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STATE OF SOUTH CAROLINA)
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 COUNTY OF RICHLAND)
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)
 LARRY A. YATES, L. A. YATES and)
 Alpha One Marketing, LLC,)
 Plaintiffs,)
)
 vs.)
)
 EAST RICHLAND COUNTY PUBLIC)
 SERVICE DISTRICT,)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT
 DOCKET NO.: 2013-CP-40-03538 Appeals

**ORDER GRANTING
 SUMMARY JUDGMENT TO DEFENDANT**

JEANETTE H. NORRIS
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 RICHLAND COUNTY
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This matter came on to be heard by me on October 9, 2014, pursuant to a Motion for Summary Judgment filed by the defendant. The defendant was represented at the hearing by its attorney, H. Ronald Stanley, Esquire, of the Richland County Bar. The plaintiff, Larry A. Yates, a/k/a L. A. Yates, appeared *pro se* representing himself and his corporate entity, Alpha One Marketing, LLC.

The defendant, East Richland County Public Service District, is a special service district which provides sewer service to commercial and residential customers in the northeast section of Richland County. The plaintiff, Larry A. Yates, is the owner of a house and lot located at 109 Marbun Road, Columbia, South Carolina, which property is serviced by the East Richland County Public Service District.

The above entitled action was commenced by the plaintiffs on June 17, 2013 with the filing of a summons and complaint wherein the plaintiffs alleged that the defendant, East Richland County Public Service District, had intentionally and knowingly caused raw sewage from the toilet of the property at 109 Marbun Road to overflow onto the

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floors of the said property and into the front yard of the property thereby resulting in damages to the said property for which the plaintiffs alleged they were entitled to be compensated.

The defendant filed its Motion for Summary Judgment alleging that there was no evidence in the record to establish any material issue of fact and that the defendant was therefore, entitled to summary judgment as a matter of law. In support of its Motion for Summary Judgment, the defendant filed with the court the affidavit of its Executive Director, Larry Brazell, wherein Mr. Brazell stated that the property at 109 Marbun Road, Columbia, South Carolina, was purchased by the plaintiff, L. A. Yates, on May 30, 2012 from Louie B. Lighty and Fredericka Lighty. Mr. Brazell stated further that the property at 109 Marbun Road is within the service territory of East Richland County Public Service District and that East Richland, therefore, provides sewer service to the said property. According to Mr. Brazell, on or about January 5, 2010, the sewer service account of the then owners of the property at 109 Marbun Road, Louie B. Lighty and Fredericka Lighty, became delinquent and, subsequently, on June 14, 2010, East Richland disconnected service to the said property and imposed a disconnect fee of \$300.00 in addition to the delinquent service charges of \$194.40 for a total delinquent charge of \$494.40. When title to the property at 109 Marbun Road was obtained by the plaintiff, L. A. Yates, on May 30, 2012, sewer service to the property was still in a disconnected status and when Mr. Yates applied for the service to be reconnected, he was advised that the delinquent charges owed by Mr. & Mrs. Lighty in the amount of \$494.40 which constituted a lien on the subject property, would have to be paid before the sewer service to the said property could be reconnected. Mr. Yates refused to pay

the delinquent charges to have the sewer service reconnected and, thereafter, according to the complaint, Mr. Yates rented the property and allowed his tenants to use the toilets located in the Marbun Road property although the said property was not connected to the public sewer service.

The defendant maintains that since the property at 109 Marbun was not connected to the public sewer service, the plaintiff should not have allowed his tenants to use the bathroom facilities located in the Marbun Road property and that if any sewage overflowed onto the floors and into the yard of the Marbun Road property, the overflow of sewage occurred because the sewer pipes on and within the boundaries of the property at 109 Marbun Road were not connected to the main sewer line maintained by the defendant, East Richland County Public Service District. In other words, the defendant maintains that any damages suffered by the plaintiffs, if any, was caused by the plaintiffs' own action in renting the Marbun Road property and allowing the tenants at the said property to use the bathroom facilities without the said property being connected to the public sewer service.

Additionally, the defendant maintains that it had a right to refuse sewer service at 109 Marbun Road for as long as the delinquent sewer charges remained unpaid pursuant to Section 6-11-1240 of the South Carolina Code of Laws, 1976, as amended.

This section provides that:

"all sewer service charges imposed and.... not paid when due and payable shall be and constitute a lien upon the real estate to which the sewer service concerned relates so long as the sewer service charges remain unpaid. In addition to such other rights and remedies as may be available to the commission in law or in equity for the collection of sewer service charges, the lien may be enforced by the commission in the same manner and fashion as the lien of property taxes on real estate. The lien herein provided shall be superior to all other liens except liens for unpaid property taxes."

This section goes on to state that “the method provided in this article for the enforcement of the collection of past due sewer service charges shall not be the exclusive method of enforcing such collection and the commission is fully empowered to enforce the collection of any such sewer service charges in any other lawful manner in all or any part of the district...” Under the foregoing section, it appears clear that the defendant was within its rights to deny sewer service to the Marbun Road property so long as the delinquent sewer charges in the amount of \$494.46 remained unpaid.

Finally, the defendant provided to the court the supplemental affidavit of Larry Brazell which states that the sewer service to the property at 109 Marbun Road, Columbia, South Carolina, was reconnected on April 7, 2014, when the past due sewer charges in the amount of \$494.40 were paid by the tenant of the property, Reynalda Moreno.

Upon due consideration of the arguments of both parties together with consideration of the affidavits of Larry Brazell which were filed by the defendant, this court finds and concludes that there is no evidence in the record to show that the defendant permitted any raw sewage to flow onto the floors or into yard of the property at 109 Marbun Road, Columbia, South Carolina. This court finds and concludes that that if any raw sewage did flow onto the floors and into the yard of Marbun Road property, the presence of the sewage on the floors and in the yard of the said property was caused by the plaintiffs through their actions in renting the said property and then allowing the tenants to use the bathroom facilities in the said property knowing that the property was not connected to the public sewer.

This court further finds and concludes that under Section 6-11-1240 of the South Carolina Code of Laws, 1976, as amended, the defendant, East Richland County Public Service District, was within its rights to deny sewer service to the property at 109 Marbun Road, Columbia, South Carolina, until the delinquent charges in the amount of \$494.40 were paid in full.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that defendant's Motion for Summary Judgment be and is hereby granted.

AND IT IS SO ORDERED.



D. Craig Brown
Circuit Court Judge

Florence, South Carolina

Dated: 10-17-14