

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

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.

BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

THE CIRCUIT COURT ERRED IN HOLDING THAT THE MAGISTRATE HAD SUBJECT MATTER JURISDICTION TO HEAR THE CASE AND ~~ISSUE THE WRIT OF EJECTMENT.~~

THE CIRCUIT COURT AND THE MAGISTRATE VIOLATED APPELLANT WARD'S RIGHTS TO DUE PROCESS OF LAW BY ISSUING THE WRIT OF EJECTMENT.

STATEMENT OF THE CASE

This is an appeal from a June 7, 2013 decision of the Florence County Circuit Court upholding a magistrate court's order of ejectment against Appellant Derick Ward. Ward asks this Court to find that the Magistrate did not have subject matter jurisdiction over the action or, alternatively, that the Magistrate violated Ward's right to due process, and to reverse the Circuit Court's order.

In December 2011, Appellant Derick Ward and his aunt, Respondent Margaret Ashbaugh, made an oral agreement that Ward would "rent to own" Ashbaugh's manufactured home. (R. pp. 9, 16.) The parties agreed to a purchase price of \$7,000, to be paid in monthly installments of \$200.¹ (R. pp. 16-17.) In August 2012, the owner of the lot upon which the home was situated ordered Ashbaugh to remove the home from the property. (R. p. 13.) Thereafter, Ward moved the home to a lot rented by Ward's girlfriend, Brandy Blackburn, located at 2911 Effingham Highway, Effingham, South Carolina.² (R. pp. 13-14.) Subsequently, Ashbaugh issued a bill of sale for the home to Blackburn.³ (R. p. 14.)

On March 26, 2013, Ashbaugh filed an Application for a Rule to Vacate or Show Cause in the Florence County Magistrate's Court. (R. p. 7.) In her Application, Ashbaugh alleged that Ward had "failed to pay rent when due or demanded." (R. p. 8.) On March 28, 2013, Ward filed an Answer denying that he was responsible because "as renters (to own) we had to incur almost

¹ Ward's counsel has previously misstated this amount as \$7,500. (R. p. 17.)

² The Magistrate's Return states that a Bill of Sale was not produced at the hearing. (R. p. 17.) However, the Magistrate added: "The Plaintiff [Ashbaugh] alleges the Bill of Sale was given to the Defendant [Ward] only so that he could get the permit to move the home" (Id.)

³ Ward continues to occupy the home at this location.

\$5,000 worth of cost to mobile home or it would have been lost, Landlord denied fin[ancial] respons[ibility]. We tried to pay [but] she refused balance.” (R. p. 9.)

On April 4, 2013, the Magistrate conducted a hearing on the merits of Ashbaugh’s summary ejectment action. (R. p. 13.) Both parties appeared *pro se* and no transcript of the hearing was taken, although a summary of the parties’ testimony is given by the Magistrate in his Return. According to the Return, Ashbaugh stated that Ward “agreed to rent to own the mobile home by verbal agreement for a price of \$7000 in ‘as is condition’ in October 2011.” (Id.) Ashbaugh also stated that Ward “agreed to pay the lot rent to a third party...and make a rent to own payment of \$200 per month on the mobile home,” as well as “pay the property taxes” on the mobile home. (Id.) Ward stated that he agreed to purchase the mobile home for \$7000 at \$200 per month. (Id.) The Magistrate’s Return also states that both parties agreed that Ashbaugh issued a Bill of Sale to Ward (through his live-in girlfriend, Brandy Blackburn), as Ward and Blackburn were responsible for moving the mobile home from one lot to another and required the Bill of Sale to do so. (R. pp. 14, 16-17.) As agreed, Ward and Blackburn moved the mobile home to a lot that they are currently leasing from a third party. (R. p. 17.) The parties disagreed as to (1) whether the cost of moving and setting up the mobile home on a new lot would be deducted from the purchase price, and (2) whether Ward tendered the balance of the purchase price to Ashbaugh after moving the mobile home. After hearing from both parties, the Magistrate issued a Writ of Ejectment against Ward. (R. p. 5.)

