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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Case No.: 2014-CP-40-5976
Appellate Case No.: 2016-000505

Tracy Fulmore Appellant,

v.

Julie Smith..... Respondent.

MOTION TO DISMISS THE APPEAL

Respondent, Julie Smith, hereby moves to dismiss with prejudice this appeal because the Appellant, Tracy Fulmore, failed to timely perfect the appeal within thirty days after the magistrate announced his ruling from the bench.

Appellant filed this action in Magistrates Court on July 3, 2014. Respondent filed an answer and counterclaim on July 15, 2014. Appellant replied to Respondent's counterclaim on July 28, 2014. Magistrate Judge Andy Surles tried the dispute on August 27, 2014. Return of Appeal. (Ex. A) At the conclusion of the bench trial and in the presence of both Appellant and Respondent, Judge Surles announced a judgment in favor of Respondent, finding that the Appellant breached a commercial lease and awarded Respondent \$7,500.00 minus \$2,200.00 already received from the Appellant under the terms of the lease. Magistrate Hearing Transcript p. 26, l. 7 – p. 30, l. 6. (Ex. B)

Appellant did not file a motion for a new trial. Appellant filed a Notice of Civil Appeal on September 29, 2014. Notice of Civil Appeal. (Ex. C). Appellant served Respondent with the Notice of Civil Appeal on October 2, 2014. Proof of Service By Mail. (Ex. D)

Circuit judges may hear appeals from magistrates' courts and municipal courts in the Court of General Sessions and the Court of Common Pleas, upon notice as required by law being given for the hearing of such appeals. S.C. Code Ann. § 14-5-340 (1976). S.C. Code Ann. § 18-7-20 dictates the requirements for when and how a notice of appeal to circuit court must be taken:

The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, **except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary**, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (2014) (emphasis added). Rule 18 of the South Carolina Magistrates Court Rules similarly dictates:

All appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered. **If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced.**

SC R MAG CT Rule 18(a) (emphasis added).

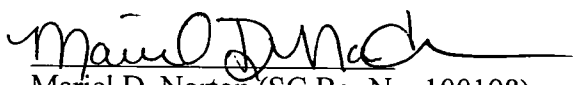
Because the court announced his ruling in the presence of the parties, the Appellant had thirty days from that day to file the Notice of Appeal. The time for the Appellant to appeal ran on Friday, September 26, 2014, thirty days after the oral ruling. Appellant's Notice of Civil Appeal was filed with the Richland County Clerk of Court on

September 29, 2014. Notice of Civil Appeal. (Ex. C) As a result, Appellant's Notice of Civil Appeal from the magistrate court's judgment was untimely. Moreover, Appellant did not serve the Notice of Civil Appeal on Respondent until October 2, 2014. Proof of Service by Mail. (Ex. D) Pursuant to Rule 18 of the South Carolina Magistrates Court Rules, Appellant was required to both serve and file his notice of appeal within thirty days of Judge Surles' announcement of his judgment on August 27, 2014, or by September 26, 2014.

In South Carolina, "as a general rule if an inferior court or tribunal has no jurisdiction of a cause, an appeal from its decision confers no jurisdiction on the appellate court" *Senn v. Spartanburg Cty.*, 192 S.C. 489, 7 S.E.2d 454, 456 (1940); *see also* 15 S.C. Jur. Appeal and Error § 72 (2016) ("If the circuit court did not have jurisdiction over the appeal, the Supreme Court did not have jurisdiction over the appeal from the circuit court."). Because the requirement of service of the notice of appeal is jurisdictional, the appellate court lacks jurisdiction to consider this appeal. *Elam v. S. Carolina Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004); *see also State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) ("[T]his Court has held the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction"). Since Appellant failed to both timely serve and file his Notice of Civil Appeal from the magistrate court's judgment, the circuit court did not obtain appellate jurisdiction over the case. As a result, Appellant's subsequent Notice of Appeal from the circuit court's decision failed to confer appellate jurisdiction to this Court.

For these reasons, Respondent asks this Court to dismiss this appeal with prejudice. Respondent respectfully requests that the times set forth in the applicable rules

and this Court's Order filed August 4, 2016, concerning the filing of Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal, be stayed pending this Court's ultimate decision on this Motion pursuant to Rule 263(b), SCACR. Respondent respectfully requests that the thirty (30) day period granted in this Court's aforesaid Order be given from the date of the final disposition of this Motion, if this Motion is not granted.


Mariel D. Norton (SC Bar No. 100198)
Catharine Garbee Griffin (SC Bar No. 9821)
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
(803) 779-3423
Attorneys for Respondent

August 16, 2016

Other Counsel of Record:

Charles T. Brooks, III, Esquire
The Brooks Law Office, LLC
P.O. Box 3512
Sumter, SC 29151
(803) 418-5709
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PONTIAC MAGISTRATE'S COURT

CP NUMBER 2014CP4005976
CASE NUMBER: 2014CV4010900510

Tracy Fulmore

PLAINTIFF,

VS.

Julie Smith

DEFENDANT

RETURN OF APPEAL

RICHLAND COUNTY
FILED
2014 NOV - 7 PM 1:23
JEANETTE W. MOORE
C.C.P. & G.S.

This appeal arises from Pontiac Magistrate civil case number 2014CV4010900510, filed July 3, 2014 and heard August 27, 2014 during a term of Civil Non Jury Court. Tracy Fulmore, Plaintiff and Defendant, Julie Smith appeared without attorneys. No motions or objections rose during trial.

