

84232

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Court Case No. 2016-002177
Circuit Court Case No. 2016-CP-32-1968

Gerald J. Nagy, Appellant.
v.
Bob Rice Realty, Inc., Respondent,

MOTION TO STRIKE ALL OR PORTIONS OF BOTH
RESPONDENTS INITIAL BRIEF AND
RESPONDENTS DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD ON APPEAL

Gerald J. Nagy
Mail Stop 149
911 Old Barnwell Road
West Columbia, South Carolina 29170
(803) 808-3438
Pro Se

RECEIVED

AUG 09 2017

SC Court of Appeals

Come now the Appellant, Gerald J. Nagy, Pro Se, and hereby submits the following:

1. On June 02, 2016, in Magistrates Court case #2016-CV-1060854, the Honorable Albert J. Dooley issued a Writ Of Eviction against Appellant.
2. On September 20, 2016, in Circuit Court case #2016-32-1968, the Honorable Donald B. Hocker issued an order reversing the decision of Magistrates Court. By doing so, Judge Hocker effectively ruled that a Residential Lease Agreement between Appellant and Respondent, originally dated on January 01, 2014 was in effect, and the automatic renewal clause contained therein, was valid. Judge Hocker also awarded Appellant court costs but denied additional damages claimed by Appellant.
3. On October 14, 2016, Appellant filed an appeal with the South Carolina Court Of Appeals, appealing only "the monetary damage award" of Judge Hocker.
4. Respondent did not file any type of appeal.
5. On March 20, 2017, Appellant filed his INITIAL BRIEF AND DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL.
6. On April 24, 2017, Respondent filed a MOTION TO DISMISS based mostly on Appellants lack of filing for a Rule 59e SCRPC motion.
7. On June 15, 2017, Respondents MOTION TO DISMISS was denied.
8. On July 20, 2017, Respondent filed both a RESPONDENT'S INITIAL BRIEF and DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APPEAL.

Appellant requests that RESPONDENT'S INITIAL BRIEF and subsequently Respondents DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APPEAL be stricken in their entirety based on the following:

9. In Respondents initial brief, under TABLE OF CONTENTS, Arguments, Respondent lists

five items, three of which (#1, #2, & #4) are items not under consideration in Appellants appeal, Respondent is attempting to obfuscate the issues under appeal, and turn this into a trial de novo.

10. Permeating throughout the other two items (#3 and #5), Respondent states facts and infers conclusions in reference to the decisions of the two lower courts. Appellant believes the arguments presented by both parties, along with the rulings of both courts, that are not germane to the issues under appeal, should not be argued or considered under this appeal.

ALTERNATIVELY, Appellant requests that portions of the two filings be stricken. Considering the items as stated in #1 through #9 above, Appellant is submitting proposed selected strikes (and Appellants reasoning) to portions of both documents (attached hereto as EXHIBIT A) as follows:

1. TABLE OF CONTENTS, Arguments, #1, #2, & #4. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling.
2. TABLE OF AUTHORITIES, CASES, #2, #6, & #8. These are cases cited under selected stricken Argument sections.
3. TABLE OF AUTHORITIES, STATUES, #1, #2, & #3. These are statues cited under selected stricken Argument sections.
4. STATEMENT OF ISSUES ON APPEAL, #1, #2, #4. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling.
5. STATEMENT OF THE CASE (no page number), portions of the third paragraph. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling.
6. FACTS, pages 3, 4, & 5, portions of various paragraphs. These issues are not under appeal

and are moot based on the Circuit Court reversal of the Magistrates ruling. Also, many of the "facts" stated simply are not facts, or infer things such as month to month tenancy (page 3) that the Circuit Court, by reversing, ruled were in fact, not true. In the March 10th hearing (page 4), the Magistrate made no findings other than the failure of the Respondent to send a 30 day Registered (or Certified) letter to Appellant. Respondent is again arguing items that were reversed (page 4, last paragraph). Respondent also included an opinion (page 5, second paragraph) that "...Judge Hocker in effect stayed the execution..." which has absolutely no basis under any statute, which Respondent continues to repeat in numerous filings, and was addressed by Appellant in his reply to Respondents MOTION TO DISMISS.

