

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

NOV 30 2017

Marvin H. Dukes, III, Circuit Court Judge

SC Court of Appeals

Case No. 2016CP0701475

Shamsy Madani, Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

RECORD ON APPEAL

Chris S. Truluck
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellants

Andrew J. Toney
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorney for Respondent

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475

Shamsy Madani, Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

RECORD ON APPEAL

Chris S. Truluck
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellants

Andrew J. Toney
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorney for Respondent

INDEX

Order of June 1, 2016..... 1
Order of August 3, 2017..... 4

Appellants' Complaint.....	7
Respondent's Answer.....	11
Partial Transcript.....	17
Verdicts.....	46
Memorandum in Opposition filed October 24, 2016.....	51
Certificate of Counsel in Final Brief.....	63

Order of June 1, 2016

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT) C/A NO: 2015CV0710301411

RICKY PHELPS AND CHRISTY PHELPS,)
Plaintiffs,)
Vs.) Order on Post Trial Motions of Defendant
SHAMSY MADANI,)
Defendant.)

2016 JUN - 6 AM 8: 23
BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH

This Order resolves Defendant Shamsy Madani's Motion for Reconsideration and New Trial which was filed with the Beaufort County Magistrate Court on May 20, 2016. The Motions apply to the Court's Order on Post Trial Motions of the parties filed April 28, 2016, and the Court's Order on post trial motions of the parties signed on May 12, 2016. The Plaintiffs Phelps object to the Court's consideration of the motion as untimely filed; however, the Court has considered the motion in full.

1. Defendant Madani first moves that the Court award her attorney's fees on the basis that she was the prevailing party in her counterclaim against the Plaintiff. In this matter, both parties were given awards by the jury. Because of the statutory provision requiring the award of three months' rent or the amount awarded by the jury, whichever is greater, on the Plaintiff's claim of unlawful ouster, the Plaintiffs' monetary award exceeded the award made to the Defendant on her claim for unpaid rent. Therefore, the Court found that the Plaintiffs were the prevailing party in the matter and were entitled to an award of attorneys fees. The Defendant's claim for attorney's fees is therefore denied. It is unclear whether the Defendant wishes to cross examine the Plaintiff's attorney regarding his fees or present evidence in that regard. Should he wish to do so, a hearing to reconsider the **amount** of the attorneys fees awarded to the Plaintiffs will be scheduled upon request.
2. Defendant alleges that Plaintiffs' Rule 59 motion was not timely filed. I find that it was timely filed.
3. Defendant Madani further argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. The Plaintiffs sued the Defendant for a violation of S.C. Code Sections 27-40-660 (unlawful ouster) and 27-40-410 (failure to observe the statutory requirement for deductions from return of the security deposit at the end of a lease). The Defendant counterclaimed against the Defendant for failure to pay rent and for damages to her property. 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 upon 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.

4. Defendant Madani argues that the Plaintiffs case is barred by res judicata and collateral estoppel because the parties were previously engaged in an eviction proceeding in which the Defendant sought an order of eviction against the Plaintiffs. She argues that any claims by the Plaintiffs should have been brought in that proceeding. These issues were not raised at trial and cannot be raised now. In any case, I find that the Plaintiffs actions were not mandatory counterclaims in the eviction proceeding.

The Defendant also argues that collateral estoppels precludes the Plaintiffs' claim for a violation of the security deposit statute in that the jury found that there was unpaid rent due to the Defendant and at the same time found that the Defendant violated the provisions of the security deposit statute. Because the language of the statute requires certain conduct on the part of the landlord before any deduction in the security deposit can be made, I find that the verdict is not inconsistent.

5. Defendant Madani requests that the Court reconsider her request for attorney's fees. While the Court did review and consider the affidavit for attorney's fees filed by the Defendant Madani, the finding that the Plaintiffs are the prevailing party in this matter precludes the award of attorney's fees to the Defendant.
6. All dates of judgment remain the dates that the orders were signed and filed.
7. The Defendant moves that the court order a New Trial *Nisi Additur* on the grounds that the judgment by the jury on the amount owed to the Defendant Madani was inadequate as a matter of law. The jury was instructed on the law and the defenses to nonpayment of rent. The amount of rent owed to the Defendant was a question for the jury to decide.

