

STATE OF SOUTH CAROLINA )

COUNTY OF MCCORMICK )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

R. JAY LAGROON,

FILED  
GWENDOLYN Civil Action No. 2015-CP-35-0006

APPELLANT(S), 2016 DEC -7 P 1:28

vs.

CLERK OF COURT  
MCCORMICK COUNTY, SC  
ORDER AFFIRMING DECISION ON  
APPEAL

SBA COMMUNICATIONS CORP.

RESPONDENT(S).

RECEIVED

FEB 03 2017

SC Court of Appeals

BEFORE THE COURT is the appeal filed by Appellant R. Jay Lagroon ("Lagroon") from the Magistrate Court's decision finding in favor of Respondent SBA Communications Corp. ("SBA") on Lagroon's eviction action. Based on the arguments and briefing submitted to the Court, the Court's file in this matter, and the relevant authorities, I hereby affirm the decision of the Magistrate Court and dismiss Lagroon's appeal. I make the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Lagroon, representing himself *pro se*, filed this appeal from an Order and judgment entered in McCormick Magistrate Court civil case number 2014CV3510100096.
2. Lagroon alleged that SBA failed to pay Lagroon rent for the month of March 2014. The alleged missed rent payment was due pursuant to a ground lease agreement between Lagroon, as lessor, and SBA (as assignee to Nextel South Corp.) as lessee. SBA maintained a cellular communications tower on the leased premises. Lagroon also alleged that SBA breached the lease by failing to give notice prior to entering the property.

3. The Honorable C. Ryan Johnson, Magistrate for Greenwood County, was appointed to preside over this matter by Order of the South Carolina Supreme Court. A bench trial was scheduled for December 18, 2014.

4. On December 17, 2014, Lagroon filed motions for a change of venue, a continuance, and to videotape the trial or for a court reporter.

5. On December 18, 2014, the parties appeared for trial. The Magistrate Court held a pretrial hearing immediately before the trial. After hearing argument from both parties, the Magistrate Court denied Lagroon's motions. SBA moved for summary judgment on Lagroon's claim for breach of the lease for failure to give notice. The Magistrate Court granted summary judgment to SBA on this claim, finding that the lease did not require that SBA give notice prior to entering the premises. The Magistrate Court denied SBA's motion for summary judgment on the claim for failure to pay rent, finding an issue of fact existed.

6. The trial in this action was held on December 18, 2014, and was recorded via audio recorder.

7. At the trial, Lagroon testified that SBA failed to pay rent in March 2014. Lagroon's employee, Sheila Sonnenberg, testified that in February 2014 she deposited \$1,957.15 in cash into an account with First Citizens Bank on behalf of a woman named Ms. Felix. Lagroon testified that the cash deposit was for rent due to Lagroon from Ms. Felix pursuant to a commercial lease and that a cashier's check subsequently issued by First Citizens on February 26, 2014 represented the funds deposited on behalf of Ms. Felix. Lagroon produced a copy of the commercial lease with Ms. Felix, which was accepted into evidence. The Felix lease stated that it terminated in September 2013 and that Ms. Felix's rent was \$1,400 per month. Lagroon also entered into evidence a letter to Ms. Felix dated January 18, 2014. This letter, from Lagroon, provided that

Ms. Felix's rent for 2014 was \$1,957.15 per month. Lagroon also attempted to enter into evidence an empty envelope postmarked from First Citizens Bank. The Magistrate Court accepted all exhibits submitted by Lagroon into evidence except the envelope.

8. SBA offered business records from First Citizens Bank and Trust, with accompanying notarized records custodian affidavits, which showed that SBA timely deposited rent payments into an account associated with Lagroon<sup>1</sup> each month from November 2013 to February 2014. The First Citizens records reflected that the Barnett account was closed in February 2014 and that a credit in the amount of SBA's rent payment was posted to the account on February 26, 2014, after the account was closed. The records further reflected that First Citizens subsequently issued a cashier's check to Kelli Barnett in the same amount as SBA's rent payment, and that the was cashed on March 7, 2014. The First Citizens records were accepted into evidence by the Magistrate Court.