Case Summary;

Plaintiff, Mr. Fulmore filed to recover twenty two hundred dollars plus filing fees from Defendant, Ms. Smith. Ms. Smith answered and filed a counter claim seeking seventy five hundred dollars for cost associated with the alleged breach of a lease agreement.

Mr. Fulmore wanted to lease a building owned by Ms. Smith for a barbershop business. After several conversations an agreement was reached and a lease agreement signed. In May 2014 Mr. Fulmore and Ms. Smith entered into a two year lease which would begin on June 1, 2014. Before the start date Mr. Fulmore notified Ms. Smith he would not go forward with the lease and wanted his money returned.

Mr. Fulmore states that at the time of signing in early May he did not get a signed copy of the lease and did not get a key to the building. He further states that during further conversations he got a bad feeling about Ms. Smith saying she would say one thing but do another and because of this discomfort he did not want to go forward. He also stated he had never entered into a lease where he did not get a key and copy of the lease at signing.

Ms. Smith counters, she did not give a copy of the lease at signing but did scan and email a copy that afternoon. The lease did not start for a month and Ms. Smith's daughter still had items in the building that needed to be removed and Ms. Fulmore still needed to provide documents for liability insurance and switch the power into his name. Several weeks before June Ms. Smith tried to arrange a meeting to give Mr. Fulmore a key.

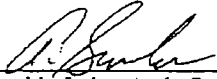
In June Mr. Fulmore contacted an attorney who wrote a letter stating Mr. Fulmore wanted his money back and on June 7, 2014 Mr. Fulmore filed a summons and complaint to recover the funds,

Court Conclusion:

The testimony presented by the parties showed that both parties agreed on key issues. Both parties wanted to enter into an agreement and both parties would benefit from the agreement. Mr. Fulmore sign a two year lease in early May and gave Ms. Smith a security deposit of twelve hundred dollars and the first month's rent of one thousand dollars. While Ms. Smith did not give a written copy of the lease at signing she did scan and email a copy later that day. Even if she did not provide a copy of the lease for a day or two, that would not justify a breach in the contract.

Both parties knew there were items in the building that needed to be removed and actual availability would not take place immediately. The lease start date was June 1st. After hearing the testimony the Court could not find sufficient justification for Mr. Fulmore to not honor the agreement. Ms. Smith sought seventy five hundred dollars to cover her loss because the building was not leased. She demonstrated she actively sought to lease the space. She did not seek compensations for the full amount of the breach.

The Court granted Ms. Smith the amount requested minus the security deposit and first month's rent already received.



The Honorable Judge Andy Surles
Pontiac Magistrate

This 17th day of October 2014

1 **CLERK:** Tracy Fulmore versus Julie Smith.
2 **THE COURT:** Yes, sir. Would you tell me your name,
3 please?
4 **MR. FULMORE:** Tracy Fulmore.
5 **THE COURT:** All right. Mr. Fulmore, it's good to
6 have you. And, ma'am, your name please?
7 **MS. SMITH:** Julie Smith.
8 **THE COURT:** All right. Ms. Smith, it's good to have
9 you. And I'd like to ask you, both of you to
10 please raise your right hand, and do you
11 solemnly swear or affirm that the testimony
12 you'll present to the Court will be the truth,
13 the whole truth, and nothing but the truth so
14 help you God?
15 **MS. SMITH:** Yes, sir.
16 **MR. FULMORE:** Yes, Your Honor.
17 **THE COURT:** Okay. Please have a seat. And, Mr.
18 Fulmore, you are -- you filed this action, and
19 I believe there's been a counterclaim filed
20 with regards to -- along with your answer, and
21 he answered the counterclaim. So we'll start
22 with the primary, primary claim. So, Mr.
23 Fulmore, what, what can you tell me? What are
24 you seeking from this Court?
25 **MR. FULMORE:** I'm seeking the amount of \$2200 and \$80

1 for court costs. Those are the checks that I
2 gave to Mrs. Smith on May the 9th for the space
3 at 323 Long Court Lane, that I was trying to
4 lease. You want me to keep going?

5 **THE COURT:** Okay. So what else can you tell me about
6 it? You gave her checks for \$2200?

7 **MR. FULMORE:** Yes, sir.

8 **THE COURT:** Why did you give her those checks?

9 **MR. FULMORE:** That's what she requested. She
10 requested a \$1200 security fee and \$1000 first
11 month's rent. And we had agreed on \$1000 a
12 month rent for the first six months of the
13 contract.

14 **THE COURT:** Uh-huh.

15 **MR. FULMORE:** Yeah.

16 **THE COURT:** Okay, so you were entering into a lease
17 agreement with her?

18 **MR. FULMORE:** Yes, sir.

19 **THE COURT:** And, as I recall, wasn't this a two-year
20 agreement or something like that?

21 **MR. FULMORE:** That's what she's got on the paper, but
22 we discussed a one-year agreement, but she did
23 write two on the contract.

24 **THE COURT:** All right. And did you sign the lease
25 agreement with her?

1 MR. FULMORE: I did, sir.

2 THE COURT: All right. So you signed the lease

3 agreement and, in accordance with the terms of

4 that lease agreement, you were to pay her \$1200

5 down as a deposit; is that correct?

6 MR. FULMORE: That was a security fee.

7 THE COURT: A security fee, okay. And then you were

8 going to pay her \$1000 a month?

9 MR. FULMORE: Correct. But I gave her ---

10 THE COURT: And you gave her the first month's rent?

11 MR. FULMORE: That was the first month's.

12 THE COURT: Okay. And then what happened?

13 MR. FULMORE: Then she -- well, first of all, at the

14 lease signing agreement -- we had a couple of

15 phone calls, I can't remember exactly how many,

16 that I was supposed to lease the place for

17 \$1000 a month. And she said that once I signed

18 the lease that she would give me a key to the

19 lease space and a copy of the contract. And

20 she did neither of those on the day of the

21 signing.

