

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 06 2017

APPEAL FROM MCCORMICK COUNTY

Donald Hocker Circuit Court Judge, Eleventh Circuit

SC Court of Appeals

Case No. 2017-000203

R. Jay Lagroon, Appellant,

v.

SBA Communications Corp., Respondent.

BRIEF OF APPELLANT

Robert J. Lagroon
Pro Se Appellant
791 SC Hwy 7
McCormick SC 29835

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STATEMENT OF ISSUES ON APPEAL

- 1. Whether the Circuit Court erred in reaching its instant decision that the cashier's check issued by First Citizens Bank to Kelli Barnett which was cashed on March 7, 2014 was the funds of the Respondent SBA.**
- 2. Whether the Circuit Court erred in reaching its decision that the Motion to Reconsider and the pending appeal did not deprive the Magistrate Court of subject matter jurisdiction.**
- 3. Whether the Circuit Court erred in reaching its instant decision in denying the Appellant motion for continuance based on the heavily medicated state of the Appellant because of the sexual abuse of his minor child.**
- 4. Whether the Circuit Court erred in reaching its instant decision in so much that the Magistrates Court record does not contain documents presented at trial which is contrary to the Magistrates return.**

STATEMENT OF THE CASE

On March 24, 2014, Appellant Robert Jay Lagroon, filed an application for eviction against Respondent SBA Communications Corp, alleging the Respondent failed to pay rent for use of a cell-phone tower located on Appellant's property. The missed rent payments were due pursuant to a ground lease agreement between Appellant, as lessor, and Respondent, as lessee. On December 18, 2014, following a bench trial before Judge Ryan Johnson, Magistrate, the Court issued a written Order December 22, 2014. Appellant timely filed a notice of appeal, and, thereafter, filed a petition for writ of mandamus. Respondent filed its motion to dismiss the appeal on May 4, 2015.

By Order the Court filed August 18, 2016, the Respondents motion to dismiss was Denied and Appellant's petition for writ of mandamus was granted. In lieu of a hearing, the Court directed the parties to submit the matter on briefs only. An Order Affirming Decision on Appeal was filed December 7, 2016. It is this Order from which this Appeal is taken.

STATEMENT OF FACTS

1.

The Appellant, Lagroon, appeals the denial of the eviction for failure to pay rent based on the following undisputed facts:

On February 25, 2014, SBA employee Mr. John Henry Layher was arrested for Criminal Trespassing and removed from the Appellant's property by the McCormick County Sheriff, after cutting locked gates and destroying the concrete driveway owned by the Appellant to gain access to the Appellant's property. Mr. Layher plead guilty to the charges of Criminal trespass on March 11, 2014, (EXHIBIT 1 "TRANSCRIPT OF EXCERPTED PROCEEDINGS"-page 24 line 2 and EXHIBIT 2 certified copy of Uniform Traffic Ticket 91343 ER).

The Respondent, SBA maintains and contends the Appellant, Dr. Lagroon barred SBA from accessing the property while the Magistrate Court actions were pending. Upon inquiry by the Court, counsel for SBA admits his client has not tried to access the property therefore could not have been hindered in any way by Dr. Lagroon. (EXHIBIT 1- page 51 line 14.)

On March 24, 2014, the appellate filed a rule to vacate or show cause against SBA in McCormick County Magistrate Court case number 2014CV3510100096. The action was born from SBA's failure to pay rent for Febuary 2014, and SBA's failure to provide written notice of termination under paragraph 10 of the lease dated October 26, 2004. (EXHIBIT 3 "Communications Site Lease Agreement (Ground)"). The Respondent made an unsuccessful attempt to terminate the lease and remove the cell tower without paying final rent payments or without providing written notice under section 10 of the lease. The transcript of the proceedings shows that upon inquiry by the Court:

1. Respondent's counsel admitted he could not show that the First Citizens cashier's check tendered to "Kelli Barnett" dated February 28, 2014 was indeed SBA's money.

(EXHIBIT 1- page 39 line 8.)

2. Respondent's counsel admits he could not show that Notice to Terminate the lease had been provided to the Appellate prior to February 2014. (EXHIBIT 1- page 27 line 3.)

3. Upon request of the Appellant, Respondent's counsel refused to answer or provide evidence to conclude that the First Citizens cashier's check dated February 28, 2014, tendered to "Kelli Barnett" was indeed SBA's money by stating "I don't have to answer your questions." (EXHIBIT 1- page 37 line 5.)

4. At trial the Appellant testified, and counsel for the Respondent agreed, that SBA's lease begins October 26, 2004, with a 3% increase on the anniversary term of the lease.

(EXHIBIT 1- page 43 line 6). As the Court noted: "The term of the lease is October 26, 2004. The lease amounts changed from \$1900.15 in December, 2013 and then it jumps to \$1912.00 in January 2014. And then the February 2014 cashier's check is \$1957.57.