Following the issuance of the Writ of Ejectment, Ward retained counsel and timely appealed the magistrate’s decision to the Florence County Circuit Court. (R. pp. 10-12.) On April 11, 2013, the magistrate held a bond hearing, ordered the Writ stayed and required Ward to pay Ashbaugh \$200 per month during the pendency of the appeal. (R. p. 6.) Also on April 11, 2013,

the Magistrate filed a Return on Appeal, in which he stated: “[T]his court could only conclude that the Plaintiff was the actual owner of the home and that any agreement to rent to own was breached by the failure of the Defendant to make payments as required and therefore the Plaintiff had a right to evict the Defendant.” (R. p. 17.) Ashbaugh then hired counsel, who filed a Response.

On June 7, 2013, the circuit court heard Ward’s appeal from the Magistrate’s ejectment ruling. (R. p. 23.) Following the hearing, in a Form 4 Order the circuit court affirmed the issuance of the Writ of Ejectment, stating: “This Court finds that the magistrate did have jurisdiction.” (R. p. 2.)

On June 17, 2013, Ward filed a Rule 59 Motion to Reconsider, requesting an explanation of the court’s holding or a new hearing on the merits. (R. p. 20.) In his Motion, Ward contended: “this Court did not rule as to whether or not there was a landlord-tenant relationship.” (Id.) Following the circuit court’s denial of Ward’s Motion, he filed this appeal with the South Carolina Court of Appeals. (R. p. 4.)

ARGUMENT

I. THE CIRCUIT COURT ERRED IN HOLDING THAT THE MAGISTRATE COURT HAD SUBJECT MATTER JURISDICTION, AS THE COURT DID NOT AND COULD NOT ESTABLISH THE EXISTENCE OF A LANDLORD-TENANT RELATIONSHIP.

Because the record is clear that the parties have the relationship of a buyer and seller, rather than that of a landlord and tenant, the Magistrate did not have jurisdiction to hear the proceedings and issue a writ of ejectment. The circuit court, therefore, erred in affirming the magistrate's issuance of the writ, and this Court should reverse the circuit court's decision and order the writ vacated.

Subject matter jurisdiction "refers to a court's power to hear and determine cases of the general class or category to which proceedings in question belong...." *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121, 463 S.E.2d 600, 605 (1995), quoting Black's Law Dictionary 1425 (6th ed. 1990). An initial determination of subject matter jurisdiction is a fundamental inquiry in every case. The South Carolina Supreme Court has held, "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this court.' It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court." *Brown v. State*, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001), quoting *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Additionally, "the acts of a court with respect to a matter as to which it has no jurisdiction are void." *State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972).

In South Carolina, magistrates have historically been granted subject matter jurisdiction to hear summary ejectment proceedings. See *e.g.*, § 5279, Vol. 3, Code 1922; § 12, Chapter

LXXXIV, Gen. Stat., 435. Presently, magistrates are granted subject matter jurisdiction to hear “all matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27,” by S.C. Code § 22-3-10. As to applications for Rules to Vacate or Show Cause and summary ejectment actions specifically magistrates are granted subject matter jurisdiction to hear such matters by S.C. Code Ann. §§ 27-37-10 et. al, and S.C. Code Ann. § 27-40-710(B). However, to assume subject matter jurisdiction in summary ejectment actions, both the common law and the relevant statutes require the magistrate to conduct a threshold factual inquiry into the existence of a landlord-tenant relationship. If that relationship cannot be established, the magistrate lacks jurisdiction to hear the case.

In *Stewart-Jones Co. vs. Shehan*, 127 S.C. 451, 121 S.E. 374 (1924), referring to a summary ejectment statute⁴ very much like South Carolina’s modern statute, the South Carolina Supreme Court held, “By its express terms the statute is applicable **only** to a case where the *relationship of landlord and tenant* actually exists.” *Id.* at 455-56, 121 S.E. 374 at 376 (emphasis added). In other words, “the existence of the conventional *relation of landlord and tenant* is a **prerequisite** to the assumption and exercise of jurisdiction by the magistrate in such proceedings....” *Id.* (emphasis added).