22 THE COURT: Do you have a copy of the lease

23 agreement?

24 MR. FULMORE: Yes, sir. I've got all the paperwork.

25 THE COURT: All right. Well, show it to her first.

1 Ma'am, is this --

2 MR. FULMORE: This is her complaint.

3 THE COURT: --- is this the lease agreement that

4 y'all entered into?

5 MS. SMITH: It's going to take me a minutes, I'm

6 sorry.

7 THE COURT: That's all right. We've got all day.

8 Just take your time, no rush. I just want to

9 make sure that's the right contract that I'm

10 reviewing.

11 MR. FULMORE: That's her copy, so that's ---

12 MS. SMITH: I have the original here also.

13 THE COURT: Either way.

14 MS. SMITH: Okay. Yes, sir, it looks like the same

15 document.

16 THE COURT: All right. Do you have any objections to

17 my reviewing the ---

18 MS. SMITH: Do you want ---

19 THE COURT: --- this agreement? Either one of you.

20 MR. FULMORE: I'll give it -- it don't matter.

21 MS. SMITH: Okay.

22 THE COURT: All right. We'll mark this as

23 Plaintiff's Exhibit Number One.

24 (Plaintiff's Exhibit Number One was marked for

25 identification.)

1 THE COURT: All right. Mr. Fulmore, so you agree
2 that this is the lease agreement and you signed
3 this lease agreement?

4 MR. FULMORE: Yes, sir.

5 THE COURT: All right, sir. And in this lease
6 agreement that it specified when you would take
7 occupancy of the ---

8 MR. FULMORE: Yes, it did.

9 THE COURT: And when was that?

10 MR. FULMORE: August.

11 THE COURT: In August. All right, sir. And when did
12 you actually -- was there a problem with your
13 taking occupancy in August?

14 MR. FULMORE: Well, I didn't receive a key. First of
15 all, I didn't have occupancy -- I've signed a
16 lease three times. I'm in the barber business.
17 I'm a barber. I leased it for a barber shop.
18 I been in the barber business for about 20
19 years now.

20 THE COURT: All right.

21 MR. FULMORE: And I've done three leases. I've never
22 signed a lease and didn't receive a copy of the
23 contract on the signing day. I've never signed
24 a lease and didn't receive a key to the
25 building on the signing day. So I, I don't

1 know if I have possession of it or not, sir.

2 **THE COURT:** All right. Did you ever move in?

3 **MR. FULMORE:** No, sir.

4 **THE COURT:** And why was that?

5 **MR. FULMORE:** I never got a key.

6 **THE COURT:** You never got a key so ---

7 **MR. FULMORE:** Yeah, June -- on the original leasing
8 of the contract, Ms. Smith told me that she
9 would call me and let me know when I could pick
10 up the keys. And, matter of fact, her and her
11 husband both was at the signing. And they had
12 some birdhouses and a couple of tables in
13 there, and I had spoken to her prior to signing
14 the lease and she said her daughter had made
15 birdhouses and tables. And apparently her
16 daughter -- she said her daughter got
17 disinterested in the business and she left. I
18 don't know when she left, sir, but I live in
19 Lake Carolina and I ride through the town
20 center of Lake Carolina all the time. And I
21 had been riding through there for over a year,
22 watching that space. And then when it went up
23 for lease, that's when I had contacted her in
24 late 2013. And that's how I got involved in
25 this. And she, she said that she would contact

1 me, but she didn't contact me. I actually
2 ended up contacting her on May the 14th, about
3 five days later, asking her what happened, why
4 didn't she call me about the key. And then we
5 got into about a 12-minute phone conversation.
6 I have a copy to show you -- it's in a document
7 right there, where we spoke. And I kind of got
8 under the impression that I was being pulled
9 back and forth because you -- excuse me, Ms.
10 Smith said to me on the phone that she was not
11 going to let me go in and start work, like
12 preparing the place for the barber shop, she
13 won't let me go in there and work because I'd
14 be using her electricity. And then she said,
15 since you're getting six weeks free. And so I
16 took offense to that, that she said I was
17 getting six weeks free after I had already
18 given her \$2200 that she had asked. Everything
19 that she requested that I do leading up to the
20 lease, I'd done it. And then I said, well, is
21 this a trust issue, and we went back and forth.
22 And she dabble-dabbled on the phone, said a few
23 things. And then I said, you know, I said,
24 well, the best thing for me at this moment
25 right now, for you to just send me my two

1 checks back. And then I ended the phone
2 conversation. I haven't contacted her since
3 May the 14th. Now, she sent me a series of
4 emails, it's in the document. She also sent me
5 a text message on my phone I can show you. I
6 felt like I was going back and forth, riding a
7 roller coaster. I feel, I said, if I get in
8 the shop and she's acting like this now I'm not
9 even in there, I felt like it's going to be a
10 lot of issues with her. So I decided I don't
11 want to fool with that. And that's the truth,
12 I mean, that's how it happened.

13 **THE COURT:** All right. And what time frame is that?

14 **MR. FULMORE:** Between -- you mean, when I signed the
15 lease?

16 **THE COURT:** Yes.

17 **MR. FULMORE:** It was on May the 9th.

18 **THE COURT:** All right.