7. STANDARD OF REVIEW, pages 5 - 9, the entire section. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling. In this entire section, Respondent is re-presenting arguments from the cases already decided by both the Magistrate Court and the Circuit Court and attempting to turn this into a trial de novo, ignoring the issues under appeal.
8. LEASE CREDITS, page 9, portions of the second paragraph. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling. Again, Respondent states conclusions as facts, and claims limited time frames, all of which were reversed by the Circuit Court, and is re-presenting arguments from the cases already decided by both the Magistrate Court and the Circuit Court, and attempting to turn this into a trial de novo.
9. NOTICE TO TERMINATE, pages 10-11, the entire section. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling. In this entire section, Respondent is re-presenting arguments from the cases already decided by both

the Magistrate Court and the Circuit Court and attempting to turn this into a trial de novo, ignoring the issues under appeal.

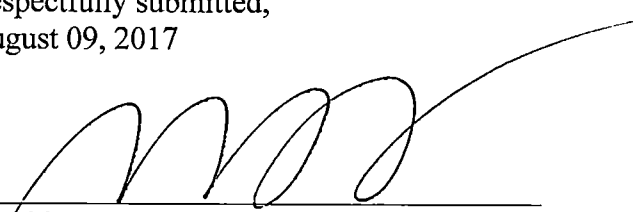
10. RETALIATORY CONDUCT, page 12, portions of paragraph three. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling.
11. RETALIATORY CONDUCT, page 13, portions of the first paragraph. Respondent is presenting "facts" after the date this appeal had been filed. Parenthetically, Appellant vacated the property over six months ago.
12. CONCLUSION, page 13. These issues are not under appeal and are moot based on the Circuit Court reversal of the Magistrates ruling.
13. RECORD ON APPEAL, #1. There were two Magistrate Court hearings, the respondent did not designate which, and to Appellants knowledge, the only document produced by that court is #2 on the same list, the Magistrates Return which specifically did not include a transcript.
14. RECORD ON APPEAL, #15. Respondent is trying to include a document dated months after the filing of this appeal.

It is important to note that as pro se, Appellant is not entirely certain as to what portions could or should be stricken. Throughout their brief, Respondent has interwoven many misstatements, arguments and items that were ruled to not be true, invalidated, or overturned by the Circuit Court, and essentially has tried to retry the entire case from the beginning when the only things under appeal are the monetary damages not awarded to Appellant by the Circuit Court. In addition it appears to Appellant that Respondent is also trying to reargue their MOTION TO DISMISS as the outcome was not favorable to Respondent. Appellant is not certain, based on the denial of Respondents MOTION TO DISMISS, if Respondent is allowed to raise those arguments again in subsequent filings. If Respondent is not allowed to do so,

Appellant would ask the court to strike those irrelevant portions also.

Therefore, Appellant prays that this Honorable Court grant Appellants request to strike all or portions of Respondents INITIAL BRIEF and RESPONDENTS DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL as invalid and outside the scope of this appeal.

Respectfully submitted,
August 09, 2017



Gerald J. Nagy
Mail Stop 149
911 Old Barnwell Road
West Columbia, South Carolina 29170
(803) 808-3438
Pro Se

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case #2016-002177

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

RECEIVED
JUL 20 2017
SC Court of Appeals

Case No. 2016-CP-32-1968
ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854

Bob Rice Realty, Inc., Respondent,

v.

Gerald J. Nagy, Appellant.

