SUPREME COURT OF SOUTH CAROLINA

Number 2014-001039

APPENDIX

Breakfield v. Woods

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Lower Court Case Number: 2011-CP-12-0291

Court of Appeals Number 2012 212318

Appendix pages A01-A62

Index follows:

Mell Woods
P.O. Box 2603
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INDEX FOR APPENDIX

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

FINAL BRIEF OF APPELLANT

Court of Appeals Number: 2012 212318

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

TABLE OF CONTENTS

Table of Cases and Authorities

CASES Page

OTHER AUTHORITIES

[SC Statutes]

ISSUES PRESENTED

1. Is it lawful for a magistrate to proceed with an eviction action where the defendant pleads SC Statutes §22-3-1110 (Defense of Questionable Title), §22-3-1120, and also §22-3-1130, which requires discontinuance of the action where the cost bond required by SC Statute §22-3-1130 is filed?

2. Is it lawful for a magistrate to issue a "10 day Notice to Show Cause" on the mere word of someone claiming to be a landlord, in secret, and without a summons and complaint and 30 days to answer, as is required for all other classes of litigants in South Carolina?

3. Is it constitutional to have two classes of litigants in South Carolina, those who claim to be landowners and landlords, as opposed to those who are unfortunate enough to be labeled tenants?

STATEMENT OF THE CASE

This case is about respondent trying to evict appellant Mell Woods, where respondent has no legal right to proceed. The case has roots in a probate proceeding where appellant should have been a party to the proceeding but was never notified, and as a result extrinsic fraud was practiced upon the probate court. Appellant is not a tenant as is falsely claimed by respondent. This eviction case is for revenge because appellant Mell Woods is in litigation over the Will of Mrs. Hinson. Appellant purchased some land from the decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, *R.pp. 603A - 603B;* Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, *R.pp. 782-783;* in Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." *R.pp. 782-783;* Ned Gregory, II is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form for the

probate court, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (RECORD, this was brought up during oral argument in Circuit Court, [and also Magistrate Court], circuit transcript page 23 lines 16-19, attached hereto as "Record Note 01" *R.pp. 73-76; R.pp. 89-92; R.pp. 99-101; R.pp. 159-163; R.p. 269; R.pp. 387-392; R.pp. 515-516; R.pp. 577-578; R.pp. 584-588; R.pp. 614-619; R.pp. 772-778; R.pp. 580-581; R.p. 654; R.p. 678 lines 14-25; R.p. 679; R.p. 746; R.pp. 699-705; R.pp. 2-588.*

Other Information Required by Rule 208(b)(1)(c) SCACR:

The action is an appeal from magistrate court, filed June 13, 2011.

Issue Number three, about the two classes of litigants in South Carolina, was raised in the pleadings in the magistrate court, carried forward in the Record, and ruled on by the circuit court, a Rule 59(e) Motion was filed regarding some points not ruled on, and summarily denied by the circuit court, the Honorable Brooks P. Goldsmith, presiding. The Notice of Appeal was served on June 21, 2012.

ARGUMENT

As to Issue Number 1:

South Carolina Statute §22-3-1130 makes it very clear that where there is a Question of title, that the matter be left alone as far as a magistrate court is concerned. The Record will show that appellant Mell Woods filed a verified answer which denied that respondents had any title whatsoever in the land, *R.p. 603B, (Response to No. 3) R.p. 606 (Response to No. 10) R.p. 604, (Interrogatory No. 7);* and in addition, filed the

bond and cash deposit as required to discontinue the action, Record, *R.pp. 609-611;* This should have been

the end of the magistrate case, but no. Here is the case in the South Carolina Court of Appeals. Clear statutes do not mean anything where revenge is involved, and where the person seeking revenge wants to get even.

As to Issue Number 2:

In South Carolina to be labeled a tenant is to be treated worse than a dog -- perhaps not a dog, because dogs do have rights, maybe a rattlesnake is a better example. The label "tenant" is nearly synonymous with sharecropper, and the South Carolina summary eviction procedure is from the old days, and is part and parcel of the sharecropper system. The "10 day Notice to Show Cause," SC Statute §27-37-20, and its counterpart SC Statute §27-37-40 fail to meet constitutional muster. If everyone else is allowed 30 days to answer, then it cannot be fair to label, and then create another class of persons with less rights.

As to Issue Number 3:

"A defendant has thirty days from the date of service of the complaint to serve his answer." Bowers v. Robinson, 311 S.C. 412, 429 S.E.2d 799 (1993).

"A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective." Rule 12 entitles a defendant to thirty days to respond. Board of Medical Examiners v. Fenwick Hall, 300 S.C. 274, 387 S.E.2d 458 (1990).

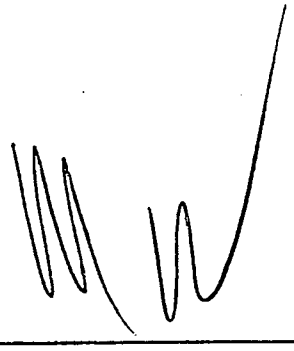
An issue affecting title to land is a substantial right and should be tried in front of a jury in common pleas court, Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985).

CONCLUSION

Appellant asks that the South Carolina summary eviction practice be declared unconstitutional; asks further that the magistrate action be dismissed.

Respectfully submitted,

this 03 day of ~~January,~~ June, 2013.



Mell Woods

P.O. Box 2603
Lancaster, S.C. 29721

Certificate of Service follows: [page 11]

Record footnote 01:

talk about the magistrate bench book, that's something -- it's a training manual they write up there, it's not really the law citing that. And he cited that older statute, I didn't get the number of it. But I mean, the South Carolina Rules of Civil Procedure superceded those older statutes and everybody nowadays is entitled to a 30 day notice of anything and a summons. But he's claiming that this annotated law is still the law in South Carolina and it's not, under the Rules of Civil Procedure they have to go by it. I'm not trying to reform everything but it may be time to get the bench book rewritten. The Rules of Civil Procedures controls all cases even in the magistrates court. And all the stuff we're talking about are all jury issues, if we can ever get in here in front of a jury we can get things straightened out but it's never going to get over the way we're going. And the root cause of this problem is they've probated the wrong will instead of Ms. Hinson's will and they swore to a lie to get into court, that's what the main root of all of this problem is. If you ever get this --

THE COURT: You're talking about the probate court.