Citing *Stewart-Jones*, the Supreme Court later held in *Baldwin v. Baldwin*, 224 S.C. 429, 79 S.E.2d 459 (1954), that:

If it should hereafter be properly determined by the judge, sitting as a magistrate, that the *landlord-tenant relation* does not exist between appellant and respondent,

⁴ The previous statute, Section 5279, Vol. 3, Code 1922, stated: “In all cases where tenants hold over after the expiration of their lease or contract for rent, whether the same be in writing or parol, or shall fail to pay the rent when the same shall become due, the landlord is hereby authorized and empowered, either in person or by agent, to demand possession thereof from the tenant or person in possession thereof; and in case of refusal or resistance, it shall be lawful for the person so letting said premises, houses or tenements, his agent or attorney, to apply to a Magistrate.”

he will dismiss the rule and his jurisdiction, so far as this summary proceeding of ejectment is concerned, will be at an end.

Id. at 431, 79.S.E.2d at 460 (emphasis added).

Therefore, in order to assert subject matter jurisdiction over the parties in summary ejectment proceedings, South Carolina case law requires the magistrate to make an initial finding of fact that “there was a contract between the parties, express or implied, which created the relation of landlord and tenant.” *Stewart-Jones* at 455-56, 121 S.E. 374 at 376. If such a contract and relationship does not exist, the magistrate is divested of her subject matter jurisdiction and cannot hear the matter any further.

Not only is this threshold factual inquiry as to the existence of a landlord-tenant relationship required by the Supreme Court in *Stewart-Jones* and *Baldwin*, but it also implicit in the modern statutes which govern in this case. Again, magistrates are granted subject matter jurisdiction to hear summary ejectment actions by S.C. Code §§ 27-37-10 et. al, and 27-40-710(B). Section 27-37-10(a) states that “[t]he *tenant* may be ejected upon application of the *landlord* or his agent when...the *tenant* fails or refuses to pay the rent when due or when demanded” (emphasis added). Section 27-40-710(B) states that “[i]f rent is unpaid when due and the *tenant* fails to pay rent within five days from the date due...the *landlord* may terminate the rental agreement...” (emphasis added). Therefore, the remedy of summary ejectment of residential tenants is given exclusively to landlords for use in dealing with tenants who, as it applies to this case, have not paid their rent when due or demanded.

Definitions and explanations of the terms “landlord,” “tenant” and “rent” are found in Chapter 40 of Title 27, more commonly known as the South Carolina Residential Landlord and Tenant Act (hereinafter “SCRLTA”). The SCRLTA defines “landlord” as “the owner, lessor, or sublessor of the premises.” S.C. Code Ann. § 27-40-210(6) (2007). The statute defines “tenant”

as “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others,” and “rent” as “the consideration payable for use of the premises.” S.C. Code Ann. § 27-40-210(15), (11) (2007). This statute also acts to estop a tenant from denying the landlord’s title to the leased premises. S.C. Code Ann. §§ 22-3-1120, 1130, 1140 (2007).

Furthermore, the SCRLTA includes list of relationships which involve the use and occupancy of dwelling units, but are not landlord-tenant in nature and are, therefore, excluded from the magistrate’s jurisdiction. For example, the relationship between a hotel owner and an overnight guest is not a landlord-tenant relationship, and is therefore excluded by S.C. Code Ann. § 27-40-120(4). The relationship between an employer who provides her employee with living quarters is not a landlord-tenant relationship, and is therefore excluded by S.C. Code Ann. § 27-40-120(5). Most relevant to this case, the relationship between an occupant of a dwelling unit who is also purchasing that dwelling unit from the owner is not a landlord-tenant relationship, and is therefore excluded by S.C. Code Ann. § 27-40-120(4).