19 **MR. FULMORE:** And I did get a -- she sent me a copy
20 of the lease over the Internet. Her husband
21 even asked her when we were there, did you
22 bring him a copy of the lease. She says, no,
23 I'm going to send it to him over the Internet.
24 Which I thought that was really inappropriate
25 also.

1 **THE COURT:** All right. And you were going to occupy
2 the premises as of June the 1st?

3 **MR. FULMORE:** No, it was supposed to have been
4 August. The agreement was August. I paid her,
5 let me see -- I tried to explain to her that
6 when you -- I'm moving from one barber shop to
7 another.

8 **THE COURT:** Right.

9 **MR. FULMORE:** And I said to her, I said, I have to
10 notify my customers that I'm going to move.
11 That's why I put the time span in between. I
12 wasn't going to occupy the place until the
13 exact date, but I wanted to go in and get set
14 up. I got -- my barber shop now got ten chairs
15 in it. I was downsizing down to two chairs,
16 just me and my son, because the people had
17 left.

18 **THE COURT:** Right.

19 **MR. FULMORE:** And that's what the plan was, I was
20 going to -- she seemed to be concerned about me
21 demolition the place. And I wasn't going in to
22 demolition. I don't know if you've been in a
23 barber shop lately, Judge, but --

24 **THE COURT:** Why would he say that?

25 **MR. FULMORE:** I'm not trying to be funny. But the

1 way I set up a barber shop, I've got roll carts
2 that sits on four wheels. And it's a one by
3 one by one, but it's -- it's a modern type of
4 station for a barber shop.

5 **THE COURT:** Right.

6 **MR. FULMORE:** All right. And then all I was going to
7 do in there was put mirrors on the wall and
8 have a gentleman to come in and put in one
9 drainpipe for one shampoo bowl. And I
10 explained all of this to her in the beginning,
11 that that's what I was going to do. So to come
12 in and demolition the place wasn't necessary.
13 She had the floor already in. The walls are
14 already painted. The place was ready to go,
15 and so it was a very simple thing. But she had
16 a sign outside also, For Sale. That happened
17 in between the time of me and her talking
18 several months ago, up until the time I leased
19 the building. So I asked her, I said, well,
20 you plan to sell the place? And then she said,
21 if I can. So she wrote, it's on there, she
22 wrote something on there for the tenant,
23 whoever may -- for the people who buy the
24 building, that they could allow me to stay
25 there. She put it all in the contract.

1 THE COURT: Right.

2 MR. FULMORE: Okay. So, like I said, the main thing
3 is that I just felt like, you know, I didn't
4 want to go back and forth with her. I don't
5 like getting into things with people. I just
6 wanted to lease the space for the year that I
7 asked her to lease it for. She asked me for
8 the \$2200, I gave her the \$2200. I did expect
9 to get a key on the day of the lease because
10 she said she would give me one, but she didn't.
11 I did expect to get a copy of the contract on
12 the day of the lease. She said she would give
13 me one, but she didn't. Even her husband
14 questioned her, and he was there. And then
15 when she said to him, she said to him, she
16 said, when will you be able to take the -- to
17 clean the place up for Mr. Fulmore so I can
18 give him a key? He says, well, I guess it'll
19 take me a couple of days. So I kept riding
20 through there because it was on my way home.
21 I live in Lake Carolina. This is in the town
22 center. I was riding through there -- I was
23 riding through Lake Carolina -- even to this
24 day I still ride through there three and four
25 times a week.

1 THE COURT: Well, let me ask, by not having the key,
2 did that prevent you -- I mean, what did that
3 do to you that would cause you to say, I need
4 to get out of this lease?

5 MR. FULMORE: Well, you talk to -- if you talk to
6 Julie over the phone, Julie's very
7 disingenuous. She's saying one thing, but she
8 often does another. You can read a couple of
9 her emails, and you can see it in the email.
10 I'm not making this up. I've got one of them
11 right here, I'll read it to you.

12 THE COURT: No, that's okay. I just wanted to ---

13 MR. FULMORE: She does one thing and she says
14 another. I got frustrated because nothing that
15 she said she was going to do at the time, she
16 didn't do it.

17 THE COURT: Okay.

18 MR. FULMORE: You know, I've never -- I don't want to
19 sound like I'm complaining, Judge. I've never
20 in my life signed a lease and didn't receive a
21 key. That doesn't make sense. I never took
22 occupancy of the building. She was supposed to
23 call me; I had to call her.

24 THE COURT: Did you ever get a key?

25 MR. FULMORE: No.

1 THE COURT: You never got a key.
2 MR. FULMORE: I never got one.
3 THE COURT: So you were never, ever ---
4 MR. FULMORE: I was never in the building except for
5 to sign her lease.
6 THE COURT: And so you never had an opportunity to go
7 forward and make your construction changes ---
8 MR. FULMORE: Remember ---
9 THE COURT: --- that you said ---
10 MR. FULMORE: Remember, Judge, on the 9th, on the 9th
11 we signed the lease.
12 THE COURT: Right.
13 MR. FULMORE: She said she would call me and give me
14 a copy of the key.
15 THE COURT: Right.
16 MR. FULMORE: This is what she told me in front of
17 her husband. Okay? On the 14th, that
18 Wednesday, I called her because I was wondering
19 what was the holdup was. And then we got into
20 a long, 12-minute conversation of her telling
21 me that I was getting six weeks free. And then
22 I got frustrated on the phone and I said, you
23 know what, I said, I don't argue with people
24 about their property. This is your property.
25 I said, either you're going to agree to the

1 terms that we agreed to, or you're not. And
2 then when I got off the phone with her, I had
3 a friend of mine who's a lawyer to send her a
4 copy of a letter, hoping that she would respond
5 to that and return my checks. But she didn't,
6 and that's why we're here, ended up here today.