RESPONDENT'S INITIAL BRIEF

Cynthia K. Mason
Holler, Garner, Corbett, Gilchrist,
Hayes & Mason
1777 Bull St.
Columbia, SC 29201
Phone (803) 765-2968
Fax (803) 252-8290
Attorney for the Respondent

TABLE OF CONTENTS

Table of Authorities..... i

Statement of Issues on Appeal.....ii

Statement of the Case..... 1

Facts..... 3

Arguments

- ~~1. Validity of Unsigned Lease~~
- ~~2. Automatic Renewal Clause~~
- 3. Lease Credits
- ~~4. Notice to Terminate~~
- 5. Retaliatory Conduct

Conclusion..... 13

TABLE OF AUTHORITIES

CASES

1. *BMW of North America, LLC v. Complete Auto Recon Services, Inc.*, 399 S.C. 444, 454-455, 731 S.E.2d 902, 908 (Ct. App. 2012)
- ~~2. *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984)~~
3. *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005)
4. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004)
5. Hadfield at 92-93, 538 S.E.2d 268, 53 S.E.2d at 270
- ~~6. Hadfield, 343 S.C. at 94, 538 S.E.2d at 271~~
7. *Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006)
- ~~8. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984)~~

STATUTES

- ~~1. South Carolina Code §27-40-770(b)~~
- ~~2. South Carolina Code §27-40-320~~
- ~~3. S.C. Code §27-40-240(b)(3)~~
4. S.C. Code §27-40-910(h)

OTHER AUTHORITIES

1. South Carolina Rules of Civil Procedure, Rule 59(e)

STATEMENT OF ISSUES ON APPEAL

- ~~1. Did the Circuit Court err in reversing the Magistrate when S.C. Code §27-40-320 states an unsigned or undelivered rental agreement can only be effective for one year?~~
- ~~2. Did the Circuit Court err by considering evidence not admitted at the trial court level?~~
3. Did the Circuit Court err in denying Appellant's request for damages?
- ~~4. Did the Circuit Court err by refusing to hearing arguments on retaliatory conduct and denying damages when this issue was not raised to or ruled upon by the Magistrate Court?~~

STATEMENT OF THE CASE

This action arises from a Landlord-Tenant dispute. Appellant had been renting a residential property from Bob Rice Realty, Inc. (Respondent) without a lease since 1982. In October 2013, the Respondent attempted to effectuate a lease with the Appellant for the term of January 1, 2014 through December 31, 2014, by sending the Appellant an unsigned lease for his review. (Resp. Letter 10/13) Although the parties disagree about how or why the lease was not signed by both parties, it is undisputed that the lease was never formalized with both parties' signatures. (Lease, Mag. Return, Mag Transcript, App. Brief)

Respondent served Appellant with a thirty day notice to vacate on April 4th, 2016. (Resp. Letter 04/16) When the Appellant failed to vacate the property, Respondent filed this action, a Rule to Vacate, on _____. (Rule) Appellant timely filed an Answer and Counterclaim.

On June 2, 2016, a bench trial was held in the Lexington County Magistrate Court. ~~The Appellant argued the unsigned lease from 2014 was effective based on South Carolina Code §27-40-320(a) and that it contained an automatic renewal clause causing the lease to automatically renew in 2015 and again in 2016. (Mag. Return; Mag Transcript)~~ Judge Dooley held in favor of the Respondent, ~~holding that the unsigned lease was valid for the period of January 1, 2014 through December 31, 2014 pursuant to South Carolina Code §27-40-320, subsections (a) and (b), but that pursuant to subsection (c), the lease was only valid for a term of one year. (Mag. Return; Mag Transcript)~~ Judge Dooley also denied Appellant's counterclaims as they were based on an expired lease. (Mag. Return; Mag Transcript) On that same date, Appellant filed and served a notice of intent to appeal the eviction to the Court of Common Pleas.¹

¹ A bond hearing was held on _____ whereby the Appellant was required to pay the monthly rent during the pendency of the appeal.