Defendant's motions are therefore denied.

IT IS SO ORDERED.

Beaufort, South Carolina
June 1, 2016


Nancy Sadler, Beaufort County Magistrate

RECEIVED
JUN 1 2016
CLERK OF COURT

Order of August 3, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01475

Shamsy Madani

Rickey Phelps and Christy Phelps

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before me on March 20th, 2017, pursuant to Shamsy Madani's Appeal timely filed on June 30th, 2016. After argumkent of counsel and review, I find that a new trial is required as a result of "irreconcilable verdict". Reversed and remanded.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3069

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Andrew James Toney

Christopher Stephen Truluck

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Shamsy Madani VS Rickey Phelps
Case Number: 2016CP0701475
Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-08-03 13:49:16 page 3 of 3

Appellants' Complaint

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
SECOND AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 MAR -3 AM 10:40

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

SCANNED
MAR -3 2016
BY: *gc*

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.

11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.

12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.

13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.

14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

15. The above stated allegations are hereby incorporated as if stated herein.

16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

18. The monthly rent due pursuant to the terms of the Lease is \$950.00.

19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

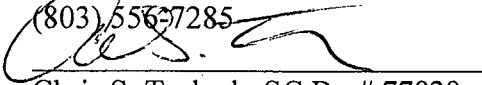
FAILURE TO RETURN SECURITY DEPOSIT PURSUANT TO S.C. CODE § 27-40-410

24. The above stated allegations are hereby incorporated as if stated herein.
25. Plaintiffs entered into a lease agreement (“Lease”) with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 (“Property”) on or about March 20, 2015.
26. Plaintiff’s deposited with Defendant a security deposit in the amount of \$950.00 pursuant to the terms of the lease.
27. Plaintiff delivered possession of the property on or about November 21, 2015.
28. On or about January 19, 2015 Plaintiffs provided written notice to Defendant pursuant to § 27-40-410 requesting the return of Plaintiffs’ security deposit to P.O. Box 962691, Riverdale, GA 30296.
29. Defendant has failed to return Plaintiff’s security deposit or otherwise provide written itemization of deductions of any amounts by Defendant.
30. Pursuant to South Carolina Code section 27-40-410, Plaintiff is entitled to recover three times the security deposit in addition to reasonable attorney’s fees.
31. Plaintiff is further entitled to an award of punitive damages where Defendant’s conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court and upon verdict of a Jury.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. A determination be made of the reasonable attorney's to be awarded and an Order be entered against Defendant for the amount due as ascertained under direction of this Court.
4. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Columbia, South Carolina
February 26, 2016

9. Madani admits so much of paragraph 19 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.

10. Madani denies paragraphs 20 through 23 of the Complaint.

11. As to paragraph 24 of the Complaint, Madani incorporates herein by reference paragraphs 1 through 10 above.

12. Paragraphs 25 through 28 of the Complaint are admitted.

13. Madani denies paragraphs 29, 30, and 31 of the Complaint.

FOR A FIRST DEFENSE

14. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

15. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR A THIRD DEFENSE

16. Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

FOR AN FOURTH DEFENSE

17. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

18. This matter involves Rickey Phelps and Christy Phelps (hereinafter "Phelps") breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

19. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ("Subject Property").

20. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.

21. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.

22. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.

23. Several furniture rental companies had rented furniture to Phelps.

24. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.

25. Madani refused to allow such furniture companies' access to the Subject Property.

26. Madani attempted to schedule several meetings with Phelps.

27. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.

28. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.

29. Madani questioned neighbors of the Subject Property about the Phelps.

30. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.

31. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.

32. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.

33. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.

34. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.

35. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.

36. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

37. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

38. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

39. Madani did lawfully evict Phelps for failure to pay rent and Phelps does now owe Madani unpaid rent.

40. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

41. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

42. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease – As to Phelps)

43. Each and every allegation set forth above is fully incorporated herein.

44. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.

45. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.

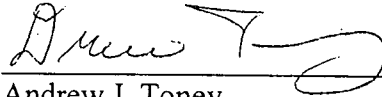
46. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

(SIGNATURE PAGE TO FOLLOW)

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

March 8, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

MAGISTRATE'S COURT

Rickey Phelps and Christy)
Phelps,)

Plaintiffs,)

vs.)

Shamsy Madani,)

Defendant.)
-----)

COPY

PARTIAL TRIAL TRANSCRIPT

April 18, 2016



1 **THE COURT:** You are resting the plaintiffs' case,
2 right?

3 **MR. TRULUCK:** Yes, Your Honor, so I guess I'm
4 subject to motion for a directed verdict and I
5 -- I guess since he hasn't been able to call
6 his witness yet, he's not subject to it. So --

7 **THE COURT:** His counterclaim is not.

8 **MR. TRULUCK:** And we've already stipulated to all of
9 the facts I think we can, so I don't think I
10 properly have any motions at this time. I do
11 reserve my right for a directed verdict after
12 his case, of course, Your Honor.

13 **THE COURT:** Well, you've got to make your directed
14 verdict motion now.

15 **MR. TRULUCK:** Well, he hasn't put his witness up
16 yet, Your Honor. I don't know what she's going
17 to say.

18 **THE COURT:** Right, well, you -- you -- you can --
19 you are at the end of the plaintiffs' case, so
20 it's proper now to make a directed verdict
21 motion. You can do that or not. That's up to
22 you.

23 **MR. TRULUCK:** Yes, Your Honor, I'm the plaintiff.

24 **THE COURT:** You don't -- you don't have to -- you
25 don't have to hear the defense side of the case



1 to make your directed verdict motion.

2 **MR. TRULUCK:** Well, Your Honor, the only issues I
3 think I would make a directed verdict on is
4 that --

5 **THE COURT:** Actually, you're right. The defendant
6 would make a directed verdict motion right now.

7 **MR. TRULUCK:** Yes, Your Honor.

8 **THE COURT:** Do you want to make a directed verdict
9 motion?

10 **MR. TONEY:** Yes, Your Honor, at least as to one
11 cause of action.

12 **THE COURT:** Okay.

13 **MR. TONEY:** The first cause of action in the Second
14 Amended Complaint of the plaintiffs is the 27-
15 40-610 violation of the -- general violation of
16 the South Carolina Landlord Tenant Act. I
17 don't -- there's been no testimony as to any
18 violation of this Act. There's been mention
19 that there was no notice of Ms. Madani coming
20 into the apartment, but there was no testimony
21 that she ever came into the apartment or any
22 evidence presented that she ever came into the
23 apartment without giving notice. There has
24 been testimony that -- that they were locked
25 out and the testimony in our case to refute



1 that. However, there's -- there's no testimony
2 on the record that essential services weren't
3 provided to the plaintiffs, that the -- that
4 Mrs. Madani entered the apartment or violated
5 any other terms of the South Carolina
6 Residential Landlord Tenant Act and so for that
7 reason, I would ask the Court to dismiss the
8 allegations of violations of 27-40-610.

9 **MR. TRULUCK:** Your Honor, very easily, I have two
10 things to say about that. One, Section 610 is
11 a reversible section that can be -- it's called
12 either a counterclaim or a defense and, Your
13 Honor, until they put up their case, I can't
14 fully submit it as a defense and cross-examine
15 Ms. Madani about that. Secondly, Your Honor,
16 we did put up evidence that they've never been
17 notified by the five-day notice for any rent
18 due. That's -- there's two provisions in there
19 for that. One does -- the one that says we
20 don't have to give you notice for an eviction
21 hearing, but her contract goes on to say it a
22 second time a different way. It gives them a
23 contractual right on top of it. So that would
24 be a violation --

25 **THE COURT:** It's -- it's -- it's not mandatory,



1 though. It says it may -- she may provide that
2 notice.