7 **THE COURT:** All right. Anything else you want to
8 tell me?

9 **MR. FULMORE:** No, not except for the emails. I think
10 you have those.

11 **THE COURT:** I have those. All right. Okay, ma'am,
12 what would you like to tell me?

13 **MS. SMITH:** Okay. We met on May 9th and signed the
14 lease in the space that he was going to lease.
15 I went over the entire contract with him so
16 that he would understand what was in the lease.
17 Everything was agreed to. Everything that was
18 written in here was initialed. I told him my
19 daughter still had items in there. She had a
20 store. She had various furniture items, and it
21 wasn't just a table and some birdhouses. There
22 was quite a bit of stuff in there. So she had
23 to arrange to try to sell out what she had or
24 to put it in storage or get it out of the
25 place. The lease was supposed to begin June 1.

1 And I agreed, after he requested, to give him
2 occupancy earlier than that with no charge so
3 that he could come in, do measurements and get
4 plans drawn up for his shop. And so I agreed
5 to do that. And I told him I would let him
6 know, just like he said, when we get the place
7 cleared out and cleaned up and ready for him.
8 When he called me he asked me, whatever date he
9 called me, I have a time line here, he asked me
10 about getting a key. I said I needed a copy of
11 his liability insurance paperwork, which is
12 part of the lease agreement. He was well aware
13 he needed to provide that, and he said he could
14 at the time we signed it, he said he could give
15 that to me. As far as -- he said that he
16 couldn't give me -- or, he wouldn't give me
17 anything -- he wanted -- I asked him why he
18 didn't want to put the power in his name since
19 I was going to give him possession early, and
20 he said he just didn't want it on. So I turned
21 it off, and I emailed him the very next day
22 saying that I shut the power off to the
23 location and asked him when he wanted to pick
24 up the key. He didn't respond to my email. He
25 hadn't called me or texted me or anything after

1 that. During our conversation he did not ask
2 for the checks back. The first thing I had
3 heard is when I got a letter from his lawyer
4 asking for the checks back. I called the
5 lawyer the next day. I asked the lawyer if he
6 had a copy of the lease. He said no. I asked
7 him if he saw the emails, he said no. So I
8 emailed everything to that lawyer immediately.
9 And he basically didn't do anything after that.
10 As far as agreeing to give him a key, there was
11 no way I could have given him a key on the day
12 that we signed the lease, and he knew that.
13 And I gave him a copy of the lease the same
14 day. I scanned it and emailed it to him. I'm
15 a real estate agent. This is what we do all
16 the time, we scan the documents and send them
17 to each party after they're signed. We don't
18 do multiple copies unless somebody requests
19 that they have an original. He did not request
20 an original. You know, he agreed to the terms,
21 and I did everything that I agreed to do, and
22 more.

23 **THE COURT:** Ma'am, tell me what you are asking for.

24 **MS. SMITH:** In my counterclaim?

25 **THE COURT:** Yes, ma'am.

1 MS. SMITH: I'm asking for \$7500 to release him from
2 the contract.

3 THE COURT: Have you rented the place?

4 MS. SMITH: I have not.

5 THE COURT: Have you advertised it?

6 MS. SMITH: Yes. I have it listed in the MLS. It
7 has been listed in there continuously.

8 THE COURT: How many months has it been on the market
9 since ---

10 MS. SMITH: Since it ended? Or since he told me he
11 didn't want it?

12 THE COURT: Right.

13 MS. SMITH: The entire time.

14 THE COURT: Which is?

15 MS. SMITH: I found out ---

16 THE COURT: Two months or ---

17 MS. SMITH: --- in June, so June, July, August. But
18 I could have rented it after he signed the
19 document ---

20 THE COURT: So basically so far about three months,
21 four months?

22 MS. SMITH: Yeah -- well ---

23 THE COURT: Y'all signed it this year?

24 MS. SMITH: Yeah, we signed May 9th. So, May ---

25 THE COURT: June, July ---

1 MS. SMITH: --- June, July, August.
2 THE COURT: --- and August.
3 MS. SMITH: In the lease, that is part of what it
4 says, is that he would need to continue to pay
5 me until I get it leased to someone else.
6 That's one of the items in here, and I can find
7 that for you.
8 THE COURT: Do you have any copies of advertising
9 that you've done to show the Court that ---
10 MS. SMITH: Yes, sir.
11 THE COURT: --- (inaudible).
12 MS. SMITH: I'm sure I have them right here.
13 THE COURT: You are also in the process of selling
14 the place, as well?
15 MS. SMITH: We have it advertised for sale, but we do
16 not have an offer on it.
17 THE COURT: All right.
18 MS. SMITH: Which actually, the for sale has expired
19 and I did not re-list it. I wanted to wait a
20 little bit to do that. But it is still for
21 lease.
22 THE COURT: (Inaudible) that this place is for sale
23 or lease (inaudible)?
24 MS. SMITH: Okay. Two different documents. Two
25 different advertising. Let me just give this

1 to you so you can see what it is.

2 **THE COURT:** If I were a prospective -- if I were
3 interested in leasing the place, would I know
4 that it was also for sale?

5 **MS. SMITH:** Yes, sir. The last page of the lease
6 agreement that Mr. Fulmore signed mentions on
7 there ---

8 **THE COURT:** So it was mentioned to him that he needs
9 to let prospective clients come in to look at
10 and inspect the place?