The uncontested facts in this case show that the relationship between Ashbaugh and Ward is not that of a landlord and a tenant, but rather that of a seller and a purchaser of personal property. The parties in this case agree that they had an oral contract whereby Ward was purchasing the mobile home on a rent-to-own basis from Ashbaugh, paying \$200 a month, and that those monthly payments were going toward the purchase price of \$7,000. Once Ward paid the full \$7,000, Ashbaugh would transfer the paper title to Ward. This seller-purchaser relationship is distinct from the landlord-tenant relationship. In a landlord-tenant relationship, a landlord owns the subject property both at the beginning and the end of the contract (commonly called a “lease”). A tenant pays money or “rent” solely to *occupy* the premises. At the completion of the lease in a landlord-tenant relationship, the tenant simply leaves the premises to the landlord –

legal title to the premises does not change hands. In contrast, the agreement between the parties in this case contemplates a complete and permanent transfer of title from Ashbaugh to Ward. In fact, the parties agree that Ashbaugh issued Ward (via Blackburn) a Bill of Sale on this mobile home. (R. p. 17.) The contract between the parties in this case, then, does not establish a landlord-tenant relationship, but rather a seller-purchaser relationship.

The SCRLTA also explains the obligations of a landlord. A landlord has to “make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition”; provide “running water..., hot water..., and reasonable heat”; and “maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances.” S.C. Code Ann. § 27-40-440(a) (2007). Ashbaugh did not conduct herself as a landlord, but as a seller of personal property. Ashbaugh herself testified that she sold the mobile home to Ward “as is,” meaning she undertook no responsibilities to keep the premises fit and habitable, to provide running water and heat, or to make sure the electrical, plumbing and appliances were in working order. (R. p. 13.) Ashbaugh also testified that Ward was responsible for paying the taxes on the mobile home. Finally, Ashbaugh admitted that she issued Ward a Bill of Sale on the mobile home, and that Ward used the Bill of Sale to transport the mobile home to another lot. (R. p. 14.) Like a seller of personal property, Ashbaugh has passed onto Ward all of the obligations and responsibilities of ownership, and like a purchaser of personal property, Ward has assumed and performed on these obligations.

The Magistrate’s Return does not state that the Magistrate conducted the required threshold factual inquiry as to the existence of a landlord-tenant relationship between the parties. In fact, the Return does not contain **any** language establishing the existence of such a

relationship. Instead, the Magistrate's decision to issue the writ is based on the parties' relationship as a seller and purchaser of personal property, stating that "any agreement to rent-to-own was breached by the failure of the Defendant to make the payments as required and therefore the Plaintiff had the right to evict the Defendant." (R. p. 17.) The circuit court affirmed this decision, and refused to explain "if there was a landlord-tenant relationship between" the parties, as requested in Ward's Rule 59 motion. (R. p. 20.)

Therefore, because the Magistrate did not conduct the required threshold factual inquiry as to the existence of a landlord-tenant relationship, the Magistrate did not properly establish subject matter jurisdiction. The circuit court then erred by affirming the Magistrate's subject matter jurisdiction and by refusing to explain the existence of a landlord-tenant relationship upon post-trial motion. Furthermore, even if trial courts would have conducted this required threshold factual inquiry, they would have been unable to establish a landlord-tenant relationship. As such, the Magistrate did not have subject matter jurisdiction to issue the writ of ejectment.

II. THE CIRCUIT COURT DENIED APPELLANT WARD SUBSTANTIVE DUE PROCESS OF LAW BY AFFIRMING THE MAGISTRATE'S ORDER REQUIRING WARD TO LEAVE THE HOME HE HAD PURCHASED FROM ASHBAUGH.

Arguendo, if this Court finds the circuit court properly concluded the Magistrate had subject matter jurisdiction to hear this matter, the Magistrate's issuance of the writ of ejectment against Ward denied him substantive due process of law by wrongfully ordering him out of the home he had purchased from Ashbaugh. The circuit court, therefore, erred in affirming the Magistrate's issuance of the writ, and this Court should reverse the circuit court's decision and order the writ vacated.