3 **MR. TRULUCK:** Indeed, Your Honor, and I would submit
4 that the jury can decide that that ambiguity
5 should go to my client that she should have
6 told them. Additionally, Your Honor, this is
7 also a defense. It's either a defense or
8 counterclaim, so it'll still survive as a
9 defense as we go through the case as against
10 any claims for rent once she testifies to that.
11 So, Your Honor, that that's kind of putting me
12 before the horse with regard to the defense.
13 I haven't heard her case yet, so I can't rebut
14 it. I've done --

15 **THE COURT:** So I'm just not following you. So
16 you're saying that these six -- that a
17 violation of the general provisions of 610,
18 which I don't see this as a defensive --

19 **MR. TRULUCK:** Your Honor, it's also 640. 640 says
20 the landlord's non-compliance as defense to
21 action for possession of rent. In an action
22 for rent tend to rely on the rental agreement
23 or the provisions of this chapter to assert
24 defenses and to counterclaim -- counterclaim,
25 Your Honor, for any amount recoverable



1 thereunder. So I didn't file that until after
2 the -- the defendant had answered, so I had to
3 put it in my Complaint to preserve it. I also
4 put it in my Complaint as a defense -- or in my
5 reply as a defense to preserve it, Your Honor,
6 so the noncompliance remains as an off-set to
7 any claims for rent. Whether it's a claim, a
8 counterclaim, or a defense, it still sits there
9 as an off-set, so, Your Honor, I should still
10 be allowed to rely on it especially since there
11 has been a no notice -- testimony as no notice
12 provision that they had been locked out, that
13 they had been failed to return the security
14 deposit. Those are breaches of the contract
15 and those are breaches of the Residential
16 Landlord Tenant Act and so I do believe that I
17 survive a motion for a directed verdict, which
18 we see in the light most favorable to the
19 plaintiff, Your Honor.

20 **THE COURT:** Well, I'm going to leave it. Just -- I
21 may at the end of the case reverse myself, but
22 for now, I'm going to allow him to ask
23 questions along those lines as we go forward
24 and we can figure out what remains at the end
25 of the case, okay.



1 MR. TONEY: Yes, Your Honor.

2 MR. TRULUCK: Thank you, Your Honor.

3 THE COURT: All right.

4 * * * * *

5 MR. TONEY: Mrs. Madani closes here case.

6 THE COURT: Okay. All right. Any rebuttal?

7 MR. TRULUCK: Your Honor, no, we don't have anything
8 else to put up.

9 THE COURT: Okay. All right. Ladies and gentlemen,
10 you get to step out again. There -- I'm going
11 to take up some legal matters for a brief
12 second and then we'll -- we'll call you back in
13 and we'll -- you'll hear the attorneys' closing
14 arguments and I will charge you on the law --
15 on the law and then you'll be able to begin
16 your deliberation.

17 (The jury is excused from the courtroom.)

18 THE COURT: All right. I'll hear the motions.

19 MR. TRULUCK: Your Honor, I think -- I think the
20 only motions with regard to the counterclaims
21 would be just to have them restricted a little
22 bit. I will concede that I think there's
23 enough evidence to go to the jury as to whether
24 or not there was a breach and whether or not
25 they believe my clients are responsible for



1 damage to the property. I do, however, make
2 note that any motion I have is to restrict any
3 claim for damages after the eviction. Anything
4 past November -- middle of November essentially
5 I believe should be barred. There is no claim
6 for quantum meruit. There's also no claim
7 pursuant to the reasonable rent provisions for
8 holdover tenants under that statute. So, Your
9 Honor, it's just a complete lack of notice for
10 my client to be responsible for anything after
11 the time they moved out in the event the jury
12 finds that they are responsible for rent. So
13 I ask that the jury be instructed that if they
14 -- if they ever found rent, that it would only
15 be for the possible variations of September,
16 October and halfway through November, which I
17 think we all agree they didn't stay longer than
18 mid November. Anything past that has not been
19 sufficiently plead for my client to have been
20 on notice for and so -- and, furthermore, Your
21 Honor, the Complaint does specifically say
22 several months prior to the expiration of the
23 lease, the Phelps ceased paying required rent.
24 And there's no -- there's no claim past that
25 for actual damages as a result of any breach.