MR. WOODS: I'm talking about probate court.

MR. BRACKETT: Your Honor, that's been heard and decided by you previously in a summary judgment order when you affirmed to Judge Gettys' probate court order.

RULE 242 (e) SCACR 12
*APPENDIX page A*_____.

pg. 09 of this brief

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

Rule 211(a) SCACR CERTIFICATE OF PARTY

Court of Appeals Number: 2012 212318

Mell Woods hereby certifies that the within and foregoing *Final Brief* complies with Rule 211(b) SCACR.

This 03 day of June, 2013.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-10-

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

CERTIFICATE OF SERVICE

Court of Appeals Number: 2012 212318

Respondent was served with a copy of the within and foregoing document entitled Final Brief of Appellant, by method of placing the copy in the U.S. Mail with sufficient postage addressed to the counsel of record for respondent, to wit:

Moses Koon & Brackett, PC
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 03 day of June, 2013.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-11-

RULE 242 (e) SCACR
APPENDIX page A_____.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

v.

Mell Woods ..... Appellant.

Respondent's Brief

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Table of Contents

Table of Authorities

Cases

Statutes

Other

Statement of Issues on Appeal Re Appellant's Amended Initial Brief

1. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e) motion, thereby ruling that a defendant-tenant in a statutory ejectment proceeding (S.C. Code Ann. §27-37-10 et seq.) cannot oust the Magistrate's Court of jurisdiction by alleging affirmative defenses and counterclaims purporting to challenge the plaintiff-owner-landlord's title. (Appellant's Issue on Appeal no. 1.)

2. Appellant's Issue on Appeal No. 1, on the question of posting bond pursuant to S.C. Code Ann. §22-3-1130, was not and is not preserved for appellate review. (Appellant's Issue on Appeal no. 1.)

3. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied the Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a defendant -tenant in a statutory ejectment proceeding cannot oust the Magistrate's Court of jurisdiction by alleging counterclaims for money damages. (Appellant's Issue on Appeal no. 1.)

4. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a Summons is not required for Magistrate's Court jurisdiction in a statutory ejectment proceeding. (Appellant's Issue on Appeal no. 2.)

5. Appellant's Issue on Appeal No. 3, in which Appellant appears to challenge the constitutionality of the summary ejectment statutes on the ground that they create two classes of litigants, has not been preserved for review in this Court. (Appellant's Issue on Appeal no. 3.)

Respondent's Objection to Appellant's Excessive Designations for the Record on Appeal

Appellant has designated the entire circuit court record and magistrate's court record in this case. He has designated the entire probate court and circuit court records in two other cases. He has designated a plat that was not presented to the magistrate's court or to the circuit court in this case. He has designated an agreement that was not presented to the magistrate's court or to the circuit court in this case. From these thousands of pages, Appellant cited to the following in his Amended Initial Brief:

- Appellant's verified Answer in the above-captioned case (p. 2, l. 12 and p. 4, l. 6-8;)
- #300 Document (p. 2, l. 16 and 20;) this document is a stranger to the proceedings in this appeal;
- Interrogatory 7 (p. 4, l. 8); there was no discovery conducted in this case, and the source of Interrogatory 7 is unknown;
- money order and bond attached to verified Answer (p. 4, l. 11;)
- page 23, lines 16-19 from the transcript of the circuit court appeal hearing in this case. (p. 3, l. 4-6) having nothing to do with any of Appellant's Issues on Appeal.

The transcript of the circuit court appeal hearing is 31 pages in length. The hearing proper starts on page 9. The only materials/documents/submissions made to the Court by

Appellant or referred to by Appellant in his argument were: his pleadings (R. p. 730, l. 10-11.) He did not submit to the circuit court as a part of his appeal in this case a " #300 Document," an "Interrogatory 7," a plat or an agreement. Respondent incorporates herein by reference pages 3-5 from his Motion to Dismiss and to Strike that was filed in this Court on November 20, 2012.

Respondent's Objection to Appellant's Statement of the Case

Respondent objects to Appellant's Statement of the Case on the ground that it is a flagrant violation of Rule 208(b)(1)(C), SCACR, in that it is an argumentative narrative of contested and irrelevant matters. In his Notice of Appeal to the Supreme Court, Appellant likewise included an argumentative narrative. Respondent moved to have the narrative portion of the Notice of Appeal stricken. The Supreme Court agreed and granted the motion in its July 16, 2012 Order in which the appeal was transferred to this Court. (R. p. 787.)

In addition to the bare argument in Appellant's Statement of the Case, he refers to a "#300 Document" that was never before the court in this proceeding.

Appellant has again included an improper argumentative narrative where argument and contested matters are disallowed by court rule, and said narrative in its entirety should be disregarded by the Court.

Respondent's Statement of the Case

On or about March 11, 2011 Respondent commenced an eviction action in the Chester County Magistrate's Court to evict Appellant by filing a verified Complaint for

Possession of Real Property/ Application for Ejectment. (R. p. 591-599.)

On March 16, 2011 the Magistrate's Court issued a Rule to Vacate or Show Cause. (R. p. 590.)

The verified Complaint and Rule to Vacate or Show Cause were served on the Appellant on March 16, 2011. (R. p. 625.)

On or about March 24, 2011 Appellant filed a verified Answer that included a Motion to Dismiss and a counterclaim. (R. p. 601-612.)

On or about March 28, 2011 Respondent filed and served a Motion to Dismiss Appellant's counterclaim. (R. p. 620-622.)

On or about May 2, 2011 Appellant filed and served an Amendment of Counterclaim. (R. p. 626-630.)

The Magistrate's Court held a pretrial hearing on May 12, 2011 at which pending motions were heard. The Magistrate's Court issued its Order On Motions dated June 2, 2011. (R. p. 710-713.)