So why would..." (EXHIBIT 1- page 43 line 18). At that time the Court allows the

Appellant to testify "So why would a company say, we're going to take down your tower but, in the meantime, we're going to throw you some extra money that's not in here."

(EXHIBIT 1- page 43 line 23).

The Appellant also testifies, "There is no reasonable explanation for the rent changing from the consistency of \$1900.15 to the one-time \$1912.36 in January 2014 and then changing again to \$1957.15 in March 2014. There's no plausible explanation for that."

(EXHIBIT 1- page 44 line 24; EXHIBIT 1- Defendant's Exhibit No. 5 thereto- page 185-

186 of EXHIBIT 1).

Witness for the Appellant, Sheila Sonnenberg RN testified at trial that she cared for stroke victim Leona Felix who was a tenant of the Appellant and that she made the cash deposit in the amount of \$1957.15 in February 2014 on behalf of Ms. Felix by placing cash into the hands of Ms. Teresa Taylor at the First Citizens Bank branch located at 342 Baston Road in Martinez, Georgia. (EXHIBIT 1- page 68 line18). The First Citizens cashier's check presented at trial was signed by Ms. Teresa Taylor and endorsed by Kelli Barnett, wife of the Appellant. (EXHIBIT 1- Defendant's Exhibit No. 1 thereto, page 139 of EXHIBIT 1). The original envelope from the First Citizens branch located at 342 Baston Road in Martinez, Georgia, which was introduced at trial and not accepted into evidence bears the identical certified mail #7013 3020 0000 9269 4062, as Plaintiff's exhibit 2 and as the original envelop filed with the Appellant's Notice of Civil Appeal. (Notice of Civil Appeal filed January 28,2015), (EXHIBIT 1- Defendant's Exhibit 2 thereto page 146 of EXHIBIT 1).

The Court states "All items sought to be admitted into evidence by the plaintiff were accepted into evidence with exception of an empty envelope" (Second Return to Appeal, page 4, 2nd paragraph,). A search of the official Court transcript reveals absence of the following from the record, but these documents were filed with Appellant's Notice of Appeal on January 28, 2015:

1. The commercial lease of Ms. Leona Felix which clearly documents her lease is \$1957.15 for the year of 2014.
2. The letter to Ms. Felix dated January 18, 2014 stating the amount of her lease for 2014, is \$1957.15

3. The Original cashier's check stub 5019895 from First Citizens Bank dated February 28, 2014, in the amount of \$1957.15 from Branch 817 (342 Baston Rd. Martinez Ga 30907). The check stub also bears the initials (TAT04), of the First Citizens representative who authorized and signed the cashier's check, (Teresa A. Taylor) Plaintiff's Exhibits 2 -11. (EXHIBIT 1)

These items coupled with testimony of Shelia Sonnenberg, along with the original envelope from First Citizens Bank postmarked March 4, 2014, from 342 Baston Rd. Martinez, Ga 30907 which contained the cashier check, signed by Ms. Teresa Taylor, and the admission by Respondent's counsel he cannot show that the First Citizens cashier's check tendered to "Kelli Barnett" dated February 28, 2014 was indeed SBA's money. (EXHIBIT 1- page 39 line 8.), clearly establish the evidence required to meet the burden of proof that funds deposited which led to the generation of the cashier's check in the amount of \$1957.15 are indeed the funds of Ms. Felix deposited by Sheila Sonnenberg.

It is unimaginable that SBA representatives traveled from Boca Raton Florida to Martinez Georgia, to deposit cash in the amount of \$1957.15, and that SBA cannot produce a single witness or a single bank record to support their contentions at trial.

In the case *sub judice*, Pursuant to S.C. Code Ann. § 18-7-10:

2.

"When a judgment is rendered by a magistrate's court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment rendered and shall amount to a supersedeas."

¹ Initially, the court reporter mistakenly stated she could not attest to the validity of the exhibits, however, the court reporter subsequently corrected her certification stating "All exhibits attached to this transcript were produced by said plaintiff, along with attached certification from the McCormick County Magistrate Court Clerk." (EXHIBIT 1 SUPPLEMENT, Compare EXHIBIT 1 Page 187 and EXHIBIT 1 SUPPLEMENT)

By Order of the Court filed April 1, 2016, Case Number 2015-CP-35-00006, The case was continued beyond April 4, 2016 Term. The Order also states "The files regarding this case, 2015-CP-35-0006, and a prior case, 2014-CP-35-000034, Have been jumbled together. A Reconsideration motion was filed in 2014-CP-35-00034. After challenges were considered, A ruling was issued by Order filed March 30, 2016." The Order also states "The only pending case now is this 2015 appeal." (Case Number 2015-CP-35-00006). Therefore, the Magistrate Court lacked subject matter jurisdiction because the Motion to Reconsider and Appeal to the Circuit Court in this matter was still pending at the time of trial, which the Magistrate Court was made aware of by motion filed in the Magistrate Court filed by the Appellant.

3.