9. SBA also offered its internal records showing that it paid rent to Lagroon each month from April 2013 to May 2014, including the disputed March 2014 rent payment. Each rent payment shown on the First Citizens records is in the same amount as the corresponding rent payment on SBA's internal records. Each rent payment shown on the First Citizens records was posted to the Barnett account one day after SBA made that payment, according to its internal records. The same is true for the disputed March 2014 rent payment. SBA's internal records were accepted into evidence.

10. After weighing the evidence and testimony, the Magistrate Court found in favor of SBA on the failure to pay rent claim. Magistrate Judge Johnson announced his decision from the

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<sup>1</sup> The account was in the name of Kelli Barnett with an address associated with Lagroon. At trial, Lagroon did not argue that this was not the correct account or that SBA's rent payments should have been deposited into a different account.

bench on December 18, 2014 and issued an Order and written notice of judgment on December 22, 2014.

11. Lagroon filed his notice of appeal on January 28, 2015.

12. On February 9, 2015, the Magistrate Court filed the Return to Appeal. The Return found that the appeal was untimely and no return was required. On May 1, 2015, SBA filed a Motion to Dismiss the appeal as untimely.

13. By Order dated August 15, 2016, the Honorable Judge Allison Lee denied SBA's Motion to Dismiss and directed that the Magistrate Court file a complete return.

14. On September 16, 2016, the Magistrate Court filed a Second Return detailing the magistrate court proceedings. On November 11, 2014, SBA filed its Respondent's Brief.

15. The Court held a hearing on the appeal on October 17, 2016. Graham R. Billings, Esquire, appeared on behalf of SBA. Dr. R. Jay Lagroon appeared *pro se*. After accepting argument from both parties, the Court granted the parties an opportunity to file supplemental briefing.

16. On October 17, 2016, Robert Homlar, Esq., filed a notice of appearance on behalf of Lagroon. On November 7, 2016, Lagroon, through counsel, filed his Appellant's Brief and a transcript of the magistrate court proceedings. On November 14, 2016, SBA filed its Supplemental Respondent's Brief.

17. On November 21, 2016, the Court notified the parties via email of its decision to deny Lagroon's appeal and affirm the Order and judgment of the Magistrate Court and its intent to enter a formal written order reflecting that decision. This Order follows.

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## CONCLUSIONS OF LAW

**I. The Magistrate Court did not err in accepting SBA's exhibits into evidence or abuse his discretion in denying Lagroon's application for eviction.**

In magistrate court proceedings, trials are informal and evidentiary standards are relaxed in the interest of justice. Rule 13, South Carolina Rules of Magistrates Court. "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." S.C. Code Ann. § 18-7-170. "In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact." *Id.* However, the circuit court may only consider questions that were presented to the magistrate court. *Indigo Associates v. Ryan Inv. Co.*, 314 S.C. 519, 523, 431 S.E.2d 271, 273 (Ct. App. 1993).

The Magistrate Court found that SBA established that it timely made the disputed March 2014 rent payment. As a result, the Magistrate Court found in favor of SBA and denied Lagroon's application for eviction. Lagroon failed to present evidence or argument on appeal establishing that the Magistrate Court abused his discretion or committed an error in reaching this decision.

Lagroon's argument that the Magistrate Court abused his discretion in accepting SBA's exhibits into evidence without testimony establishing a foundation or authenticity fails. The Magistrate Court did not err in accepting SBA's exhibits into evidence because the records were admissible, met an exception to the hearsay rule pursuant to Rule 803(6) of the South Carolina Rules of Evidence, and were relevant. Furthermore, because evidentiary standards in Magistrate's Court are relaxed and in the interests of justice, I find that the Magistrate Court properly accepted the exhibits into evidence despite the lack of testimonial evidence.

The Magistrate Court carefully reviewed and compared the internal SBA records and the records from the First Citizens account. The Magistrate Court also heard testimony from Lagroon

and his witness, observed their demeanors, and judged their credibility as well as the credibility of the exhibits offered by Lagroon. The Magistrate Court was in the best position to weigh all of the evidence, and after allowing both parties a full opportunity to present that evidence and arguments in support thereof, the Magistrate Court found in favor of SBA. I find that the Magistrate Court's decision finding in favor of SBA was in the interests of justice, and the Magistrate Court's decision finding that SBA timely paid rent is hereby affirmed.