On or about June 13, 2011 Appellant filed and served his Notice of Appeal and Grounds of Appeal to appeal the Magistrate's Court's June 2, 2011 Order to the Circuit Court. (R. p. 714-716.)

The appeal was argued in the Circuit Court on January 4, 2012, and by Order dated January 16, 2012, the Circuit Court affirmed the Magistrate's Court's June 2, 2011 Order. (R. p. 752-757.)

On or about February 11, 2012 Appellant filed and served a Rule 59(e) Motion for

Reconsideration. (R. p. 758-770.)

On or about March 5, 2012 Respondent filed and served his Return to Appellant's Rule 59(e) motion.

By Order dated April 23, 2012, the Circuit Court denied Appellant's Rule 59(e) Motion. (R. p. 771.)

On June 21, 2012 Appellant served his Notice of Appeal to the South Carolina Supreme Court.

By Order of the South Carolina Supreme Court dated July 16, 2012 Appellant's appeal was transferred to the South Carolina Court of Appeals.

Argument

1. **The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a defendant -tenant in a statutory ejectment proceeding (S.C. Code Ann. §27-37-10 et seq.) cannot oust the Magistrate's Court of jurisdiction by alleging affirmative defenses and counterclaims purporting to challenge the plaintiff-owner-landlord's title. (Appellant's Issue on Appeal no. 1.)**

Appellant's Issue on Appeal No. 1 is ambiguous. It questions whether it is lawful for a magistrate "to proceed with an eviction action" where title issues are alleged by the defendant-tenant. It is unclear if Appellant is arguing that the Magistrate's Court must dismiss the eviction outright or remove the proceeding to circuit court. Statements of Issues on Appeal must be "concise," and no point will be considered on appeal which is not set

forth in a proper and sufficient statement of issues on appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 209 (2d ed.2002) and cases cited therein. Reserving this objection, the ambiguity should make no difference with respect to the ejectment proceeding.

Appellant's argument on this issue consists of one paragraph, 14 lines of text, citing only S.C. Code Ann. §22-3-1130 to support his argument that the Magistrates Court has no jurisdiction to hear a summary ejectment proceeding if the Defendant-tenant (1) questions the Plaintiff's title, S.C. Code Ann. §22-3-1110, and (2) delivers a written undertaking to the magistrate. S.C. Code Ann. §22-3-1120 and 1130. Appellant argues that his allegation of questionable title and his delivery of the undertaking "should have been the end of the magistrate [sic] case." (Appellant's argument as to Issue no. 1.)

The Magistrate's Court held that the governing statutes for the summary ejectment proceeding do not permit a tenant to raise affirmative defenses or counterclaims to a statutory eviction proceeding. (R. p. 712, l. 3-10.) Citing Nesbitt v. Marshall, 24 S. C. 507 (1884) and Sywgert v. Goodwin, 32 S.C. 146, 10 S.E. 933 (1890), the Circuit Court affirmed the Magistrate's Court on that point by ruling that "summary eviction proceedings are not proceedings involving title to land." (R. p. 755, l. 3-10.) Statutory summary possession remedies involve, not title, but the landlord-tenant relationship and are intended to provide landlords with a quick and simple procedure to recover possession of property while still affording basic procedural protections to tenants. 5 Thompson on Real Property, Second Thomas Edition §40.09(c)(1) (2007). Historically, summary eviction proceedings do not allow a tenant to assert defenses other than the payment of the rent. Id. at §40.09(c)(3). At

common law, the only defense to a petition to remove a tenant for nonpayment of rent was by proof of payment of rent. Id. While some statutes in other jurisdictions enable tenants to assert affirmative defenses in summary eviction proceedings, South Carolina's statutes do not.

Accordingly, whatever defenses or claims the tenant might have against the landlord would have to be asserted in a separate action. Otherwise, the very purpose for the summary eviction proceeding could be defeated by allowing the tenant to bring all manner of issues before the magistrate's court and delaying the ultimate resolution of the central question, namely gaining possession of the premises. **The statutory summary ejectment proceeding, and the above-cited authorities, assume the existence in fact of a landlord-tenant relationship.**

The case of Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) is dispositive. It addresses the Magistrate's Court's jurisdiction in a summary ejectment proceeding when the Defendant-alleged tenant denies that the plaintiff is the owner of the premises and denies that the relation of landlord and tenant exists.

The relevant holdings of the Stewart-Jones Co. opinion are:

- the issue of the plaintiff's title cannot properly arise in a summary ejectment proceeding because a summary ejectment proceeding is one that requires a landlord and tenant relationship, and a tenant is estopped by the relationship to deny his landlord's title;
- it is essential to a summary ejectment proceeding that the relation of landlord and tenant exist, and the existence of the conventional relation of landlord and tenant is

a prerequisite to the assumption and exercise of jurisdiction by the magistrate;

- therefore, the magistrate must first determine its jurisdiction by determining as a fact whether the relation of landlord and tenant exists;
- if the relation of landlord and tenant exists, the tenant is estopped to deny plaintiff-landlord's title and may not inject that issue to deprive the magistrate of jurisdiction;
- if the relation of landlord and tenant does not exist, the Magistrate Court has no jurisdiction to proceed with an ejectment action.

Therefore, had the Appellant chosen to proceed in Magistrate's Court rather than pursuing an appeal, the Magistrate's Court would first have been required to determine if the relationship of landlord and tenant exists between the parties, which itself, would determine the Magistrate's Court's jurisdiction.

Consequently, the mere questioning of Respondent's title and the delivery of the written undertaking do not in and of themselves oust the Magistrate's Court of jurisdiction to determine the existence of a landlord and tenant relationship within the scope of a summary ejectment proceeding.

2. Appellant's Issue on Appeal No. 1, on the question of posting bond pursuant to S.C. Code Ann. §22-3-1130, was not and is not preserved for appellate review.

The Magistrate's Court's Order on Motions dated June 2, 2011 did not address or rule on the posting of bond pursuant to S.C. Code Ann. §22-3-1130. (R. p. 710-713.)