"In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006). Furthermore, this denial or deprivation must be done "by the government." *Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008), summarizing *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Ward had a cognizable interest in the mobile home he had purchased pursuant to his oral contract with Ashbaugh. The common law in this state has long recognized the validity of oral contracts for the sale of personal property. *See, e.g., Rabon v. State Financial Corp.*, 203 S.C. 183, 26 S.E.2d 501 (1943), and *Carolina Amusement Co., Inc., v. Connecticut Nat'l Life Insurance Co.*, 313 S.C. 215, 437 S.E. 2d 122 (Ct. App. 1993). The parties both acknowledge that they had an oral agreement whereby Ward would purchase the mobile home from Ashbaugh in installments. (R. pp. 16-17.) The parties also acknowledge that Ward performed on his obligation under the contract, either in full or in part. (R. p. 17.) Therefore, Ward has a cognizable property interest, rooted in state law, in the residence from which he was ejected by the Magistrate.

Ward was then deprived of his property interest by the Magistrate who evicted him from his home, and the circuit court that affirmed the issuance of the writ. Magistrates and judges are empowered by the state constitution and state law to administer justice and settle disputes. When the Magistrate in this case issued Ward a writ of ejectment, the Magistrate ordered Ward to leave his home under the threat of compulsion by law enforcement. S.C. Code § 27-37-160. The circuit court then affirmed this decision. Therefore, the government, acting through the Magistrate and

circuit court, deprived Ward of his property interest in the mobile home by issuing the writ of ejectment.

The Magistrate's actions were arbitrary and capricious because the issuance of the writ ignored current law, because the magistrate's reasoning for issuing the writ involved the creation of his own contradictory common law, and because affirming the trial courts would lead to an absurd result. As explained *supra*, South Carolina common law requires every magistrate in every summary ejectment proceeding to determine, first and foremost, as a threshold inquiry, if a landlord-tenant relationship exists between the parties. The requirement of this initial inquiry is confirmed by the statutory scheme, which authorizes the summary ejectment process only to "landlords" and "tenants." However, the Magistrate in this case did not find that there was a landlord-tenant relationship. Instead, the Magistrate found that the parties had a seller-purchaser relationship, as Ward was making monthly payments toward the purchase of the mobile home. (R. p. 16.) Upon finding that Ward was purchasing the residence from Ashbaugh, the Magistrate should have dismissed the action, and his decision to instead issue the writ was arbitrary and capricious.

Secondly, the statutes which authorize summary ejectment give only three grounds upon which a landlord can apply for the ejectment of a tenant: (1) non-payment of rent, (2) end of the lease term, or (3) violation of the lease. S.C. Code Ann. § 27-37-20. In her Application, Ashbaugh alleged that Ward had "failed or refused to pay rent when due or demanded." (R. p. 7.) The Magistrate then found that the sales agreement between Ward and Ashbaugh "was breached by the failure of the Defendant to make the payments as required and therefore the Plaintiff had the right to evict the Defendant." (R. p. 17.) In support of this finding, the Magistrate stated that, "[i]n a normal 'rent to own' contract...should the purchaser/tenant fail to make the payments as

required, the payments revert to rent and the tenant can be evicted.” (Id.) On appeal to the circuit court, Ashbaugh’s counsel did not allege that Ward failed to pay rent, but stated, “there was a contract about purchasing the mobile home which was breached by Mr. Ward; and the result of this is...that he defaulted in the transaction.” (R. p. 27.) The circuit court then affirmed the decision to grant the writ. (R. p. 32.) Therefore, the Magistrate evicted Ward from his home upon the finding that he defaulted on his sales contract with Ashbaugh. Such a finding by the Magistrate is inadequate to support the issuance of a Writ of Ejectment, as it does not fall under one of the three grounds for issuance of such a writ. Instead, the Magistrate created another ground upon which a tenant can be evicted – namely, breach of a sales contract. Such action by the Magistrate, and the circuit court’s affirmation of such action, was arbitrary and capricious.

