

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

75252

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

RECEIVED

MAR 05 2015

SC Court of Appeals

Derick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

PETITION FOR REHEARING

The Appellant, through his undersigned attorney, hereby petitions this Court to rehear this matter, pursuant to Rule 221 (a), SCACR.

This Court should rehear this matter, first, because the Court decided this case without oral argument, despite Appellant's motion explicitly requesting oral argument. Attached to this Petition is a copy of the letter sent to the Clerk of Court with the Appellant's Motion for Oral Argument, as well as a copy of the letter sent to Respondent's counsel and a Certificate of Mailing. Upon inquiry into what

happened with Appellant's motion, the Clerk of Court's staff informed Appellant's attorney that there was no such motion in the file. However, the check for the filing fee which was attached to Appellant's motion was endorsed and deposited (*see* attached copy of check). Therefore, it appears that the Court received Appellant's motion requesting oral arguments in this matter, but failed to rule on the motion and instead made its decision without the aid of oral argument. As such, the Appellant requests the Court grant a rehearing so that the parties can be heard, as requested in their motion.

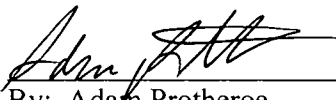
Second, oral argument would benefit the Court because the Court mistakenly characterized this case as a breach of contract case for the recovery of personal property when the action that Respondent filed was not a breach of contract action but one for summary ejectment of a tenant. This Court's misunderstanding is evidenced by the fact that the Court's decision to affirm the lower court's ruling that the Magistrate had jurisdiction over this case cites S.C Code Ann. § 22-3-10(11) (2007), which gives Magistrates jurisdiction to hear cases where a party seeks to "recover the possession of personal property" which is worth less than \$7,500. Under S.C Code Ann. § 22-3-10(11), the Magistrate clearly would have had jurisdiction over a *claim and delivery or breach of contract* action had Respondent chosen to file one. However, Respondent instead filed a *summary ejectment* action claiming that the Appellant was a tenant who failed to pay his rent. By doing so, the Respondent requested that the Magistrate take jurisdiction of the case not under S.C Code Ann. § 22-3-10(11), but under S.C Code Ann. § 22-3-

10(10) and S.C Code Ann. § 27-37-10. A necessary prerequisite to the Magistrate's exercise of jurisdiction in a summary ejectment action is the existence of a landlord-tenant relationship. Stewart-Jones Co. v. Shehan, 127 S.C. 451 (1924). It is undisputed that the parties had a contract for sale of the mobile home at issue in this case. Thus, the relationship of landlord and tenant did not exist and, as a result, the Magistrate did not have jurisdiction over Respondent's summary ejectment action.

Finally, this case involves important legal issues with regard to (1) the manner in which the Magistrate's Court takes subject matter jurisdiction over an action for summary ejectment, and (2) when and how the Magistrate's Court can grant the unique remedy of summary ejectment. The last reported cases to speak directly to these issues are from 1924 and 1954, long before the South Carolina Residential Landlord-Tenant Act ("SCRLTA") was passed. Yet, data from Court Administration reflects that over 290,000 summary ejectment cases were disposed of statewide in 2013 and 2014 combined. Magistrates are routinely called upon to determine the scope of their jurisdiction under the summary ejectment statute and it is important for the Court to engage in dialogue with the parties so as to fully understand the affects of this Court's decision on Magistrates and on litigants, most of whom appear *pro se* in these matters.

Appellant respectfully requests this Court grant this petition for rehearing and schedule this case for oral argument.

SOUTH CAROLINA LEGAL SERVICES



By: Adam Protheroe
S.C. Bar No. 78442
D. Elliott Tait
S.C. Bar No. 100772
Attorneys for Appellant
2803 Carner Ave.
N. Charleston, SC 29405
(843) 266-2165

Columbia, South Carolina
March 5th 2015

RECEIVED

MAR 05 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

Derick Ward,

Appellant,

v.

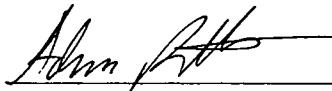
Margaret H. Ashbaugh,

Respondent.