11 **MS. SMITH:** Correct. And I made provisions for him
12 in case I did sell it so that he would have
13 time and receive money, or he could stay if the
14 new buyers decided they wanted to keep him
15 there.

16 **THE COURT:** All right.

17 **MS. SMITH:** I'm trying to find the -- get the right
18 documents here for you. I thought I had them
19 in order. I'm so sorry.

20 **THE COURT:** Basically what I'm looking for is
21 documentation that would show to me that you
22 did post this as an available space and you
23 published it in whatever it is you publish it
24 in so that people could see that this was an
25 available space that you wanted to lease or

1 to you so you can see what it is.

2 **THE COURT:** If I were a prospective -- if I were
3 interested in leasing the place, would I know
4 that it was also for sale?

5 **MS. SMITH:** Yes, sir. The last page of the lease
6 agreement that Mr. Fulmore signed mentions on
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12 in case I did sell it so that he would have
13 time and receive money, or he could stay if the
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15 there.

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18 documents here for you. I thought I had them
19 in order. I'm so sorry.

20 **THE COURT:** Basically what I'm looking for is
21 documentation that would show to me that you
22 did post this as an available space and you
23 published it in whatever it is you publish it
24 in so that people could see that this was an
25 available space that you wanted to lease or

1 that you wanted to sell.

2 **MS. SMITH:** Okay. I don't want to give you
3 duplicates, and I've got some duplicates here
4 and that's what I'm concerned about. I'm
5 sorry.

6 **THE COURT:** Take your time.

7 **MS. SMITH:** Just bear with me here a moment. Okay,
8 that's the for sale and that's the -- I
9 apologize about this one. (Inaudible) shows on
10 here the pricing, the dates that I listed it,
11 the date it's expired, and I continued to list
12 it. I did not re-list it for sale because I
13 decided I wanted to keep the building, but this
14 is the For Sale document. And in that last
15 number, sir, at the top, these listings showed
16 up on ---

17 **THE COURT:** So it was April that it was listed for
18 sale?

19 **MS. SMITH:** Listed April 22nd and expired -- I can't
20 read it. I need new glasses I think.

21 **THE COURT:** Well, that's all right. Looks like it
22 expired as of June 22nd.

23 **MS. SMITH:** Okay. That's fine. And that was the
24 sale document. When items are listed in the
25 MLS, they go onto every website, all agents'

1 websites, Zillow, Trulia, Realtor.com, every
2 website where you would find listings.

3 **THE COURT:** Mr. Fulmore, you want to just take a look
4 at these and -- what she's indicated to me that
5 these are, are documents showing that she had
6 listed the property, A, for sale. The top one
7 shows that it was listed, starting in April and
8 going through June.

9 **MR. FULMORE:** Of this year?

10 **THE COURT:** Yes, sir. And also, some other documents
11 showing that she had listed the property as it
12 being available for lease. I just want you to
13 see if you have any objections to my
14 considering those documents.

15 **MR. FULMORE:** Well, I don't -- you know, I'm not
16 objecting to it, even though I would ride, ride
17 by there three or four times every week. You
18 know how you have tunnel vision, I was looking
19 at the space and not the sign.

20 **THE COURT:** Right.

21 **MR. FULMORE:** If that makes sense to you.

22 **THE COURT:** Okay. All right.

23 **MR. FULMORE:** But I did want to say a couple other
24 things once I get the chance.

25 **THE COURT:** All right, I'll give you -- yeah, let you

1 have an opportunity for re-direct questioning.
2 **MR. FULMORE:** All right, thank you.
3 **MS. SMITH:** He did ask me about the For Sale sign up
4 front, and I told him that if it was ---
5 **MR. FULMORE:** That was ---
6 **MS. SMITH:** --- something he wanted, I would remove
7 it.
8 **MR. FULMORE:** That was when I signed the lease, I saw
9 the sign on the 9th.
10 **THE COURT:** And you are seeking \$7500 for ---
11 **MS. SMITH:** Yes, sir.
12 **THE COURT:** --- breach of contract?
13 **MS. SMITH:** Yes. Because it may take me longer than
14 that to lease it again, and he could end up, if
15 he had to continue to pay, he could end up
16 paying much more than that.
17 **THE COURT:** Yeah. Okay. All right. And, sir, what
18 would you like to tell me?
19 **MR. FULMORE:** Judge, I know you don't know me, and I
20 don't know if it matters on the contract, but
21 if you look on her paperwork that she -- the
22 copy of her response to my complaint, there's
23 a series of phone calls. Now, I made one phone
24 call to her late, about October, November of
25 2013. She called me several times. She told

1 me somebody was about to lease the place, but
2 she really wanted me to have it. Now, she
3 didn't know me, she was talking to me over the
4 phone. She said, if you don't get it now,
5 somebody else is going to get it. And that's
6 standard real estate -- she's a realtor.
7 That's standard practice from a realtor, they
8 want you to move when they want you to move.
9 But, as I said to her, I said, until I can sell
10 the place that I'm in, I won't be moving. I
11 said, but I would not try to keep you on the
12 line to try to give it to me, telling you I
13 want it. I don't think -- I said, if somebody
14 wants the place, ma'am, I said, by all means,
15 let them have it. I said to you just a minute
16 ago, she's very disingenuous. I'm not trying
17 to attack her; I'm telling you the truth, she
18 -- between that time, it took about seven
19 months before we actually got -- till May the
20 9th, to sign the lease. There were several
21 phone calls in between that time where she was
22 calling me, telling me that she wanted me to
23 have the space. So I did not lead her on, you
24 know. When we got down to the signing of the
25 lease, she just didn't do what she said she was

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1 going to do. And I felt like that just --
2 there was going to be a problem down the road.