1 Also, Your Honor, and I don't think this
2 actually prejudices the defendant's case at
3 all, but the defenses that have been claimed,
4 unclean hands, estoppel, and res judicata, the
5 first two were equitable defenses. This is a
6 legal action, Your Honor. It's a statutory
7 action. Even the breach of contract, whether
8 it common law or otherwise, is going to be
9 legal. And so the first two claims don't apply
10 -- the defenses don't apply at all because
11 they're equitable, Your Honor. And the third
12 one, of res judicata, I'm not sure how that
13 defense would be applied. In any event, I
14 haven't heard any evidence that there is a
15 defense of res judicata that should be
16 submitted to the jury. Even further in support
17 of that, Mr. Toney hasn't submitted any
18 instruction to the jury for the defense of res
19 judicata, so I ask that all those defenses be
20 stricken. Any other defenses that may be out
21 there be stricken as not having been plead, and
22 it be limited to the time period that we agreed
23 that they were in the apartment, Your Honor.

24 **MR. TONEY:** Your Honor, in response to that, I think
25 initially I'd just say I move for a directed



1 verdict. The testimony is absolutely clear
2 from the Phelps that they agree that they did
3 not pay September, October, and November rent
4 or those late charges. Then they turned around
5 and they sued my client for allegedly locking
6 them out of the apartment when they admit that
7 they received the note -- to receive the key.
8 Any damages that they could recover in this
9 case are limited by three months of rent. They
10 presented absolutely no damages other than the
11 statutory damages that are allowed. And so any
12 verdict in this case is -- any verdict they may
13 get under statutory grounds are wiped out by
14 their own admission of not paying rent under
15 the contract. And that amount is actually
16 greater than three months of rent because of
17 the late charges that they admit that they
18 haven't paid. On those grounds, I move for a
19 directed verdict in favor of the defendant and
20 ask for the case to be dismissed. Furthermore,
21 there is -- the plaintiffs have presented
22 absolutely no evidence that Mrs. Madani entered
23 the apartment without notice to them. They
24 presented zero evidence of any damage to them.
25 There's been not one dollar of damage shown.



1 They haven't shown that they -- they haven't
2 stayed in a hotel or had to eat out or stay in
3 other places because of this. All their
4 damages are -- that they're relying upon are
5 statutory interpretations and that is it. For
6 those grounds, I move for a directed verdict in
7 favor of the defendant and ask for a judgment
8 to be rendered in her favor.

9 **THE COURT:** So why wouldn't I go ahead and direct a
10 verdict on the rent issue?

11 **MR. TRULUCK:** That we owe rent, Your Honor?

12 **THE COURT:** Uh-huh (affirmative response).

13 **MR. TRULUCK:** Two reasons, Your Honor, both the
14 common law repudiation; and two, the non-
15 compliance section of the Residential Landlord
16 Tenant Act, it says in the noncompliance
17 section, Your Honor, the defendant can use as
18 a defense or a counterclaim any non-compliance
19 by the landlord as against a failure for
20 payment of rent. If the jury finds that Mrs.
21 Madani's behavior was such that my clients
22 should be responsible for rent, they can choose
23 to make that determination.

24 **THE COURT:** For September?

25 **MR. TRULUCK:** For the entire period, Your Honor.