**II. The Magistrate Court did not err in refusing to admit the empty envelope into evidence.**

The Magistrate Court accepted all exhibits offered by Lagroon into evidence except an empty envelope. Lagroon contends that the envelope is the original envelope which contained the cashier's check sent by First Citizens to Barnett. Transmittal of the cashier's check is not at issue in this action. Both parties agree that First Citizens mailed a cashier's check to Barnett and the cashier's check was deposited. [The disputed issue is the whether the cashier's check represented the funds from SBA's rent deposit or Ms. Felix's rent deposit.] The envelope has no bearing on this disputed issue. Accordingly, I find that the Magistrate Court did not err in refusing to admit the envelope into evidence.

**III. The Magistrate Court did not abuse his discretion by denying Lagroon's motion for continuance.**

"The grant or denial of a continuance lies with the sound discretion of the trial court and such ruling will not be reversed absent a clear showing of abuse of discretion." *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 474-75, 666 S.E.2d 262, 265 (Ct. App. 2008). "A tribunal necessarily exercises wide discretion in managing a case, and decisions denying a request for a continuance are 'rarely' overturned." *Trotter v. Trane Coil Facility*, 393 S.C. 637, 650, 714 S.E.2d 289, 295

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(2011) (citations omitted). "Every reasonable presumption in favor of a proper exercise of the trial court's discretion will be made." *Id.* (citation omitted).

The Magistrate Court was in the best position to weigh the ability of the parties to proceed to trial on the morning of December 18, 2014. No prejudice appears from the record; Lagroon was able to prepare multiple motions, testify, and present additional evidence and witnesses at trial. The Magistrate Court is vested with wide discretion in ruling on motions for a continuance and there is no indication this discretion was abused or should be overturned here.

**IV. The Magistrate Court did not abuse his discretion by denying Lagroon's motion to record the proceedings by videotape or court reporter.**

Civil proceedings in Magistrate Court are not required to be recorded by any means. Here, the Magistrate Court recorded the proceedings via audio recording. A copy of the recording was provided to Lagroon, and he arranged for the recording to be transcribed. Lagroon does not contend that the transcription was erroneous or inadequate in any way. Accordingly, Lagroon has suffered no prejudice from the denial of his motion. The Magistrate Court did not abuse his discretion by denying Lagroon's motion to record the proceedings by videotape or court reporter. Accordingly, this decision of the Magistrate Court is affirmed.

**V. The Motion to Reconsider filed in Case No. 2014-CP-35-0034 did not deprive the Magistrate Court of subject matter jurisdiction or require trial to be continued.**

An action between the same parties, *Robert Jay Lagroon v. SBA Steel, LLC*, Case No. 2014-CP-35-0034, was pending at the time of the magistrate court trial in this action on December 18, 2014. On October 27, 2014, the Honorable Judge Keesley issued an Order dismissing Lagroon's appeal in that prior action. Lagroon filed a motion to reconsider Judge Keesley's Order, which was pending in the Circuit Court in December 2014 when this matter was tried.

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The motion to reconsider pending in Case No. 2014-CP-35-0034 has no effect on this action. There is no principle of law to support Lagroon's argument that the Magistrate Court was deprived of subject matter jurisdiction or that a continuance was warranted because of the pending motion to reconsider. The decision of the Magistrate Court is affirmed.

For the foregoing reasons, it is hereby **ORDERED** that the Magistrate Court's December 22, 2014 Order is affirmed;

It is further **ORDERED** that each of the grounds for appeal raised by Appellant R. Jay Lagroon are denied;


It is further **ORDERED** that Appellant R. Jay Lagroon's appeal is hereby dismissed;

It is further **ORDERED** that each party will bear its own costs associated with this appeal.

The circuit clerk is directed to mail a copy of this order to counsel of record.

**AND IT IS SO ORDERED.**

ENTERED: this 2 day of NOV, 2016

  
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Hon. Donald B. Hocker  
Circuit Court Judge

Lauren, South Carolina

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