3 **THE COURT:** Okay. Anything else from you?

4 **MS. SMITH:** I'd like to know what I didn't do that I
5 said I was going to do.

6 **THE COURT:** Do you understand what, what she's ---

7 **MR. FULMORE:** I've already said, she said that ---

8 **THE COURT:** The key --

9 **MR. FULMORE:** She said she would give me a key when
10 I signed the lease. And she would give me a
11 copy of the lease.

12 **THE COURT:** Yeah.

13 **MR. FULMORE:** She didn't. And then after that, the
14 phone call on March the -- May 14th, five days
15 later, I asked her what was the problem, and
16 that's when we went into another conversation
17 about how I was getting six weeks free and, you
18 know, that's what she said, and I was like,
19 okay, I don't want to go back ---

20 **THE COURT:** Didn't feel like you were getting any
21 free time because you'd already paid \$2200?

22 **MR. FULMORE:** Well, that was the agreement. We
23 agreed that -- her and Steve was there. We
24 agreed that it would take me between May the
25 9th until the 1st of August before I moved in.

1 That's why I gave her -- she said, well, then
2 I need \$2200 from you, so I wrote two checks,
3 for \$1200 and one for a thousand. I gave her
4 what she asked me to give her, and I thought we
5 had an agreement. But then when I spoke to her
6 five days later, she had changed her story.

7 **THE COURT:** Okay. Well, here's where we are. We
8 have an agreement that's been signed by two
9 parties. They both agree that this is the
10 document, and the terms of the lease are the
11 terms that have been stated here today. It was
12 potentially a two-year lease, but there's also
13 sufficient notice to show that the lease may
14 not have been allowed to run the full two years
15 because the property was being offered for
16 sale. At some point it was pulled off, but
17 during the period of time that he was
18 negotiating and engaging, your intent and hope
19 was that you could sell the property, because
20 you advertised it for sale. So, even though
21 it's a two-year contract, there's a strong
22 possibility that the contract could not have
23 lasted for two years, unless there were
24 provisions in the sale that would require the
25 new owners to accept that contract. I don't

1 know whether that would have taken place or
2 not. But, anyway, there was an agreement to
3 lease the property for a two-year period. The
4 lease was scheduled to actually begin on June
5 the 1st. And during the period of May,
6 preceding the June, you were going to be
7 allowed some time to get in if she had provided
8 a key or something for April. But that didn't
9 transpire. There were some telephone
10 conversations that went back and forth, there
11 were emails that went back and forth, that you
12 found disturbing to you. But those aren't
13 really a part of the contract. Now, whether
14 there's a personality involved that you don't
15 like, what I'm governed by is the contract and
16 the terms and conditions of the contract;
17 that's what legally binding on me to review,
18 accept, and to rule on. She has filed a
19 counterclaim asking the Court for \$7500 because
20 you have broken the lease agreement and she has
21 had to bear the burden of that and pay the
22 mortgage or whatever she has on that space and
23 wasn't able to lease it right away. And feels
24 that she is entitled that because there is an
25 agreement, and the lease agreement is actually

1 for 24 months, not just five or six months.
2 And the reasons that you have provided to the
3 Court as your reasons for breaking the lease
4 are because she didn't give you a key in a
5 timely fashion and she didn't give you a copy
6 of the lease in a timely fashion. And she
7 didn't allow you to basically enter into the
8 property before the actual lease agreement
9 began. There's nothing in the contract that
10 says she's required to do that. That was just
11 an off-contract oral agreement between the two
12 parties. So I do feel like the plaintiff has
13 breached the contract. I think that's very
14 clear, given the terms and conditions of the
15 contract. I also believe that the contract
16 probably would not have existed for the full
17 24-month period, but you're not asking for the
18 full 24-month period. Basically you're asking
19 for basically a seven-month period. You've
20 been damaged June, July, August, probably
21 September. At least, you know, certainly those
22 -- June, July, and August, you've certainly
23 been damaged. But he has already presented to
24 you at least two months' worth, one through the
25 security deposit, the other through the first

1 month's rent, which would have covered June and
2 July. And ---

3 **MS. SMITH:** Okay, well, even -- I'm sorry.

4 **THE COURT:** --- so what I'm going to allow is, I'm
5 going to allow you to have the \$7500; you're
6 entitled to that, but I'm going to minus from
7 that the \$2200 that he's already paid. Okay?
8 And grant you the court costs. Okay?

9 **MS. SMITH:** Okay. Because even if I had a contract
10 on it today, for sale, you know, somebody
11 wanted to buy it, it would take a couple of
12 months for that to go through.

13 **THE COURT:** Did ---

14 **MS. SMITH:** And then I was going to allow him three
15 months to stay.

16 **THE COURT:** You've asked the Court for \$7500.

17 **MS. SMITH:** Yes, sir.

18 **THE COURT:** And the Court's going to give you that.
19 And -- what is her costs? \$10, so ---

20 **MS. SMITH:** And that was in addition to the \$2200
21 that he had already paid.

22 **THE COURT:** Well, I know that \$7500 is what you've
23 asked for, and I'm going to give you that minus
24 the time period that he's already paid. Okay?
25 All right.

1 MS. SMITH: Thank you, sir.

2 THE COURT: And I'm going to minus — my clerk says
3 you didn't pay \$10 for the counterclaim, so
4 we'll deduct that off for you. All right? All
5 right. Ladies and gentlemen, thank you very
6 much.

7 (There being nothing further, the hearing was
8 concluded.)
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Tracy Fulmore,)

Plaintiff,)

vs.)

