistrate court. They're asking you to look into whether
9 or not the magistrate had jurisdiction over this. What was
10 actually tried in magistrate court was not a dispute over
11 real properties. It's a dispute over possession of a
12 mobile home that apparently had a value of less than \$7500.
13 That's within the jurisdiction of the magistrate's court.
14 Magistrate's court has the jurisdiction to deal with the
15 possession of personal property valued less than \$7500.
16 Since it was within the jurisdiction of the magistrate's
17 court to make that determination, the technical rules and
18 pleadings and such are not a basis for this Court to
19 overturn the determinations of the magistrate's court and
20 if you look at the return of the magistrate's court,
21 justice -- substantial justice was done within the
22 jurisdiction of magistrate's court and magistrate's court's
23 determination should be affirmed.

24 **MR. TAIT:** If I may, Your Honor --

25 **THE COURT:** Yes, sir.

1 MR. TAIT: -- respond.

2 THE COURT: Certainly.

3 MR. TAIT: So this is becoming a procedural due

4 process issue. It sounds like Counsel is advocating for

5 some kind of breach of contract. And really what should

6 have been brought as a breach of contract or claim and

7 delivery. This is a personal mobile home. Again, summary

8 ejectment was what was plead in the summons, so this is a

9 procedural due process issue. My client had to respond to

10 summary ejectment itself. This should have been brought as

11 a breach of contract or again as a claim and delivery

12 because this is the purchase of a mobile home. Again,

13 ejectment of a tenant is a big deal.

14 It's only -- it's the exclusive remedy given only

15 to landlords by the South Carolina Landlord Tenant Act.

16 Landlords have specific duties. They have to pay taxes,

17 they have to repair the place, they have to make sure the

18 place is fit and habitable. Those are obligations that the

19 plaintiff, originally, now the respondent, did not

20 undertake. She's not a landlord, so whether or not this is

21 a landlord-tenant relationship, is -- it's paramount

22 because that establishes subject matter for the Court to

23 issue this very harsh remedy of ejectment.

24 If I may one more time, Your Honor?

25 THE COURT: Yes, sir?

1 **MR. TAIT:** I'm not going to interrupt your reading.
2 If this Court upholds the lower Court's ruling, essentially
3 this Court is saying that any seller of mobile homes,
4 ~~instead of going through the process of breach of contract~~
5 or claim and delivery can simply issue a writ of ejectment,
6 giving ten days for someone to move out on the sale of a
7 mobile home. That's what this Court would do if it upheld
8 the lower Court's ruling.

9 **MR. NETTLES:** And, Your Honor, please, these are
10 issues that could have been raised below, apparently
11 wasn't. Substantial justice has been done. The
12 magistrate's court order ought to be affirmed.

13 **THE COURT:** All right. Well, based on the
14 magistrate's court appeal and the law and the evidence, it
15 appears that he applied in this case and this Court's
16 reading of the case that was handed up by Mr. Tait, Stewart
17 Jones versus Sheehan, I'm going to affirm the ruling of the
18 magistrate's court, find that he did have subject matter
19 jurisdiction, that he was the fact finder in the case. I
20 have reread his return in this matter.

21 All right. Thank you. Thank you very much,
22 Mr. Tait.

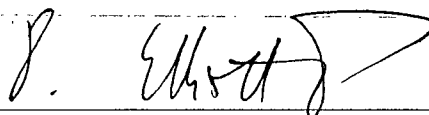
23 Thank you Mr. Nettles. The judgment of the
24 magistrate is confirmed.

25 **MR. NETTLES:** Thank you for your consideration,

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: April 18, 2014



D. Elliott Tait
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ATTORNEY FOR APPELLANT

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 Record On Appeal 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
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RECEIVED

APR 21 2014

SC Court of Appeals

Signed in Florence, South Carolina
April 18, 2014