1 She began the behavior that I believe lead to
2 all of this confusion stemming back from the
3 very beginning when there was this confusion
4 about where the rent was supposed to be given.
5 There was no testimony that there was any
6 written instruction for her to -- for my
7 clients to give the rent to her personally.
8 That derailed the whole situation and the
9 defendant -- the jury can certainly find that
10 she's not entitled to rent at all because she
11 locked them out, because she directed rent in
12 an illegal way, and because she with --
13 withheld the security deposit, and, not to
14 mention, Your Honor, all of those while even if
15 they are zero amounts, they certainly can
16 triple if there's just a finding based on the
17 rent and/or security deposit, which would
18 certainly serve three months worth of rent. So
19 it really comes down to what the jury believes,
20 Your Honor. We have never made a dispute that
21 rent was not paid for those months. We just
22 dispute whether or not the law requires that my
23 client pay it because of Ms. Madani's behavior
24 and we believe that the Code provides for a
25 defense for that.



1 **THE COURT:** What was your other ground for a
2 directed verdict? You said on the rent and
3 then --

4 **MR. TONEY:** On the issue of her illegally entering
5 the apartment. That --

6 **THE COURT:** What do you say about that?

7 **MR. TRULUCK:** Your Honor, she didn't provide any
8 evidence that she gave any timely notice. She
9 said she couldn't do it. She said that she
10 provided notice, but the jury can choose not to
11 believe her.

12 **THE COURT:** Well, now, she's only required to post
13 the notice.

14 **MR. TRULUCK:** Yes, but we don't know what she
15 posted. We don't know whether it was in
16 compliance or not.

17 **THE COURT:** She said she posted a notice giving them
18 24 hours notice. She gets to testify to that.
19 She doesn't have to produce the document. I
20 mean, and -- and there -- what's your evidence
21 that there's an illegal entry?

22 **MR. TRULUCK:** That there is no -- that she did not
23 bring any evidence to substantiate her claim.
24 It's missing, Your Honor. Obviously, we have
25 discovery problems. You stated that yourself.



1 **THE COURT:** Yeah.

2 **MR. TRULUCK:** I can't fix that. But I can tell a
3 jury I don't believe that she posted that
4 notice and they can believe it --

5 **THE COURT:** You can't tell a jury that.

6 **MR. TRULUCK:** That I don't believe that?

7 **THE COURT:** You can't -- no, you cannot say I don't
8 believe that. You can challenge their belief
9 about it, but you can't say what you --

10 **MR. TRULUCK:** Well -- I'm sorry, Your Honor, I can
11 tell them that's my -- I don't believe the
12 evidence establishes that she did it because
13 it's not here. She could have easily have
14 brought it to convince the jury that she had
15 posted the notice. In any event, Your Honor,
16 that still only goes to a non-compliance issue.
17 And I don't believe that would -- I believe
18 they can choose not to believe that she posted
19 the notice period, Your Honor. She has --
20 there were some inconsistencies in her
21 testimony, I would say much more than a few,
22 rather important inconsistencies. So they can
23 choose to believe that she didn't post the
24 notice.

25 **THE COURT:** Okay. And what do you say about an



1 unclean hands defense and estoppel and res
2 judicata?

3 **MR. TONEY:** I didn't prepare any instructions to the
4 jury on those matters. I'm fine --

5 **THE COURT:** So we're going to drop those?

6 **MR. TONEY:** Yeah.

7 **THE COURT:** Okay. All right. I'm not going to
8 direct a verdict on anything. I'm going to let
9 the jury decide it. That doesn't mean that I
10 might not correct something if I feel that
11 there's a blatant error later. In terms of
12 restricting the request for rent payments,
13 don't -- do you agree that the writ of
14 ejectment terminates the lease?

15 **MR. TONEY:** No, Your Honor, I believe that the
16 lease agreement runs through March 30th of 2016
17 --

18 **THE COURT:** Even if they got evicted?

19 **MR. TONEY:** Yes, Your Honor, I believe that she's
20 allowed to collect rent and she has to
21 reasonably try to rent out the unit, which she
22 did starting -- or she testified to December
23 17th, 2015, so she's allowed at least a half a
24 month of December and the pleadings more than
25 fully --



1 **THE COURT:** So is there some law on that somewhere?

2 **MR. TONEY:** Yeah.

