

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

Case No. 2016-CP-02-01550

RECEIVED

JUN 12 2017

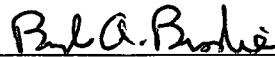
SC Court of Appeals

Robert William Robertson, Appellant,

V.

Huddle House, Inc., Respondent.

INITIAL BRIEF OF APPELLANT



Brad A. Brodie, SC Bar # 8632
Smith, Massey, Brodie, Gynn & Mayes, LLC
Post Office Box 519
Aiken, SC 29802
(803) 643-4110

Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Arguments

1. BECAUSE THE COLLATERAL ASSIGNMENT OF LEASE BETWEEN THE PARTIES PROVIDED THAT “ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE, INC.) SHALL BE DEEMED TO BE UNDER A MONTH-TO-MONTH TENANCY”, THE TRIAL COURT ERRED BY FINDING THIS UNAMBIGUOUS PROVISION DID NOT APPLY AND FINDING THAT HUDDLE HOUSE, INC. HAD MORE THAN A MONTH-TO-MONTH TENANCY .. 1

Conclusion 2

TABLE OF AUTHORITIES

CASES

State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478 S.E. 2d 831 (S.C., 1996) 2

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT THE LANGUAGE IN THE COLLATERAL ASSIGNMENT OF LEASE WHICH STATED THAT "ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE) SHALL BE DEEMED TO BE UNDER A MONTH-TO MONTH TENANCY" IS NOT ENFORCEABLE BY APPELLANT?

STATEMENT OF THE CASE

On July 11, 2016, Robert William Robertson brought this action for a declaratory judgment against Huddle House, Inc. alleging that under the terms of the Collateral Assignment of Lease between the parties, Huddle House, Inc. was under a month-to-month tenancy, which therefore could be terminated by Robert William Robertson with a 30 day notice. The action was tried on November 23, 2016, and judgment entered on February 27, 2017, and the Court found that the month-to-month tenancy language was not controlling.

On March 24, 2017 Robert William Robertson served the Notice of Appeal.

- I. BECAUSE THE COLLATERAL ASSIGNMENT OF LEASE BETWEEN THE PARTIES PROVIDED THAT "ANY POSSESSION OF THE PREMISES BY ASSIGNEE (HUDDLE HOUSE, INC.) SHALL BE DEEMED TO BE UNDER A MONTH-TO-MONTH TENANCY", THE TRIAL COURT ERRED BY FINDING THIS UNAMBIGUOUS PROVISION DID NOT APPLY AND FINDING THAT HUDDLE HOUSE, INC. HAD MORE THAN A MONTH-TO-MONTH TENANCY.

As described in the Complaint, Appellant is the owner of certain property which was under lease to Fine Food, LLC. (Complaint p. 1) Respondent is not a party, or signatory to the lease. Respondent is a party to and did execute a Collateral Assignment of Lease, which contained certain terms, including language that provided that "*Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to*

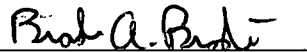
have assumed any obligations of Assignor, except for the payment of the monthly rental payments as set forth in the lease during such period of occupancy by Assignee.” (Transcript Exhibit C.)

Respondent has taken possession of the property and it is the Appellant's position that the possession is under a month-to-month tenancy, and that the trial Court erred in finding otherwise. The language is not ambiguous and should have been enforced by the Court according to its plain meaning. The Collateral Assignment of Lease is subject to general rules of contract construction and the trial court should enforce, not write the contract and should give the contractual language its plain, ordinary and popular meaning. State Farm Fire and Cas. Co. v. Breazell, 324 S.C. 228, 478 S.E. 2d 831 (S.C., 1996)

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Master-in-Equity, and order that the possession by Respondent is under a month-to-month tenancy, as described in the Collateral Assignment of Lease.

Respectfully submitted,



Brad A. Brodie, SC Bar # 8632
Smith, Massey, Brodie, Gynn & Mayes, LLC
Post Office Box 519
Aiken, SC 29802
(803) 643-4110

June 5, 2017

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

RECEIVED

Case No. 2016-CP-02-01550

JUN 12 2017

SC Court of Appeals

Robert William Robertson, Appellant,


V.

Huddle House, Inc., Respondent,

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal on Huddle House, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 2017, addressed to its attorneys of record, Paul Simons, Jr., Hull Barrett, PC, P.O. Box 517, Aiken, South Carolina 29802, and to David E. Hudson, Hull Barrett, PC, P.O. Box 1564, Augusta, Georgia 30903-1564.

June 5, 2017



Brad A. Brodie, SC Bar # 8632
Smith, Massey, Brodie, Guynn & Mayes, LLC
Post Office Box 519
Aiken, SC 29802
(803) 643-4110
Attorney for Appellant

SMITH, MASSEY, BRODIE, GUYNN & MAYES, LLC

ATTORNEYS AND COUNSELORS AT LAW

GARY H. SMITH, III
WM. RAY MASSEY*
BRAD A. BRODIE
MARY O. GUYNN**
W. DANIEL MAYES
SCOTT W. PATTERSON
*ALSO LICENSED IN NORTH CAROLINA
**ALSO LICENSED IN GEORGIA

POST OFFICE BOX 519
210 COLONY PARKWAY, SOUTHEAST
AIKEN, SOUTH CAROLINA 29802

TELEPHONE
(803) 643-4110
FACSIMILE
(803) 643-8140
(803) 644-9057

June 5, 2017

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

Re: Robert William Robertson, Appellant v. Huddle House, Inc., Respondent
Case No.: 2016-CP-02-01550
Appellate Case No.: 2017-000748

Dear Mrs. Kitchings:

Enclosed for filing please find the following:

1. Initial Brief of Appellant;
2. Designation of Matter to be included in the Record on Appeal;
3. Proof of Service

RECEIVED

JUN 12 2017

SC Court of Appeals

Brad A. Brodie

Brad A. Brodie, SC Bar # 8632
Smith, Massey, Brodie, Guynn & Mayes, LLC
Post Office Box 519
Aiken, SC 29802
(803) 643-4110

Attorney for Appellant

cc: Paul Simons, Jr.
HULL BARRETT, PC
P.O. Box 517
Aiken, SC 29802

David H. Hudson
HULL BARRETT, PC
P.O. Box 1564
Augusta, GA 30903-1564

Attorneys for Respondent

SMITH, MASSEY, BRODIE, GUYNN & MAYES, LLC

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 519
210 COLONY PARKWAY, SOUTHEAST
AIKEN, SOUTH CAROLINA 29802



02 1P \$ 002.24⁰
0001912081 JUN 05 2017
MAILED FROM ZIP CODE 29803

RECEIVED

JUN 12 2017
SC Court of Appeals

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