Appellant's Notice and Grounds of Appeal to Circuit Court did not identify the posting of bond pursuant to S.C. Code Ann. §22-3-1130 as an issue on appeal. (R. p. 714-

716.)

The Circuit Court's Order Affirming Magistrate Court dated January 16, 2012 noted in its review of the history of the proceeding that Appellant's Motion to Dismiss included allegations of superior title and bond. (R. p. 753, l. 1-9). However, the Circuit Court's Order did not consider bond pursuant to S.C. Code Ann. §22-3-1130 as an issue on appeal, and the Order did not address or decide anything related to the posting of bond pursuant to S.C. Code Ann. §22-3-1130. (R. p. 752-757.)

Appellant's Rule 59(e) motion to the Circuit Court mentioned, for the first time in the appeal, the operation of S.C. Code Ann. §22-3-1130. (R. p. 761, ¶ 7.) By then, it was too late to make that subject an issue in the appeal.

3. The Circuit Court correctly affirmed the Magistrate's Court's Order and Denied the Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a defendant -tenant in a statutory ejectment proceeding cannot oust the Magistrate's Court of jurisdiction by alleging counterclaims for money damages. (Appellant's Issue on Appeal no. 1.)

On a related note, the Magistrate's Court and Circuit Court also ruled that the Appellant-tenant cannot allege counterclaims for money damages in defense of a summary ejectment proceeding and cannot oust the Magistrate's Court of jurisdiction by such counterclaims. For the same reasons set out above, those conclusions are sound and should be affirmed.

4. **The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a Summons is not required for Magistrate's Court jurisdiction in a statutory ejectment proceeding. (Appellant's Issue on Appeal no. 2.)**

A. Procedural Argument - Constitutional Challenge Not Preserved for Appellate Court Review

Appellant's Issue on Appeal no. 2 identifies the issue as whether the use of a rule to show cause with a 10-day response period rather than a summons with a 30-day response period is "lawful." The actual argument offered by Appellant on this issue in his Brief is that S.C. Code Ann. §27-37-20 and 27-37-40 are unconstitutional.

In his Second Defense, among the various ambiguous and rambling allegations, Appellant alleged that ". . . 27-37-20, which purports to sanction summary eviction, defendant, here and now, attacks the cited statute on federal constitutional grounds, and insists on being properly served . . .." (R. p. 602, l. 11 to 603, l. 20.)

The Magistrate's Court denied Appellant's constitutional challenge. (R. p. 711, l. 19 to 712, l. 1.)

Appellant's Grounds of Appeal to the Circuit Court did not raise the issue of the alleged unconstitutionality of S.C. Code §27-37-20 and/or 27-37-40, and that issue is no longer preserved for further appellate court review. Appellant's Ground of Appeal no. 2 to the Circuit Court identified error only on the basis that the failure to serve a Summons in a summary ejectment proceeding is inconsistent with South Carolina Supreme Court precedent. (R. p. 715, l. 1-9.) In fact, neither the word "constitutional" nor the word

"unconstitutional" appears in Appellant's Notice and Grounds of Appeal to the Circuit Court. Likewise, the statutes at issue (S.C. Code §27-37-20 and/or 27-37-40) are not cited and do not appear anywhere in the Appellant's Notice and Grounds of Appeal to Circuit Court. (R. p. 715, l. 1-9.)

To preserve an issue for appellate review, the issue must be raised to and ruled upon by the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002) and cases cited therein, including Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court.) Having not preserved the issue for appellate review in the Circuit Court, the issue is also not preserved for review in this Court. Having not appealed the Magistrate's Court's ruling denying the constitutional challenge to the absence of a summons, that ruling is now the law of the case. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 80 (2d ed.2002) and cases cited therein.

B. Substantive Argument

The ejectment proceeding herein was commenced pursuant to S.C. Code Ann. §27-37-10 et seq. (rev. 2007) by a verified document titled as a "Complaint for Possession of Real Property / Application for Ejectment." (R. p. 591-599.) That document led the Magistrate's Court to issue its Rule to Vacate or Show Cause. (R. p. 590.) After service of the Complaint/Application and the Rule to Vacate or Show Cause, the Appellant filed and served a verified Answer that included a Motion to Dismiss and a counterclaim. (R. p. 601-

612.)

Appellant challenged the Magistrate's Court's exercise of subject matter and personal jurisdiction over the Appellant because the ejectment proceeding had not been commenced with a Summons. (R. p. 602, l. 11 to 603, l. 20.) The Magistrate's Court denied relief to Appellant on that ground. (R. p. 711, l. 7-11.) The Circuit Court affirmed. (R. p. 756, l. 2-7.)

Appellant argues that the Rules of Civil Procedure require the service of a Summons in an ejectment proceeding notwithstanding that the procedure set out in S.C. Code Ann. §27-37-20 (rev. 2007) does not require a summons. The proceeding authorized by §27-37-20 is a "summary proceeding" designed to protect the interests of both landlords and tenants. The pleading and procedural requirements of §27-37-20 were followed in this case.

It is instructive that the Summary Court Judges Bench Book, created and distributed by the office of South Carolina Court Administration as the administrative arm of the Chief Justice, (Civil Law Chapter; section N-3, Eviction or Ejectment, sub-sections a and b) sets out the procedural requirements for a summary ejectment proceeding. According to the Summary Court Judges Bench Book, a summons is not required.

Rule 81, SCRCP, provides that the Rules of Civil Procedure shall apply "insofar as practicable in magistrate's courts, . . . to the extent they are not inconsistent with the statutes and rules governing those courts." The requirement for a Summons in the Rules of Civil Procedure is inconsistent with the statutes governing summary ejectment proceedings in magistrate's courts, and therefore do not apply to summary ejectment proceedings in magistrate's courts.

5. Appellant's Issue on Appeal No. 3, in which Appellant appears to challenge the constitutionality of the summary ejectment statutes on the ground that they create two classes of litigants, has not been preserved for review in this Court. (Appellant's Issue on Appeal no. 3.)