The appeal was heard on September 20, 2016, by the Honorable Donald B. Hocker. Judge Hocker's ruling states, "The Magistrate's ruling is reversed, *to the extent of allowing the Appellant to remain on the property until December 31, 2016.*" (Circuit Court Order) Judge Hocker also awarded Appellant \$150.00 in court costs for filing the appeal. On October 24, 2016, Appellant filed and served a Notice of Appeal of Judge Hocker's monetary damage award.

FACTS

Appellant had been renting a residential property from the Respondent without a lease since 1982. In October 2013, Respondent sent Appellant a letter indicating the Respondent would like the parties to execute a lease agreement effective January 1, 2014, and stating the monthly rental amount would be increased. (Resp. Letter 10/13) In January 2014, Respondent sent an *unsigned* lease agreement to the Appellant and asked the Appellant to contact them to discuss the lease. (Resp. Letter 01/14) Despite numerous requests for the Appellant to return a signed copy of the lease, Respondent never received the lease. (Mag. Return; Mag Transcript) In his testimony to the trial court, Appellant claims he did sign and mail the lease agreement to the Appellant initially. (Mag. Return; Mag Transcript) However, Appellant also admitted he subsequently received multiple requests from the Respondent to forward a copy of the signed agreement, but he never did so. (Mag. Return; Mag Transcript) In accordance with the unsigned lease, Appellant made timely rental payments ~~throughout 2014.~~ (Mag. Return; Mag Transcript)

On July 8, 2015, Respondent sent the Appellant a letter terminating the ~~month-to-month~~ tenancy and requesting Appellant vacate the property no later than September 30, 2015. (Resp. Letter 08/15) Appellant responded on August 18, 2015, stating his belief that the ~~2014~~ lease had renewed pursuant to its automatic renewal clause, but indicating he would vacate the property on or before the end of the lease term, which he alleged was December 31, 2015. (App Letter 08/15) Believing the Appellant would willingly vacate the property as of December 31, 2015, Respondent took no further action to remove the tenant from the property thereby allowing him to continue his ~~month-to-month~~ tenancy throughout 2015.

The Appellant again failed to vacate the property by the end of 2015, and on February 22, 2016, the Respondent sent a notice to the Appellant indicating he must vacate the property by March 1, 2016. (Resp. Letter 02/16) Appellant responded on February 29, 2016, stating his belief

that the ~~2014~~ lease had again renewed pursuant to its automatic renewal clause. (App. Email 2/29/16). Respondent then filed a Rule to Vacate on March 10th, 2016 which was heard by the Magistrate on _____. ~~The Magistrate found that no written lease was in effect and the tenant was on a month to month tenancy.~~ The Magistrate ~~therefore~~ denied the action due to Respondent's failure to provide the tenant thirty (30) days' notice ~~as a holdover tenant on a month to month tenancy pursuant to S.C. Code §27-40-770(b).~~

As a result of this ruling, Respondent served Appellant with a thirty day notice to vacate on April 4th, 2016. (Notice to Vacate) When the Appellant again failed to vacate the property, Respondent refiled the Rule to Vacate on _____. Appellant timely filed an Answer and Counterclaim.

On June 2nd, 2016, a bench trial was held before the Honorable Albert J. Dooley, III, in Lexington County Magistrate's Court. Although the parties disagreed about how or why the 2014 lease was not signed by both parties, it is undisputed that it was in fact not signed by the landlord and the landlord did not return a signed copy to the Appellant. (Mag. Return; Mag Transcript) ~~The Appellant argued the unsigned lease from 2014 was effective based on South Carolina Code §27-40-320(a) and that it contained an automatic renewal clause causing the lease to automatically renew in 2015 and again in 2016. (Mag. Return; Mag Transcript)~~ Judge Dooley held in favor of the Respondent, ~~holding that the unsigned lease was valid for the period of January 1, 2014 through December 31, 2014 pursuant to South Carolina Code §27-40-320, subsections (a) and (b), but that pursuant to subsection (c), the lease was only valid for a term of one year. (Mag. Return; Mag Transcript).~~ Judge Dooley also denied Appellant's counterclaims. (Mag. Return; Mag Transcript) Appellant filed a notice of appeal on the same date.