Julie Smith,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Notice of Civil Appeal
Case No.: 2014-CP-40-

2014 SEP 29 AM 11:08
RICHLAND COUNTY
FILED
JEANNETTE W. HARRIS
C.C.P. & G.S.

The Plaintiff herein, by and through his undersigned counsel, hereby gives notice of his intent to Appeal the judgment of the Magistrate's Court case 2014CV4010900510 in the above action, to the Circuit Court of Common Pleas, in the County of Richland.

The Plaintiff filed a Civil Action in the Richland County Magistrate Court after entering into a lease with the Defendant for property located in Richland County. The Plaintiff issued to the Defendant the required security deposit and first month's rent for the property. The Defendant (Landlord) accepted these monies from the Plaintiff. However, the Defendant never would provide the tenant with access to the property and refused to provide the Plaintiff with a key to the property after the Plaintiff had surrendered the monies. After a significant amount of time passed and the Plaintiff was still not provided with access to the property the Plaintiff demanded a return of the security deposit and rents paid to the Defendant. The Defendant refused to return the payment and deposit to the Plaintiff. The Plaintiff filed an action with the Magistrate's Court. The Defendant answered the Complaint and issued a Counterclaim in this matter that the Plaintiff had breached the contract of the parties. The Magistrate ruled in favor of the Defendant and issued a judgment in favor of the Defendant of \$7,500.00 less the security

deposit and rents paid which equaled \$2,200.00 leaving a total amount owed by the Plaintiff to the Defendant of \$5,300.00

The basis for the appeal is that the Defendant's refusal to provide the Plaintiff with access to the property constituted a breach of contract/lease on the part of the Defendant. Once the Plaintiff tendered payment per the lease between the parties the Defendant was obligated to provide the Plaintiff access to the premises which she failed to do. The Magistrate committed a judicial error in overlooking this fact. Additionally, the Plaintiff had filed the Magistrate Court action during the term of the first month of the lease, a month for which he had already remitted rents, and at that time he was not in breach of any of his obligations as outlined by the lease. Therefore, the Magistrate's determination that the Plaintiff was in breach of the lease was also a judicial error in this matter.

Wherefore, based upon the foregoing the Plaintiff is informed and believes that the Circuit Court should:

1. Reverse the decision of the Magistrate's Court in this matter; and
2. Reverse the judgment awarded to the Defendant in this matter; and
3. Remand the matter back to Magistrate's Court for a retrial on the issues of this case;
and
4. For any such other relief as this Court finds just and proper.



Charles T. Brooks, III
Attorney for the Plaintiff
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

September 25, 2014
Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Tracy Fulmore,)
)
 Plaintiff,)
)
 vs.)
)
 Julie Smith,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Proof of Service by Mail
 Case No.: 2014-CP-40-05976

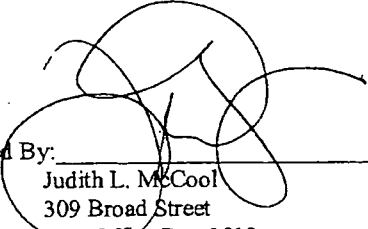
RICHLAND COUNTY
 CLERK OF COURT
 2014 OCT -6 AM 10:20
 JENNIFER M. MOHRIDE
 C.P.C. # 65

The undersigned employee of CHARLES T. BROOKS, III, hereby certifies that on October 2, 2014, I did serve the foregoing Notice of Civil Appeal by personally depositing a true copy thereof into the United States Mail, proper first class postage affixed at Sumter, South Carolina addressed as follows:

Ms. Julie Smith
 Post Office Box 291895
 Columbia, South Carolina 29229

Richland County Magistrate
 10509 Two Notch Road
 Elgin, South Carolina, 29045

So Certified By: _____


 Judith L. McCool
 309 Broad Street
 Post Office Box 3512
 Sumter, South Carolina 29151

Sumter, South Carolina
 Dated: 10-02, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 16 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Case No.: 2014-CP-40-5976
Appellate Case No.: 2016-000505

Tracy Fulmore Appellant,

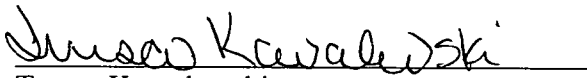
v.

Julie Smith..... Respondent.

PROOF OF SERVICE

I, Teresa Kowalewski, Legal Assistant to Mariel D. Norton, an employee of Baker, Ravenel & Bender, L.L.P., Attorneys for Julie Smith, Respondent, hereby certify that, on this 16th day of August 2016, I have served the following with the foregoing Motion to Dismiss the Appeal and Proof of Service by mailing copies of same by United States Mail, postage prepaid, to counsel of record at the addresses shown below:

Charles T. Brooks, III, Esquire
The Brooks Law Office, LLC
P.O. Box 3512
Sumter, SC 29151


Teresa Kowalewski



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

Mariel D. Norton
mnorton@brblegal.com
(803) 343-3860 – direct dial

August 16, 2016

HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
AUG 16 2016
SC Court of Appeals

Re: Tracy Fulmore v. Julie Smith
Case No. 2016-000505
File No. 10891.0

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are an original and seven (7) copies of the Motion to Dismiss and Proof of Service thereof. Please return a clocked copy to me via the courier delivering same. I have also enclosed our firm check in the amount of \$25.00 for the filing fee.

By copy hereof, I am serving same upon counsel for Appellant.

Thank you very much.

Sincerely yours,

Mariel D. Norton
MDN:tfk
Enclosures

cc: w/enclosure: Charles T. Brooks, III, Esquire