Issue on Appeal no. 3. Appellant's Issue on Appeal no. 3 is in substance a restatement of Issue on Appeal no. 2 in which, as addressed above, Appellant purports to challenge the constitutionality of the summary ejectment statutes. In Issue no. 3 Appellant appears to assert that it is unconstitutional in an ejectment context, to have parties who are alleged to be landlords and parties who are alleged or labeled to be tenants. What does this mean? If an Issue on Appeal cannot be deciphered or decoded, it should be found insufficient for appellate review.

Argument on Issue on Appeal no. 3. The repetitive nature of this issue and argument is evident when one reads how Appellant addresses Issue on Appeal No. 3 in his brief. He has three paragraphs, only two of which are relevant to the alleged constitutional issue:

Constitutional argument - three sentences.

"A defendant has thirty days from the date of service of the complaint to serve his answer." (Citation omitted.) This relates to the Summons issue addressed in Issue on Appeal no. 2.

" 'A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective.' Rule 12 entitles a defendant to thirty days to respond." (Citation omitted.) This also relates to the Summons issue addressed in Issue on Appeal no. 2.

These two paragraphs, three sentences, constitute the entirety of Appellant's

argument on the "constitutional" issue of creating two classes of litigants. Having already responded to this constitutional issue and argument, the material hereinabove addressing Respondent's position on Issue on Appeal no. 2 is incorporated herein by reference.

Respondent submits that Appellant has failed to make a proper and sufficient argument on the constitutionality component of his Issue on Appeal no. 3, which is an abandonment of the issue. An appellate court will decline to consider an argument that is so conclusory as to be an abandonment of the particular issue on appeal. S. C. Dept. of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (conclusory arguments constitute an abandonment of the issue on appeal.) Two paragraphs; eight lines; no citation to anything in the record. This violates the letter and the spirit of Rules 208(b)(1)(D) and 208(b)(4), SCACR.

Jury Trial.

The third paragraph under Appellant's Issue on Appeal no. 3 relates to the right to a jury trial in circuit court when title to land is involved in a case. It reads: "An issue affecting title to land is a substantial right and should be tried in front of a jury in common pleas court." (Citation omitted.) None of Appellant's issues on appeal identify a right to jury trial as an issue involved in this appeal. Appellant does not explain how the subject of a right to jury trial relates to his constitutionality argument that is based on the absence of a summons. Statements of Issues on Appeal must be "concise," and no point will be considered on appeal which is not set forth in a proper and sufficient statement of issues on appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in

South Carolina 209 (2d ed.2002) and cases cited therein.

Additionally, the argument, if it can be called that, on the jury trial issue is insufficient to preserve the issue for review. An appellate court will decline to consider an argument that is so conclusory as to be an abandonment of the particular issue on appeal. S. C. Dept. of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (conclusory arguments constitute an abandonment of the issue on appeal.) Two paragraphs; eight lines; no citation to anything in the record. This violates the letter and the spirit of Rules 208(b)(1)(D) and 208(b)(4), SCACR.

Conclusion

The Circuit Court's Order Affirming Magistrate [sic] Court should be affirmed.

B. Michael Brackett, S.C. Bar # 838
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

May 22, 2013

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

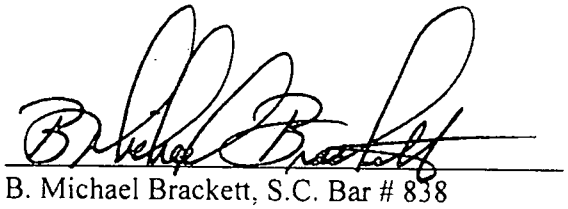
Robert H. Breakfield, as attorney in fact ..... Respondent,

v.

Mell Woods ..... Appellant.

RULE 211(a)
CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.



B. Michael Brackett, S.C. Bar # 838
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondents

May 22, 2013

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

v.

Mell Woods ..... Appellant.

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Final Brief and Certificate of Counsel** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 22nd day of May, 2013 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se

Linda T. Abernethy

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

REPLY BRIEF

Court of Appeals Number: 2012 212318

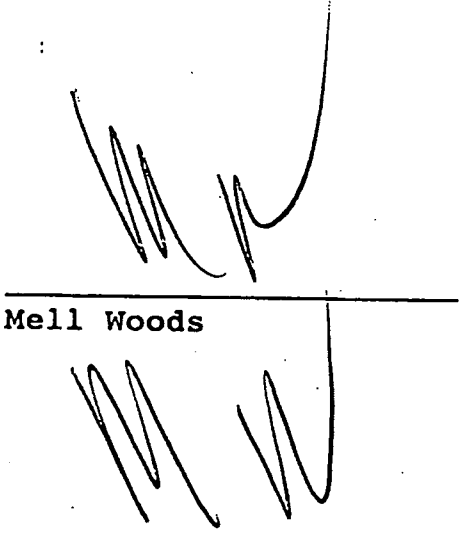
Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Moses Koon & Brackett, PC
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

1. As to Mr. Brackett's assertion that matters heard, papers filed, and any matter in the Return from the Magistrate is not preserved, <u>if not listed in the Notice of Appeal</u>, is not true. South Carolina §18-7-130, states simply that an appeal from Magistrate Court shall be heard upon *all of the papers in the case.* It is the appellant's position that each and every item brought up in front of a magistrate is the record, and properly preserved without anything further.

Respectfully submitted,

This 11 day of April, 2013.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

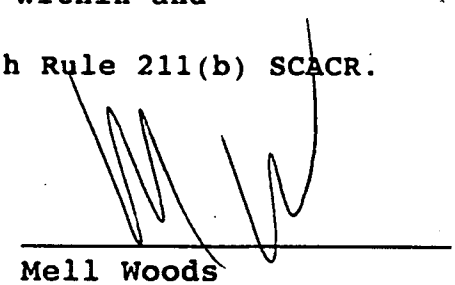
Mell Woods . . . . . Appellant.

Rule 211(a) SCACR CERTIFICATE OF PARTY

Court of Appeals Number: 2012 212318

Mell Woods hereby certifies that the within and foregoing *Final* Reply *Brief* complies with Rule 211(b) SCACR.