The appeal was heard on September 20th, 2016, before the Honorable Donald B. Hocker. Respondent did not appear at the appellate hearing in Circuit Court. (Circuit Court Order and Transcript) The Respondent didn't provide a record on appeal and did not request or provide a transcript of the Magistrate Court hearing, instead relying on the Magistrate's Return. (Circuit Court Transcript and File, Mag. Court File). During the circuit court hearing, the Appellant presented documents that were not in evidence from the lower court, and are in fact, part of settlement discussions between the parties. (Circuit Court Transcript, pps. 8-10). The primary document relied upon by the Circuit Court was an email from the Respondent in attempt to settle this matter by allowing the Appellant to remain in the property until December 2016. (Circuit Court Transcript, pps. 12-13).

Judge Hocker's ruling states, "The Magistrate's ruling is reversed, *to the extent of allowing the Appellant to remain on the property until December 31, 2016.*" (Circuit Court Order) ~~Judge Hocker in effect stayed the execution of the eviction until December 31, 2016, based on the Respondent's email~~ and also awarded Appellant \$150.00 in court costs. (Circuit Court Order).

~~STANDARD OF REVIEW~~

~~In an appeal from the Magistrate Court, the circuit court maintains a broad scope of review, however, the Court of Appeals' standard of review is more limited. *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984). "In ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence." *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). "Unless we find an error of law, we will affirm the judge's holding if there are any~~

supporting his decision.” *Hadfield*, 343 S.C. at 94, 538 S.E.2d at 271. The Court of Appeals retains *de novo* review of whether the facts show the circuit court’s decision was confirmed or affected by errors of law. *Hadfield* at 92-93, 538 S.E.2d 268, 53 S.E.2d at 270. However, statutory interpretation is a question of law, of which the appellate court reviews *de novo*. *Town of Summerville v. City of Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

I. Validity of Unsigned Lease

It is undisputed that the Respondent sent the Appellant an unsigned lease for the term of January 1, 2014 through December 31, 2014 and the lease was never formalized with the signatures of both parties. The second paragraph of the lease states: “Landlord leases to Tenant and Tenant leases from Landlord upon the terms and conditions contained herein, the dwelling located at 300 Timber Ridge Drive, West Columbia, SC 29169 for a period commencing on the 1st day of January 2014, and thereafter until the 31st day of December, 2014, at which time the Lease Agreement shall automatically renew each year unless terminated in writing.” (Lease)

South Carolina Code §27-40-320 provides for the enforcement of unsigned or undelivered rental agreements.

SECTION §27-40-320. Effect of unsigned or undelivered rental agreement.

- (a) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.
- (b) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
- (c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.

In the trial court, Appellant testified he received an unsigned lease from the Respondent and he signed and returned the lease to the Respondent. (Magistrate Return, Mag. Transcript, Circuit Transcript.) Respondent testified they never received a signed copy of the lease from the Appellant despite numerous requests for a copy. (Mag. Return, Mag. Transcript, Circuit Transcript) In spite of this fact, Appellant accepted possession of the property and paid rent without reservation and Respondent accepted the rental payments without reservation. As a result, S.C. Code §27-40-320, gave the rental agreement the same effect as if it had been signed and delivered by both parties for a period of one year, January 1, 2014 through December 31, 2014.

During the circuit court hearing, the Appellant presented documents that were not in evidence from the lower court, and are in fact, part of settlement discussions between the parties. (Circuit Court Transcript, pps. 8-10). It appears the primary document relied upon by the Circuit Court was an email from the Respondent in an attempt to settle this matter by allowing the Appellant to remain in the property until December 2016. (Circuit Court Transcript, pps. 12-13).