CERTIFICATE OF MAILING

I, Adam Protheroe, do hereby certify that I have this date served one (1) copy of the PETITION FOR REHEARING upon the Respondent through her counsel by causing said copy to be deposited with the US Postal Service, first class postage prepaid, properly affixed hereto and addressed as follows:

Karl A. Folkens
PO Box 6139
Florence, SC 29502



Adam Protheroe
Attorney for Petitioner
Bar No. 78442
P.O. Box 1646
Orangeburg, SC 29116
(803) 533-0116

Signed in Columbia, South Carolina

Mary S. [Signature], 2015



Adam Protheroe, Esq.
adamprotheroe@sclegal.org

126 Associate Parkway Phone: (803) 533-0116
P.O. Box 1646 Fax: (803) 534-5556
Orangeburg, SC 29116
www.sclegal.org | www.lawhelp.org/sc | www.probono.net/sc

March 5, 2015

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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

Dear Ms. Kitchings:

Please find enclosed the original and seven copies of a Petition for Rehearing in the above-referenced case along with the original and one copy of the Certificate of Mailing and a \$25.00 filing fee. Please file the original and 6 copies of the Petition and return the seventh clocked and marked "true copy" to me along with the copy of the Certificate similarly marked. Feel free to contact me if you have any questions about the enclosed materials. By copy of this letter I am serving the documents referenced herein on opposing counsel.

With Kind Regards, I am

Sincerely,

Adam Protheroe
South Carolina Legal Services
P.O. Box 1646
Orangeburg, SC 29116
Attorney for Appellant

Enclosures: as stated

CC: Mr. Karl A. Folkens
P.O. Box 6139
Florence, SC 29502
Attorney for Respondent



053101121
09/03/2014
000002906797721

This is a LEGAL COPY of your check. You can use it the same way you would use the original check

0130001381 09/03/2014
804273734

00004572
9143

4393

SCLS-CHARLESTON
PETTY CASH ACCOUNT
2803 DUNDAS AVENUE
N. CHARLESTON, SC 29405

BB&T
SOUTH CAROLINA
67-160-532

8/27/2014

PAY TO THE ORDER OF: South Carolina Court of Appeals \$25.00

Twenty-Five and 00/100 DOLLARS

South Carolina Court of Appeals

MEMO: Melton Fee/Derrick Ward/del

VOID AFTER 90 DAYS

[Signature]
AUTHORITY SIGNATURE

73394

Do not endorse or write below this line.

053101121 09/03/2014
000002906797721

ENDORSE HERE

For Deposit Only
SC State Treasurer's
General Deposit Account
(SCA Judicial Department)

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Seq: 22
Batch: 307699
Date: 09/03/14

4102738560 58E1000110 <



**South Carolina
Legal Services**

Balancing the Scales of Justice

320 S. Coit Street, Florence, South Carolina 29501
Phone: (843) 413-9500 Fax: (843) 415-1013
www.scllegal.org | www.lawhelp.org/sc | www.probono.net/sc

August 29, 2014

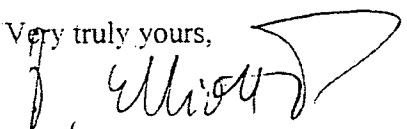
Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, South Carolina 29211

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

Dear Ms. Kitchings:

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

Very truly yours,


D. Elliott Tait
Staff Attorney

Enclosures





**South Carolina
Legal Services**

Balancing the Scales of Justice

320 S. Coit Street, Florence, South Carolina 29501
Phone: (843) 413-9500 Fax: (843) 413-1013
www.sclegal.org | www.lawhelp.org/sc | www.probono.net/sc

August 29, 2014

Karl A. Folkens
PO Box 6139
Florence, SC 29502

Re: Ashbaugh v. Ward
Case No.: 2013CV2110102242

Dear Mr. Folkens:

Enclosed please find a copy of the Motion and Certificate of Mailing.

Yours very truly,

D. Elliott Tait
Staff Attorney

Enclosures



South Carolina
BAR FOUNDATION
Lawyers. Building Justice.



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

RECEIVED

MAR 05 2015

SC Court of Appeals

Derick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

CERTIFICATE OF MAILING

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

Karl A. Folkens
PO Box 6139
Florence, SC 29502



D. Elliott Tait
Attorney for Petitioner
Bar No. 100772
2803 Carner Ave
N. Charleston, SC 29405
(843) 720-7044 ext. 2165

Signed in N. Charleston, South Carolina
8/29, 2014