

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

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SC Court of Appeals

Case No. 2016-CP-07-01475

Shamsy Madani, ..... Respondent,

v.

Rickey Phelps and Christy Phelps ..... Appellants.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE APPELLATE JUDGE ERR IN FINDING RESPONDENT PRESERVED THE ISSUE OF IRRECONCILABLE VERDICTS FOR APPELLATE REVIEW?
2. DID THE APPELLATE JUDGE ERR IN FINDING THE LOWER COURT JUDGE ABUSED HER DISRECTION IN FINDING THE VERDICTS RECONCILABLE?

STATEMENT OF THE CASE

On November 30, 2015 Rickey Phelps and Christy Phelps (“Appellants”) brought this action alleging violation of S.C. Code § 27-40-660 (“Unlawful Ouster”) as against Shamsy Madani (“Respondent”), their landlord, for unlawful ouster of Appellants from their residential property and further alleging violation of S.C. Code § 27-4-410 (“Security Deposit”) for Respondent’s failure to return Appellants’ security deposit as properly and timely requested. Respondent counterclaimed for common law breach of contract for lost rent and damages. On April 18, 2016 the jury returned verdicts in favor of Appellants on both claims, however, found zero damages as to the claim of unlawful ouster. The jury returned a verdict in favor of Respondent for \$1,351.85 for loss rent and damages. Respondent made no motion of inquiry to

the jury regarding the verdicts before their dismissal.

By order of the trial court on June 1, 2016, Respondent's post-trial motion for reconsideration and new trial made upon arguments that the jury's verdict of zero dollars as to the unlawful ouster was irreconcilable as a matter of law was denied. Respondent appealed and after hearing on March 20<sup>th</sup>, 2017 ("Hearing") Judge Marvin H. Dukes, III issued an order on August 3, 2017 finding that a new trial was required as a result of an "irreconcilable verdict". On August 22, 2017 Appellants filed and served this appeal.

#### FACTS

On April 18, 2016 the above listed action came before the Judge Nancy Sadler of the Beaufort County Magistrate Court ("Judge Sadler") on Rickey Phelps and Christy Phelps claims for Shamsy Madani's violations of Unlawful Ouster and violation of Security Deposit as well as Respondent's counterclaim for common law breach of contract ("Breach"). Appl.'s Comp., Respd.'s Ans. Prior to trial, both parties stipulated by representation to Judge Sadler that the rent at issue in the subject matter was \$950.00 and that a security deposit provided by Respondents to Appellant was \$950.00. At the close of all the evidence, Respondent moved for directed verdicts awarding unpaid rent for the months of September, October and November as well as dismissal of Appellants' claims or defenses made upon allegations Respondent unlawfully gained access to Appellants' residence. Both motions were denied. Appellants next moved that Respondent's defenses of unclean hands, estoppel and res judicata be dismissed as inapplicable equitable defenses in Appellants' action at law and Judge Sadler accepted Respondent's withdrawal of those defenses. Prt. Trans.

At the conclusion of trial, the matter was submitted to the jury with instructions on Unlawful Ouster, Security Deposit and S.C. Code § 27-40-640 ("General Defense"), without objection from Respondent, which provides for a general defense against the Respondent's claims for damages for non-compliance with the Residential Landlord Tenant Act ("RLTA"). The jury was also given verdict forms on each cause of action by agreement and consent of Appellants and Respondents. The jury returned a verdict in favor of Appellants as against Respondent for her violation Unlawful Ouster with zero (0) actual damages and in favor of Appellants as against Respondent for violation of Security Deposit with a finding in the amount of the security wrongfully withheld of \$950.00.

Frms. The Jury also returned a verdict in favor of Respondent against Appellants in the amount of \$301.85 for damage to the subject rental property and \$1,050.00 in actual damages for failure to pay rent. Id. Judge Sadler dismissed the Jury without further, motion, inquiry or request from Respondent. By order of Judge Sadler on June 1, 2016, Respondent's post-trial motion for reconsideration and new trial made upon arguments that the jury's verdict of zero dollars is irreconcilable as a matter of law was denied. Ord. June 1, 2016. Judge Sadler stated:

At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75,100 (\$401.75) and this was clearly the intention of the jury based on its verdicts. The South Carolina Code, however, states, 'If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410.' In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

Id. Respondent appealed to the Beaufort Court of Common Pleas and Appellants filed their Memorandum in Opposition to Respondent's appeal on October 26, 2016 arguing Respondent failed to preserve the issue for appellate review and that Unlawful Ouster did not require a finding of actual damages proving the verdicts reconcilable. Memo. After hearing on March 20<sup>th</sup>, 2017 ("Hearing") Judge Marvin H. Dukes, III found that a new trial was required as a result of "irreconcilable verdict". Ord. August 3, 2017. Upon diligent search by the Appellants no transcript exists to provide the arguments made at Hearing. This appeal timely followed.