Therefore, Judge Hocker ruled in reversing the Magistrate Court "to the extent of allowing the Appellant to remain on the property until December 31, 2016" when the unsigned lease expired on December 31, 2014 pursuant to S.C. Code §27-40-320 and in allowing the Appellant to present documents that were not entered into evidence at the trial court level and were part of settlement negotiations.

II. Automatic Renewal Clause

Appellant argued both at the trial level and on appeal that because the lease was valid under S.C. Code §27-40-320, the automatic renewal clause contained in the lease was valid. (Magistrate Return, Mag. Transcript, Circuit Transcript.)

Section (c) of S.C. Code §27-40-320 states, “[i]f a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.” Appellant argues this section applies only to the lease term, and does not prohibit an automatic renewal clause.

When a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the court has no right to impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Id.* The best evidence of legislative intent is the text of the statute. *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). “Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). An appellate court should reject the interpretation of a statute that would lead to an absurd result the legislature could not have intended. *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

The language of Section 27-40-320(c) is plain, clear and unambiguous. “If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.” (Emphasis added.) Because the unexpired lease was given effect solely by the operation of this section, it can only be valid for one year. An automatic renewal clause contained in a lease given effect by this section would defeat the purpose this statute by allowing an otherwise invalid lease to be valid for a period in excess of one year, resulting in an absurd result the legislature could not have intended.

~~Therefore, Judge Hocker erred in reversing the Magistrate Court "to the extent of allowing the Appellant to remain on the lease through December 31, 2016" when the unsigned lease was signed on December 31, 2014.~~

III. Lease Credits

Appellant claims he is entitled to a \$25.00 monthly credit under the lease. The lease states, "As an incentive to Tenant to make rent payments by the first of the month and for being responsible for all minor maintenance of the premises, a pre-payment discount in the amount of \$25.00 may be deducted from the above rental amount each month." (Lease)

However, Appellant testified that he did not withhold this amount from the monthly lease payments and paid the rent without reservation. (Magistrate Return, Mag. Transcript, Circuit Transcript.) ~~Since the rent was paid without reservation pursuant to S.C. Code §27-40-320, the lease was only valid for one year through December 31, 2014, and~~ the first time Appellant availed himself of the rental credit for repair expenses incurred in February 2015 (App. Brief, Magistrate Return, Mag. Transcript, Circuit Transcript.) ~~this term is not applicable.~~

Furthermore, both at the trial level and in his brief, Appellant argues the above referenced term was altered by a verbal agreement between the parties. (Magistrate Return, Mag. Transcript, Circuit Transcript.) "When Appellant and Respondent entered into the lease, there was a verbal agreement between Appellant and Respondent that Appellant would pay the full rent due, including the \$25.00 per month, and if and when any repair expenses were incurred, Appellant would adjust the following month's rent accordingly and send Respondent an up-to-date accounting. The first time Appellant availed himself of the rental credit for repair expenses incurred in February 2015, the credit was denied." (App. Brief, Magistrate Return, Mag. Transcript, Circuit Transcript.)

Under South Carolina Code §32-3-10(4), Statute of Frauds, any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. Failure to put such a contract in writing renders it void. (S.C. Code § 27-35-20). Moreover, a contract required to be in writing by the Statute of Frauds cannot be orally modified. *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E.2d 856 (1983). Again, it is undisputed that Respondent never signed the lease.

The Magistrate Judge properly denied Appellant's counterclaim and Judge Hocker properly denied Appellant's appeal of this issue and properly denied Appellant's request for damages.

~~Notice to Terminate~~
The appellant claims the Respondent did not properly notify him of Respondent's intent to terminate the lease.
Code §27-40-240 defines both the giving and receiving of notice.