Finally, affirming the Circuit Court in this case would lead to an absurd result which this Court is bound to avoid. *See e.g., Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999) (“Statutes should not be construed so as to lead to an absurd result.”); *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994) (an interpretation should be rejected where it would lead to a result so plainly absurd that the legislature could not possibly have intended it). If a party to a sales contract alleges a breach of that contract, the wronged party can seek redress in court on a breach of contract claim. Or, if a party alleges another party is wrongfully in possession of their personal property, the wronged party can seek redress in court in a claim and delivery action. Here, the Magistrate and the circuit court have permitted Ashbaugh to use the summary ejectment procedure to recover personal property after an alleged breach of a sales contract. If the decision of the Magistrate and circuit court is left uncorrected, this Court may set precedent which would enable sellers to use the summary ejectment process to “evict” people of their personal property. Finance companies would be able to “evict” people

from their car. Sears would be able to “evict” people of their washer and drier. Such results could not have been intended by the state legislature when they enacted the summary ejection statutes.

The Magistrate’s issuance and circuit court’s affirmation of the writ of ejection was an arbitrary and capricious deprivation of Ward’s right to the mobile home and therein denied him substantive due process.

III. THE CIRCUIT COURT DENIED APPELLANT WARD PROCEDURAL DUE PROCESS OF LAW BY AFFIRMING THE MAGISTRATE’S ORDER WHICH RESULTED FROM A HEARING FOR WHICH WARD DID NOT RECEIVE ADEQUATE NOTICE AND AT WHICH WARD WAS NOT GIVEN THE OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME AND IN A MEANINGFUL WAY.

The Magistrate’s issuance of the Writ of Ejection against Ward denied him procedural due process of law by allowing Ashbaugh to trigger the summary ejection process and by granting the unique relief of ejection, while deciding Ashbaugh was entitled to this relief because Ward was in breach of the parties’ sales contract. The circuit court, therefore, erred in affirming the Magistrate’s issuance of the writ, and this Court should reverse the circuit court’s decision and order the writ vacated.

Procedural due process applies in contested cases and hearings affecting an individual’s property or liberty interests, and “generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way,” and others. *Sloan* at 484-85, 636 S.E.2d at 615. However, “due process is flexible and calls for such procedural protections as the particular situation demands.” *S.C. Dep’t of Soc. Servs. v. Wilson*, 352 S.C. 445, 452 574 S.E.2d 730, 733 (2002). “The requirements in a particular case depend on the importance of the interest involved

and the circumstances under which the deprivation may occur.” *Sloan* at 485, 636 S.E.2d at 615, citing *S.C. Dept. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

In South Carolina, “a civil action is commenced by filing and service of a summons and complaint.” *Palmetto State Bank v. Boyles*, 302 S.C. 136, 139, 394 S.E.2d 313, 315 (1990). Rule 5 of the Magistrate’s Court Rules explains that the complaint must contain “a short and plain written statement of the facts showing what the plaintiff claims and why the claim is made.” Rule 5, SCMCR. Rule 7(b) then allows the Defendant 30 days after service to serve his answer on the Plaintiff, admitting or denying the allegations and/or the relief sought. Rule 7, SCMCR.

The summary ejectment process, however, is distinct from the typical civil litigation process. A landlord seeking to initiate summary ejectment proceedings against a tenant files an Application for Ejectment with the magistrate. S.C. Code Ann. § 27-37-20. The magistrate then serves the tenant with a Rule to Vacate or Show Cause. *Id.* The tenant then has ten days to “appear and show cause” why he should not be evicted. *Id.* If the tenant timely appears, a hearing is held on the merits of the application. *Id.* If the magistrate is satisfied that the tenant should be evicted, the magistrate must issue a writ of ejectment against the tenant within five days. S.C. Code Ann. § 27-37-100.