## Arguments

### I. BECAUSE RESPONDENT FAILED TO TIMELY OBJECT TO ANY PERCEIVED ERRONEOUS OR IRRECONCILABLE VERDICT ISSUED FROM THE JURY SHE HAS FAILED TO PRESERVE THE ISSUE FOR APPEAL.

Appellants argue that because Respondent allowed the court to release the jury without any attempt to discover the jury's intentions she has failed to preserve the issue for review and the Court of Common Pleas should have affirmed the lower court. The Court in *Camden v.*

*Hilton* provided:

The rule that parties seeking to reform a verdict must first voice their objection before the jury is discharged has been followed in South Carolina since at least 1920 . . . . ("The defendant's counsel made no attempt to find out what the jury intended and their objections come too late. It was [counsel's] business to clarify and ask for a correction and reformation of the verdict before the jury were [sic] discharged.") . . . . [T]his court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the injury has been discharged, claim advantage of the error, thus invited by acquiescence.

*Camden v. Hilton*, 360 S.C. 164, 171-72, S.E.2d 88 (2004). As in *Camden*, Respondent failed to bring her concerns of confusion or irreconcilability to the attention of the trial court and submit inquire to the jury before their dismissal. Similarly, Respondent made no objection to the verdict form submitted to the jury and did not request an amendment that should the jury find zero damages they should find for Respondent. Respondent's plea to the Court of Common Pleas for review of the jury's verdict should not have been allowed where Respondent had acquiesced to the finding.

### II. BECAUSE THE TRIAL JUDGE BELOW FOUND THE JURY'S VERDICTS TO BE RECONCILABLE HER FINDING SHOULD NOT BE OVERTURNED WHERE SHE DID NOT ABUSE HER DISCRETION AND THE VERDICTS WERE, OTHERWISE, SUPPORTED BY THE FACTS AND APPLICABLE LAW.

Appellants next argue the jury verdicts should not be reversed where the jury's verdict in favor of Appellants as to Respondent's violation of Unlawful Ouster was reconcilable as a matter of law and Judge Sadler did not abuse her discretion in so finding. Respondent characterized the

verdict forms as being confused where zero damages were awarded.

First, it is not irreconcilable to conceive that the jury did not find actual damages in favor of Appellants where none were presented and that, in the alternative, Unlawful Ouster provides for statutory damages by way of trebling rent in lieu of actual damages, accordingly. Judge Sadler correctly provided:

At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75,100 (\$401.75) and this was clearly the intention of the jury based on its verdicts. The South Carolina Code, however, states, 'If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410.' In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

Ord. June 1, 2016. Similarly, should any numerical variation in the jury's verdict forms create concerns of irreconcilability General Defense provides, "the tenant may rely on the rental agreement or the provision of this chapter to assert defenses . . . for any amount recoverable thereunder . . ." S.C. Code § 27-40-640. At trial, the Appellants presented sufficient evidence of Respondent's inappropriate access to the residence such that Respondent's motion for directed verdict as to Appellants' defense of unlawful access was denied. Appellants further presented evidence that the Respondent's behavior violated the RLTA's requirement for written instruction as to any changes in the location of payment of rent. Judge Sadler instructed the jury as to General Defense, without objection from Respondent, and it is not irreconcilable that the amounts determined were the result of defensive offset for Respondent's inappropriate behavior. Summarily, Judge Sadler's determination that the jury verdicts were reconcilable was supported

by the applicable law and facts of the case and should not have been reversed by the appellate court.

CONCLUSION

For these reasons, this Court should reverse the judgment of the circuit court reversing the trial judge's finding that the jury verdicts were reconcilable.

October 4, 2017

Respectfully submitted,



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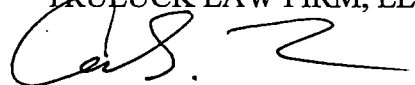
v.

Rickey Phelps and Christy Phelps ..... Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Initial Brief and Letter of Status of Transcript and Designation of Matter on Appeal in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by U.S. Mail, postage prepaid, on October 4, 2017 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

October 4, 2017

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