This 03 day of June, 2013.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

CERTIFICATE OF SERVICE

Mell Woods hereby certifies that the within and foregoing REPLY BRIEF has been served on respondent by method of placing copies in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 11 day of April, 2013.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robert H. Breakfield, as attorney-in-fact, Respondent,

v.

Mell Woods, Appellant.

Appellate Case No. 2012-212318

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-076
Submitted January 1, 2014 – Filed February 26, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of Columbia, for Respondent.

PER CURIAM: Mell Woods appeals the circuit court's order, which affirmed the magistrate's court. Woods argues (1) the magistrate's court erred in proceeding with the summary ejectment action when Woods pled the defense of questionable title; (2) the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 of the South Carolina Code (2007) are unconstitutional because they do not provide a tenant thirty days to file an answer; and (3) it is unconstitutional to

have two classes of litigants in South Carolina—landlords and tenants. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the magistrate's court erred in proceeding with the ejectment action when Woods pled the defense of questionable title: *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 475, 10 S.E.2d 3, 5-6 (1940) ("[A] tenant cannot oust the magistrate of jurisdiction in [summary ejectment proceedings] . . . by the assertion of a superior title in himself . . . ."); *id.* at 475-76, 10 S.E.2d at 6 ("Otherwise any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute.").

2. As to whether the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 are unconstitutional because they do not provide a tenant thirty days to file an answer: *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) ("[An appellate c]ourt has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid."); *In re Justin B.*, 405 S.C. 391, 395, 747 S.E.2d 774, 776 (2013) ("A statute will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt."); *id.* ("The party challenging the statute's constitutionality bears the burden of proof.").

3. As to whether it is unconstitutional to have two classes of litigants in South Carolina—landlords and tenants: *A & I, Inc. v. Gore*, 366 S.C. 233, 242, 621 S.E.2d 383, 387 (Ct. App. 2005) ("Issues not raised to or ruled upon by the lower court are not preserved for appellate review.").

AFFIRMED.[1]

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact, ...

Respondent,

v.

Mell Woods . . . . . Appellant.

PETITION FOR REHEARING

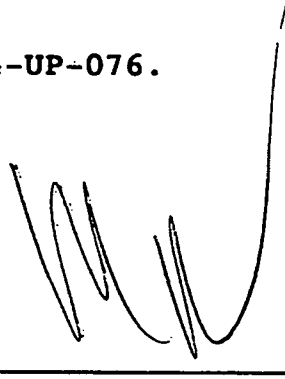
Court of Appeals Number: 2012-212318

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Respondent and petitioner Mell Woods hereby petitions for a rehearing of the Court's recent decision in the above entitled case.

The grounds for the asking for the rehearing are listed in the following Memorandum and marked as paragraphs 1-5.

The decision petitioner is asking to be reviewed is marked as Unpublished Opinion No. 2014-UP-076.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

1. As to what may have been overlooked by the Court of Appeals in Unpublished Opinion No. 2014-UP-076 in which Metropolitan Life Ins. Co, v. Stuckey, 194 S.C. 469, 10 S.E.2d 3, (1940), shortened to "Metro. Life" in the unpublished opinion, was cited for the proposition that a "tenant" will never be able to oust the magistrate of jurisdiction [in summary ejectment proceedings] by "merely" denying the landlord's title; if the unknown author of the opinion in this case had looked just a little more closely she, or he would have come across the more relevant case of Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244, (1897), where the South Carolina Supreme Court ruled that if one is a defendant in possession of property *under a contract to purchase,* such a defendant cannot be ejected in a summary proceeding. And to be more particular, Carlisle v. Prior is cited in the Metropolitan Life Ins. Co. case relied on by the author of the unpublished opinion for the present case being appealed.

2. Petitioner shows by the following citations to the the Record, the pleadings, the Briefs, and the records maintained by the State of South Carolina, that petitioner is not a *tenant* but in fact is a purchaser under a contract to purchase land:

(a) The contract itself, maintained by the South Carolina Secretary of State Office, which ironically is stored in the same building where the Court of Appeals presently sits, and is shown in the Record, R.pp. 362-367, R.pp. 614-619, with the South Carolina File ID# 111229-1557344 R.p. 363.

(b) The sworn denial by petitioner that petitioner (defendant below) is a "tenant," R.p. 603, and R.p. 603-C, with the verification on R.p. 609, along with the required cost bond and related documents, R.pp. 610-611.

(c) The circuit court transcript R.pp 719-750.

(d) Appellant Brief in the present case, pages 1-9, and page one of the Reply Brief.

3. Metropolitan Life Ins. Co. cited by the Court of Appeals in its decision in the present case just does not square Carlisle v. Prior which was cited in Metropolitan Life to differentiate between sharecropping contracts and the year to year tenancies usual with sharecropping; instead of other types of contracts, including land sales agreements where a defendant is in possession under a mortgage type of agreement with the ultimate end of purchase instead of a year to year contract between a land owner and someone who agreed to be his sharecropper.

4. Summary eviction is a tool invented for share-cropping, Metropolitan Life *was* a sharecropping case; in the facts recited in Metropolitan the defendant in Metropolitan admitted the delivery of the landowner's "share" of the cotton produced on the farm during year 1939 -- this constitutes "sharecropping" but summary eviction for *buyers* of land has never been the law in South Carolina, and has certainly not been so since the issue was clarified by the Supreme Court in Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244, (1897).

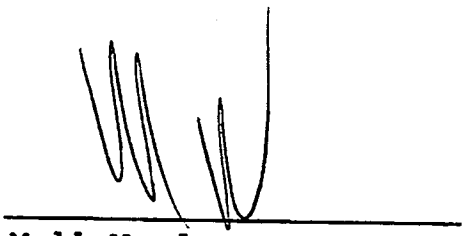
5. Appellant and petitioner has used conventional South Carolina court cases and statutes to show that the decision rendered in the present case is probably incorrect. In addition appellant continues to appeal on the constitutional grounds addressed by the Court of Appeals, and marked as "2." and "3." by the Court of Appeals. The constitutional issues were documented in the Briefs, and the transcripts where the circuit court did rule on the issue and the parts that were not clear were addressed in the Rule 59(e) motion which the trial court ignored. All parts of the Record, the Briefs, all papers filed in the Court of Appeals concerning the present case are hereby incorporated into this Petition for Rehearing.