- ~~SECTION 27 40 240. Notice.~~
- ~~(A) A person has notice of a fact if:
 - ~~(1) the person has actual knowledge of it;~~
 - ~~(2) the person has received a notice or notification of it; or~~
 - ~~(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.~~A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.~~
 - ~~(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:
 - ~~(1) it comes to his attention; *or*~~
 - ~~(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord.~~~~

landlord as the place for receipt of the communication,
or
(3) in the case of the tenant, it is delivered in hand to the
tenant or mailed by registered or certified mail to the
tenant at the place held out by him as the place for
receipt of the communication, or in the absence of the
designation to the tenant's last known place of
residence. Proof of mailing pursuant to this subsection
constitutes notice without proof of receipt.

(Emphasis Added.) “On July 8, 2015, Respondent sent Appellant a letter requesting Appellee
vacate the premises no later than September 30, 2015.” (App. Brief, Magistrate Return, Mag.
Transcript, Circuit Transcript.) “On September 21, 2015, Appellant sent an email to Respondent
requesting a two month extension until March 1, 2016.” (App. Brief, Magistrate Return, Mag.
Transcript, Circuit Transcript.) Undeniably, the Appellant had notice of Respondent’s position
and intent to terminate the month to month tenancy.

V. Retaliatory Conduct

The Appellant claims “the Circuit Court Judge failed to fully consider remedies under
S.C. Code §27-40-910(h) – Retaliatory conducted prohibited, which reads in part: Any landlord
who acts in retaliation against the tenant for engaging in protected conduct is liable for damages
up to three months rent...”

“An issue must have been raised to and ruled upon by the trial court in order to be
preserved for appellate review.” *BMW of North America, LLC v. Complete Auto Recon Services,
Inc.*, 399 S.C. 444, 454-455, 731 S.E.2d 902, 908 (Ct. App. 2012). “When a court makes a
general ruling on an issue, but does not address the specific argument raised by a party, that party
must make a Rule 59(e) motion asking the court to rule on the issue in order to preserve it for
appeal.” *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005). “A party
must file such a motion when an issue or argument has been raised, but not ruled on, in order to

preserve it for appellate review.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004).

In his brief, the appellant admits “[t]his issue was not allowed to be raised during the Summary Court trial as the Magistrate had already ruled in favor of the Respondent.” (Magistrate Return, Mag. Transcript, Circuit Transcript.) However, Appellant failed to proffer testimony or to file a Motion to Alter or Amend the Judgment or for Reconsideration with the Court pursuant to Rule 59(e), SCRCF. (Magistrate Return, Mag. Transcript, Circuit Transcript.) Because this issue was not raised to and ruled upon by the Court, and the Appellant did not file a Rule 59(e), SCRCF motion with the court, “the appellate court may not address the issue.” *Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006). The Circuit Court agreed. (Circuit Court Transcript pgs. 16-17).

Moreover, the Appellant has presented no evidence of retaliatory conduct. The Respondent requested a copy of the signed lease multiple times in 2014 and did not receive it. (Magistrate Return, Mag. Transcript) Since the parties operated under the terms of the unsigned lease ~~throughout 2014, and the lease expired on January 1, 2015,~~ Respondent was simply trying to either effectuate a written lease or oust a holdover tenant. There is nothing retaliatory about a landlord attempting to effectuate a written lease.

In fact, the Appellant admits, “[t]he principle, Mr. Robert Rice, passed away and the operations were assumed by his heirs, with Terri Lynn McLaughlin being appointed as Property Manager and Sales Broker.” (App. Brief) It is logical under these circumstances, that the heirs may want to sell off some the business’s properties to reduce their responsibilities.