3 **MR. TRULUCK:** Your Honor, the Code says that
4 eviction terminates the lease and I will try to
5 find the provision for you, but it says that in
6 there. And what it becomes, Your Honor, it
7 becomes incumbent on the party to seek damages
8 as a result of breach of contract beyond that
9 period. But my client --

10 **THE COURT:** Well, that's what we're here for.

11 **MR. TRULUCK:** Yes, Your Honor, but they didn't --
12 they didn't put us on notice. They only said
13 several months. Now, they're talking about
14 four months.

15 **MR. TONEY:** That's the most basic understanding of
16 South Carolina pleadings you're allowed to
17 generally plead your allegation, which is what
18 we did. We're -- you know, we're claiming an
19 additional half month. She tried as hard as
20 she could to rent this apartment out and she
21 did, and it's for another half a month, and
22 that is what she's claiming today in her
23 testimony.

24 **MR. TRULUCK:** And, Your Honor, I realize there's one
25 other thing I have to preserve or I'm going to



1 be doing something very stupid. And I, of
2 course, I understand if you deny it. In fact,
3 I think that almost might be fair, but I need
4 to say it. Your Honor, inasmuch as you might
5 have considered a directed verdict for the
6 issue with regard to rent, I just need to put
7 on the record I think that it would have been
8 an equally strong argument to say that the
9 failure to return the security deposit under
10 the same law wouldn't apply, as well, Your
11 Honor. There was no itemized list and that
12 that is a failure, too. So I just want that in
13 fairness put out there, Your Honor.

14 **THE COURT:** Okay. Sorry. Okay. I'm going to deny
15 the motion for a directed verdict on the rent;
16 I'm going to deny the motion for a directed
17 verdict on the illegal entry issue; I'm going
18 to deny the motion for a directed verdict on
19 the failure to return the security deposit; I'm
20 going to allow Mr. -- the -- I'm going to allow
21 the defendant to argue that she's entitled to
22 rent for half a month in December. The
23 pleadings even generally plead a half a month
24 is not any substantial change, so I'm not going
25 to -- or a month actually, I guess if it's



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

November 17th. Okay.

MR. TRULUCK: Thank you, Your Honor.

* * * * *

THE COURT: All right. This is a matter of the case of Rickey Phelps and Christy Phelps, plaintiffs, versus Shamsy Madani, defendant. Case number 2015CV0710301411, where Rickey Phelps and Christy Phelps assert Shamsy Madani failed to return the plaintiffs' security deposit in compliance with South Carolina Code § 27-7-410. We the jury unanimously find for the plaintiffs in the amount of \$950. Where Christy Phelps asserts Shamsy Madani unlawfully excluded her from the premises, we the jury find unanimously for plaintiff where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of zero. Where Rickey Phelps, plaintiff, asserts Shamsy Madani, defendant, unlawfully excluded him from the premises, we the jury unanimously find for the plaintiff where he has proven his claim by a preponderance of the evidence and further find actual damages in the amount of zero. Where Shamsy Madani asserts Rickey Phelps and Christy



1 Phelps caused damage to the subject rental
2 property, we the jury unanimously find for the
3 defendant where she has proven her claim by a
4 preponderance of the evidence and further find
5 actual damages in the amount of \$301.85. We
6 the jury unanimously -- where Shamsy Madani
7 asserts Rickey Phelps and Christy Phelps failed
8 to pay rent, we the jury unanimously find for
9 the defendant where she has proven her claim by
10 a preponderance of the evidence and further
11 find actual damages in the amount of \$1,050.
12 All right, ladies and gentlemen, I appreciate
13 your jury service so much. It's been a long
14 day. I'm going to tell Stephanie she ought to
15 write y'all down for 18 months of exclusion
16 from jury service instead of 12 months. Y'all
17 are going to get a check. Again, it doesn't
18 compensate you in any way for what you've done
19 here today, but we appreciate your hard work.
20 I noticed y'all were really working hard to
21 listen to the evidence and we appreciate your
22 work. So y'all are free to go.

23 **(The jury is excused.)**

24 **THE COURT:** All right. Any motions?