The differences between a normal civil action and the summary ejectment process are important to highlight. The summary ejectment process provides a swift legal avenue to landlords who need to forcibly remove tenants from their property. Landlords require this summary process so as to minimize the adverse financial effect of a non-paying tenant, a holdover tenant, or a destructive tenant. This is why a tenant in summary ejectment proceedings is not given the usual thirty days with which to seek legal counsel, gather facts and evidence, and file an Answer. Instead, a tenant has only ten days to do so.

In this case, Ashbaugh invoked the summary ejectment process by filing an Application for Ejectment, alleging that Ward had failed to pay rent. (R. p. 7.) At the hearings before the magistrate and circuit court, however, Ashbaugh argued that she was entitled to summarily eject Ward because he had breached their purchase contract when he missed a monthly payment. (R. pp. 13, 17, 27.) The Magistrate agreed, holding that their contract “was breached by the failure of the Defendant to make the payments as required and therefore the Plaintiff had the right to evict the Defendant.” (R. p. 17.) Therefore, the Magistrate’s decision to grant the remedy of summary ejectment to Ashbaugh was not based on the statutes which authorize summary ejectment, but on general contract law.

In other words, Ashbaugh sought relief on a simple breach of contract cause of action, but in her complaint for relief she plead a “summary ejectment” cause of action and utilized the speedy summary ejectment process to seek relief for the breach.

This result is incongruous with Ward’s right to be properly and adequately notified, and his right to be given the opportunity to be heard at a meaningful time and in a meaningful way. An action based on a breach of contract must go through the normal civil process described in Magistrate’s Court Rules 5 and 7. Ashbaugh had to give a short and plain statement that she was entitled to relief based on the breach of a contract by Ward. Ward should have then had 30 days with which to seek counsel and mount a defense. Instead, because Ashbaugh utilized the summary ejectment process, Ward only had 10 days to prepare a defense.⁵ As a result, he appeared without counsel, was disorganized and, most importantly, he did not have the proper evidence or witnesses to present to the court, as he had prepared to defend himself from an eviction – not a breach of his sales contract. The Magistrate’s decision to allow Ashbaugh to use

⁵ In fact, only 10 days elapsed from the filling of the Application for Ejectment to the issuance of the Writ of Ejectment.

the summary ejectment process and to grant Ashbaugh the remedy of ejectment, even though this was ultimately an action on a breach of contract claim, means that Ward was not given adequate notice and was not given the opportunity to be heard at a meaningful time and in a meaningful way. As such, the Magistrate and circuit court violated Ward's right to procedural due process.

CONCLUSION

Summary ejectment a remedy given exclusively to landlords dealing with their tenants, and, therefore, to assert subject matter jurisdiction in such actions a magistrate must make an initial factual inquiry into the existence of a landlord-tenant relationship. Ashbaugh and Ward do not have a landlord-tenant relationship, but that of a seller and a purchaser. The magistrate, then, did not have subject matter jurisdiction in this action. In the alternative, the issuance of the writ of ejectment was an arbitrary and capricious removal of Ward from his home by the trial courts and, therefore, a denial of his right to substantive due process. Finally, the issuance of the writ of ejectment denied Ward of his procedural due process rights to be properly and adequately notified and to be given the opportunity to be heard at a meaningful time and in a meaningful way. Therefore, the circuit court's ruling should be reversed and the writ of ejectment vacated.

(Signature block on following page)

Date: May 8, 2014

Respectfully submitted,

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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,

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v.

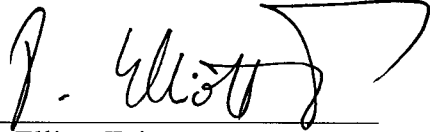
Margaret H. Ashbaugh,

Respondent.

RULE 211 CERTIFICATION

The Appellant's attorney hereby certifies that his final brief complies with Rule 211(b).

Date: May 8, 2014


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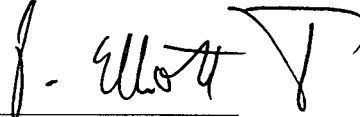
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CERTIFICATE OF MAILING

I, D. Elliott Tait, do hereby certify that I have this date served one (1) copy of the Final Brief of Appellant 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:

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