Additionally, the Respondent graciously allowed the Appellant several extensions after requests to vacate were made, after the eviction was ordered, to the Circuit Court, and again to

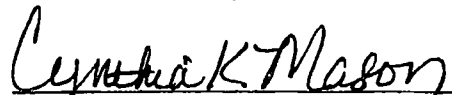
this Court when the Appellant filed a Writ. Respondent has been more than accommodating to the Appellant, ~~who, as of the date of the filing of this brief, has still not fully vacated the property pursuant to this Court's order.~~

There is simply no evidence of retaliatory conduct and no evidence the Circuit Court failed to fully consider the applicability of this statute, particularly in light of the fact that this issue was not raised to and ruled upon by the trial court. Therefore, the Circuit Court properly refused to consider this argument and properly denied Appellant's request for damages.

CONCLUSION

The circuit court ~~erred in reversing the magistrate court, but~~ properly denied Appellant's request for damages.

Respectfully submitted



Cynthia K. Mason
Holler, Garner, Corbett, Gilchrist,
Hayes & Mason
PO Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Respondent

July 20, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case #2016-002177

RECEIVED

JUL 21 2017

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

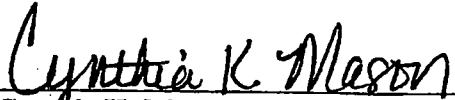
Case No. 2016-CP-32-1968
ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854

Bob Rice Realty, Inc., Respondent,

v.

Gerald J. Nagy, Appellant.

**DESIGNATION OF MATTERS
TO BE INCLUDED IN RECORD ON APPEAL**

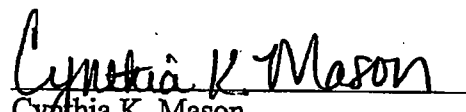

Cynthia K. Mason
Holler, Garner, Corbett, Gilchrist,
Hayes & Mason
PO Box 11006
Columbia, SC 29211
(803) 765-2968

July 20, 2017

Respondent proposes the following be included in the Record on Appeal:

- ~~1. Magistrate Court Transcript~~
2. Magistrate's Return to Civil Appeal, dated June 6, 2016
3. Bench Order of Judge Donald B. Hocker, dated September 20, 2016
4. Circuit Court Transcript of September 20, 2016
5. Exhibits presented to Circuit Court at hearing of September 20, 2016
6. Lease for term of January 1, 2014 – December 31, 2014
7. Respondent Letter dated October 2013
8. Respondent Letter dated January 2014
9. Respondent's Notice to Vacate dated July 8, 2015
10. Correspondence from Appellant, dated August 18, 2015
11. Appellant's Request for Two Month Extension, dated November 28, 2015
12. Respondent Notice to Vacate dated February 22, 2016
13. Correspondence from Appellant dated February 29, 2016
14. Respondent's Notice to Vacate dated April 4, 2016
- ~~15. Correspondence from Appellant dated December 30, 2016~~

I certify that this designation contains no matter which is irrelevant to this appeal.


Cynthia K. Mason
Holler, Garner, Corbett, Gilchrist,
Hayes & Mason
PO Box 11006
Columbia, SC 29211
(803) 765-2968

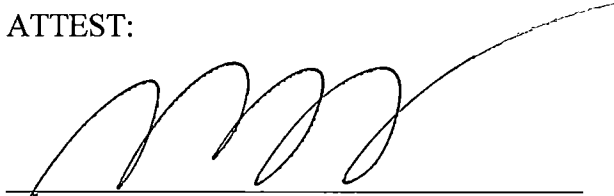
CERTIFICATE OF SERVICE

I, Gerald J. Nagy, hereby attest and affirm that on this date, August 09, 2017, I served the within and foregoing MOTION TO STRIKE ALL OR PORTIONS OF BOTH RESPONDENTS INITIAL BRIEF AND RESPONDENTS DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL, by having deposited a copy of the aforementioned document with the method and on the parties as indicated below:

Via postage prepaid United States Postal Service First Class Mail, article addressed to:

Cynthia K. Mason
Holler, Garner, Corbitt, Gilchrist, Hayes, & Mason
1777 Bull Street
Columbia, South Carolina 29201

ATTEST:



Gerald J. Nagy

RECEIVED

AUG 09 2017

SC Court of Appeals