Conclusion

Petitioner asks that the Court of Appeals reconsider the decision in Case Number 2014-UP-076.

Respectfully submitted,

This 19 day of March, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

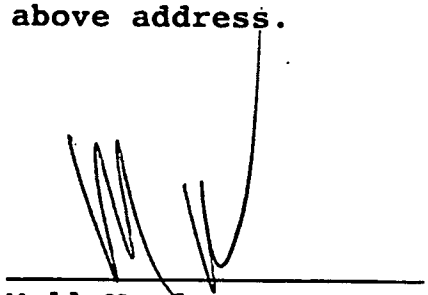
CERTIFICATE OF SERVICE

I hereby certify that I have served the respondent(s) by serving the Counsel of Record for respondent(s) to wit:

B. Michael Brackett
Moses Koon & Brackett
P.O. Box 100261
Columbia, SC 29202

by placing copies of the within and foregoing Petition for Rehearing in the U.S. Mail with sufficient postage addressed to Mr. Brackett using the above address.

This 19 day of March, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

March 19, 2014

Re: Breakfield v. Woods
Court of Appeals case Number: 2012-212318

Attached is an original, and six copies of a Petition for Rehearing in the above case, with one set of copies being un-bound. And the twenty-five dollar fee. Please file with the other papers in the above case.

Thanks,

Mell Woods

Copy of this note to Mr. Mike Brackett

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

v.

Mell Woods ..... Appellant.

Respondent's Return to Appellant's
Petition for Rehearing

This Return is submitted pursuant to Rule 240(e), SCACR. The purpose of a petition for rehearing is not to have the case or order tried or argued to the appellate court a second time. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed. 2002); Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Appellant-Petitioner (hereafter "Appellant") must demonstrate that the appellate court has overlooked or misapprehended Appellant's arguments. Id. Additionally, the Court will not grant rehearing to consider points not presented in the briefs and arguments raised in the

appeal and that is now being raised for the first time by the petition for rehearing. Darby v. Southern Ry. Co., 194 S.C. 421, 10 S.E.2d 465 (1940.) By this standard, the petition should be denied.

1. Appellant asserts that the Court relied on the case of Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940) for the principle of law that a tenant cannot oust the magistrate of jurisdiction in summary ejectment proceedings by the assertion of superior title in himself, but overlooked and did not cite or apply the law in Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244 (1897). Neither party cited the Metropolitan Life Ins. Co. or Carlisle opinions in their appellate briefs, however, Respondent cited Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) for the same principle of law found in Metropolitan.

Appellant argues that Carlisle holds that a defendant in an ejectment proceeding who is in possession of the premises under a contract to purchase places the title of the real property in question, and he cannot be ejected in a summary proceeding. Appellant herein claims title to the real property in dispute and alleges that he is an owner and not a tenant, and therefore, the magistrate's court did not have subject matter jurisdiction.

Appellant argument fails for three reasons: (1) the Carlisle v. Prior argument was not made in Appellant's briefs previously filed in this appeal and cannot be raised for the first time in a petition for rehearing, Darby v. Southern Ry. Co., 194 S.C. 421, 10 S.E.2d 465 (1940.) (2) the magistrate's court has jurisdiction to first determine if a landlord-tenant relationship exists. On this subject, from Respondent's Final Brief:

The case of Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) is

dispositive. It addresses the Magistrate's Court's jurisdiction in a summary ejectment proceeding when the Defendant-alleged tenant denies that the plaintiff is the owner of the premises and denies that the relation of landlord and tenant exists.

The relevant holdings of the Stewart-Jones Co. opinion are:

- the issue of the plaintiff's title cannot properly arise in a summary ejectment proceeding because a summary ejectment proceeding is one that requires a landlord and tenant relationship, and a tenant is estopped by the relationship to deny his landlord's title;
- it is essential to a summary ejectment proceeding that the relation of landlord and tenant exist, and the existence of the conventional relation of landlord and tenant is a prerequisite to the assumption and exercise of jurisdiction by the magistrate;
- therefore, the magistrate must first determine its jurisdiction by determining as a fact whether the relation of landlord and tenant exists;
- if the relation of landlord and tenant exists, the tenant is estopped to deny plaintiff-landlord's title and may not inject that issue to deprive the magistrate of jurisdiction;
- if the relation of landlord and tenant does not exist, the Magistrate Court has no jurisdiction to proceed with an ejectment action.

Therefore, had the Appellant chosen to proceed in Magistrate's Court rather than pursuing an appeal, the Magistrate's Court would first have been required to determine if the relationship of landlord and tenant exists between the parties, which itself, would determine the Magistrate's Court's jurisdiction.

(3) The issue of Appellant's claim to title pursuant to a contract to purchase was

decided adversely to the Appellant in this Court's unpublished opinion (2014-UP-010) in Appellate Case No. 2012-212330. Appellant's claim in that case was that he purchased the land (the same lot that is involved in the above-captioned eviction case) from Reba Hinson who had received fee simple title to the land pursuant to her deceased husband's last will. However, various Hinson family members asserted that Reba Hinson had received only a life estate in the land from her husband's last will, and they claimed title to the land as remaindermen to Reba Hinson's life estate. The trial court granted summary judgment to the Hinson family members, and in 2014-UP-010 this court affirmed the trial court. The opinion includes the following: "Therefore, because Reba Hinson inherited a life estate under Levie Hinson's will, any interest Woods acquired in the property from Reba Hinson extinguished when Reba Hinson died because 'a life tenant can convey no more than his life estate.'" [1]

2. In his ground no. 2, Appellant recounts his view of the evidence before the magistrate's court and the circuit court, sitting as an appellate court, that shows that he was an owner and not a tenant. However, this particular issue (owner or tenant) has never been decided by a lower court in this case and was not an Issue on Appeal presented to or decided by this Court in it's opinion, 2014-UP-076.[2] This issue cannot be considered now for the first time on a petition for rehearing.