On December 18, 2014, appellant was under the influence of sedative prescription medication having only recently been informed of his son having been sexually assaulted. As such Appellant was unable to fully engage in the process of representation of his interests and the court erred in not granting Appellant's request for a continuance.

On December 15, 2014, the South Carolina Attorney General victim service coordinator Ms. Toni Lawrimore, informed Appellant that his son had been sexually abused by Shea Brandon Masterson. Appellant immediately scheduled an appointment and was seen on December 16, 2014, by Court appointed psychologist Dr. Frey. Upon Dr. Frey's consultation with my family physician Appellant was immediately placed on prescription medication and instructed not to operate an automobile. (Notice of Civil Appeal filed January 28, 2015, Affidavit of Robert Jay and Dr. Jody Frey PhD).

Appellant contacted attorney Edward McCallum whose office is located in Greenwood, South Carolina, for assistance with the hearing schedule December 18, 2014.

Attorney McCallum was unable to appear on Appellant's behalf but assisted with three motions on my behalf advising the Court of the crimes committed against my son and the mental and physical effects on the Appellant on December 17, 2014.

Under South Carolina law, motions for continuance are addressed to the sound discretion of the trial judge and his ruling will not be reversed on appeal absent an abuse of discretion. *Newman v. Old West Inc.*, 286 S.C. 394, 334 S.E. (2d) 275, 276 (1985). "Whether a judge does or does not abuse his discretion depends upon the facts before him at the time." *Purex Corp. v. Walker*, 278 S.C. 388, 390, 296 S.E. (2d) 868, 869 (1982). *Grant v. Grant* 288 S.C. 86 (1986). An abuse of discretion occurs when a court's decision is controlled by an error of law or is without evidentiary support. *Micronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506, 510, (Ct. App. 2001) *citing* *Ledford v. Pennsylvania Life Ins. Co.*, 267 S.C. 671, 675, (1976).

4.

The Court states "All items sought to be admitted into evidence by the plaintiff were accepted into evidence with exception of an empty envelope" (Second Return to Appeal, page 4, 2nd paragraph,). A search of the official Courts transcript reveals absence of the following from the record, but these documents were filed with Appellant's Notice of Appeal on January 28, 2015:

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2. The letter to Ms. Felix dated January 18, 2014 stating the amount of her lease for 2014, is \$1957.15
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4. The photograph of the lock cut off the cell tower gate which led to the involvement of law enforcement by the Respondent SBA. (EXHIBIT 1 page 103 line 22 - page 104 line 19).
5. The photograph of the person holding the weapon in his hand in which the Appellant was assaulted. (EXHIBIT 1 page 105 line 3-17)

ARGUMENT

The Appellant respectfully request the Court reverse and remand the denial of the eviction of the Respondent SBA, based on the testimony the Appellant's witness, Shelia Sonnenberg, the failure of the Respondent to produce any evidence to establish the deposit that led to the production of the cashier's check was indeed SBA funds.

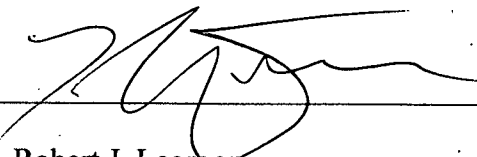
The Appellant also respectfully request the Court reverse and remand the denial of the eviction of SBA, because the Magistrate Court lacked subject matter jurisdiction over this matter because of the pending motion to reconsider and appeal in this case at the time of trial.

The Appellant also respectfully request the Court reverse and remand the denial of the eviction of SBA, such that the Appellant can adequately prepare and present his case without the influence of prescription medication and with the presence of a certified Court reporter to maintain and clear and concise record of these proceedings.

CONCLUSION

For the foregoing reasons, the Appellate, Robert Jay Lagroon, respectfully submits that the above captioned matter be **REVERSED** to grant the eviction of the Respondent SBA.

BY: _____



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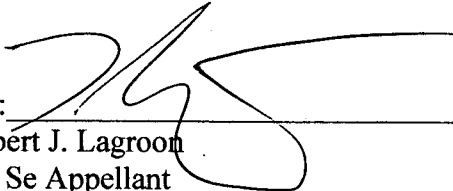
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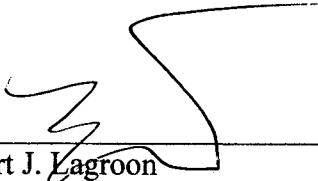
CERTIFICATE OF COUNSEL

The undersigned Pro Se Appellant certifies that the Appellant's Intial Brief complies with Rule 211(b), SCACR.

BY: 
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706-401-4893

CERTIFICATE OF COMPLIANCE

The undersigned Pro Se Appellant certifies that the Intial Brief of Appellant complies with the Supreme Court's Order of August 13, 2007, regarding personal identifiers and sensitive information.

BY: 
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CERTIFICATE OF SERVICE

The undersigned Pro Se Appellant does hereby certify that service of the **Brief of Appellant** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this 6th day of March, 2017, addressed as follows:

BY: _____


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March 6, 2017

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