---

[1] Appellant has filed a Petition for Writ of Certiorari with respect to 2014-UP-010 that has not yet been ruled on.

[2] Nevertheless, as addressed above, it is an issue recently decided adversely to Appellant by 2014-UP-010 in Appellate Case No. 2012-212330.

3. In ground no. 3 Appellant revisits Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10

S.E.2d 3 (1940) and Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244 (1897), with the argument that sharecropping contracts, such as was addressed in Metropolitan, are different from the contract to purchase mentioned in Carlisle. Respondent incorporates herein by reference the argument set forth above in response to ground no. 1. Respondent also asserts that Appellant's contract to purchase argument, from Carlisle, is not relevant and no longer applies due to the Court's opinion in 2014-UP-010 in Appellate Case No. 2012-212330. Appellant is neither an owner with fee simple title nor a purchaser with equitable title.

4. In ground no. 4, Appellant again attempts to distinguish the case of Metropolitan Life Ins.

Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940) from the facts of the above-captioned case. Respondent's argument in no. 3 above is incorporated herein by reference.

5. In ground no. 5, Appellant states that he "continues to appeal on the constitutional grounds

addressed by the Court of Appeals, and marked as "2." and "3." by the Court of Appeals" without stating with particularity what the Court overlooked or misapprehended in the opinion. A petition for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the court. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed. 2002), citing Rule 221(a), SCACR. Without particulars, there is nothing to be reconsidered.

CONCLUSION

Appellant-Petitioner has not demonstrated that the points he raised in his appeal to this Court were overlooked or misapprehended in the Court's unpublished, per curiam Opinion. At best, he has only shown that he disagrees with the decisions announced therein. The Petition for Rehearing should be denied.

B.Michael Brackett, Esquire Bar no. 838
Moses & Brackett, PC
1333 Main Street, Suite 260
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
mbrackett@mkb-law.com
Attorney for Respondent

April 3, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

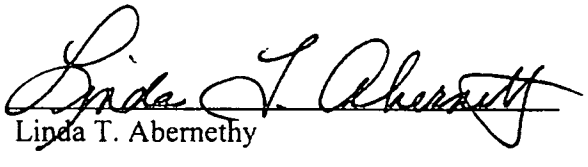
v.

Mell Woods ..... Appellant.

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Return to Appellant's Petition for Rehearing** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 3rd day of April, 2014 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se



Linda T. Abernethy

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact . . . . Respondent,

v.

Mell Woods . . . . . Appellant.

Rule 240(f) SCACR Reply

Court of Appeals Tracking Number 2012-212318

1. Quoting Mr. Brackett's own case, Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) which Mr. Brackett claims to have the same language as Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940), and as used by the un-named author of the un-published opinion in number 2014-UP-076 to support the contention that: "Otherwise any tenant, by merely denying the landlord's title or by asserting superior title in himself or another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute.") -- Yes that is the language of Metropolitan *but the language, word for word came straight from* Stewart-Jones Co. v. Shehan, as above and Mr. Brackett's favorite case. The reason that they used Metropolitan instead of Stewart-Jones Co. is the fact that in the very next sentence in Stewart-Jones Co. is the admonition, directly after (the plain and salutary object of the statute) that: "On the other hand, it is equally apparent that by merely asserting the claim that another is in possession of real estate as his tenant a party may not be permitted to use the summary statutory proceeding to eject the true owner of the premises or one in possession under the true owner." *Carlisle v. Prior, supra.*

2. Stewart-Jones Co. v. Shehan also held that the 1895 Constitution *limited* the jurisdiction of the magistrates, and that a magistrate court has no jurisdiction where the title to real estate is in question and further that any cases to the contrary were decided before the adoption of the 1895 Constitution.

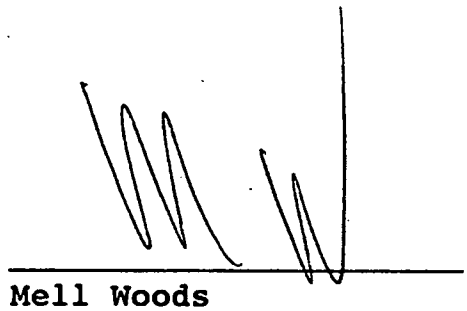
3. The use of Metropolitan Life Ins Co. as it has been used by the Court of Appeals in this case, just does not square with Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244. (1897).

4. The case cited by Mr. Brackett (Stewart-Jones) actually supports the position of appellant and petitioner Mell Woods, if the material parts discussed in the first paragraph above are included and applied.

Petitioner asks that the Court of Appeals please revisit this matter in light of the cases cited in the Petition, and especially the one cited by Mr. Brackett, Stewart-Jones.

Respectfully submitted,

This ten day of April, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

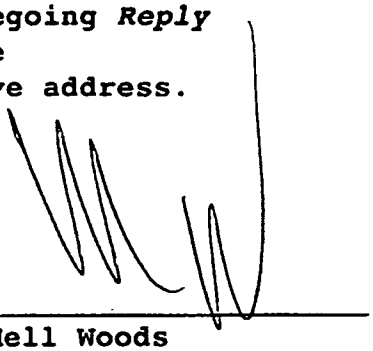
CERTIFICATE OF SERVICE

I hereby certify that I have served the respondent(s) by serving the Counsel of Record for respondents(s) to wit:

B. Michael Brackett
Moses Koon & Brackett
P.O. Box 100261
Columbia, SC 29202

by placing copies of the within and foregoing *Reply* in the U.S. Mail with sufficient postage addressed to Mr. Brackett using the above address.

This ten day of April, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

The South Carolina Court of Appeals

Robert H. Breakfield, as attorney-in-fact, Respondent,

v.

Mell Woods, Appellant.

Appellate Case No. 2012-212318

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

John D. Geathers J.

James E. Lockemy J.

Columbia, South Carolina

cc:
Mell Woods
B. Michael Brackett, Esquire

FILED
4/24/14