25 **MR. TRULUCK:** Beg the Court's indulgence very



1 briefly.

2 **THE COURT:** Sure. I'm going to figure this out.

3 **MR. TRULUCK:** Your Honor, I have got to be honest
4 with you and say that I've never been in this
5 situation before. I'm prepared to submit my
6 arguments with regard to the calculation, of
7 course, inasmuch as I believe that the
8 (inaudible) should be three times \$950 for the
9 plaintiff, the (inaudible) three times \$950 for
10 the plaintiff on the security deposit; three
11 times \$950 (inaudible) of all the cases, Your
12 Honor, as far as motions. Otherwise, my
13 clients are pleased with the verdicts and so
14 they'll wish to assert them.

15 **THE COURT:** Okay.

16 **MR. TONEY:** Your Honor, I ask the Court to determine
17 the amount of damages that the Court -- it was
18 clear from the jury's verdict they were
19 attempting to give a verdict to the Phelps of
20 \$950, which is then off-set by the verdict of
21 \$1,050 for Mrs. Madani, plus \$301.85 for Mrs.
22 Madani, which would be a net of whatever that
23 amount is.

24 **THE COURT:** \$401.85.

25 **MR. TONEY:** \$401.85 to Mrs. Madani. I would request



1 that the Court, if it wishes to do so, have the
2 two verdicts cancel out to a total of zero. I
3 don't believe that there's any evidence or the
4 way the jury found its verdict in favor of the
5 Phelps in that matter, that they awarded them
6 not \$1. There was no evidence presented as to
7 any damages and the -- if any, the evidence
8 was, as we stated all along, was completely
9 clear that the Phelps admitted all along that
10 they didn't pay three months rent. Mrs. Madani
11 testified they didn't pay three months rent.
12 They didn't pay for the -- for the \$100 late
13 fees and all those matters. There should be a
14 judgment notwithstanding the verdict if the
15 Court is inclined to give -- to give the three
16 months rent or at least that three months rent
17 should only be for one party. It's to try to
18 award them each three months rent, plus the
19 \$950 is entirely inconsistent with what the
20 jury was attempting to do here. And it's clear
21 that the jury made a decision. They were
22 trying to decide to sort of even this out and
23 they thought they were giving Ms. Madani the
24 400 and whatever dollars that is and if it's
25 opposite, then Mrs. Madani is paying \$5,000 or



1 \$5,400, whatever that amount is, which is
2 completely contrary to all the evidence that
3 was presented today by the Phelps and by Mrs.
4 Madani. There is no question and never has
5 been a question and from this morning when the
6 Phelps testified that they knew that they
7 didn't pay September, October, and November,
8 and then there was additional testimony that
9 they didn't pay December; they didn't pay the
10 late fees. You know, how they can now recoup
11 money in this action, recoup some \$5,000 if
12 that's what Mr. Truluck is trying to say that
13 they're owed is completely contrary to all
14 equity, to what occurred in this case, and to
15 the evidence that was presented today and it's
16 clear that the jury was -- is confused as to
17 what they were -- what they were issuing and
18 what their verdict was.

19 **THE COURT:** Well, I'm not sure it says what you say
20 it says. It says the tenant may recover
21 possession or terminate the rental agreement
22 and in either case recover an amount equal to
23 three months periodic rent or twice the actual
24 damages sustained by him, whichever is greater,
25 and reasonable attorneys' fees. And it says



1 may. Do you think that's mandatory?

2 **MR. TRULUCK:** I do believe, Your Honor, it says
3 whichever is greater. I don't understand how
4 else that could be interpreted. In any event,
5 Your Honor, that -- the termination -- I guess
6 we're only addressing -- I'll only address that
7 one right now, Your Honor, but it gives you the
8 option, but we didn't go over the actual
9 damages, Your Honor. We relied on the penalty.
10 And, Your Honor, we discussed that about the
11 possibility of a zero verdict, and that a zero
12 verdict would still entitle them to the penalty
13 part of the provision and that's --

14 **THE COURT:** No, you said that. I don't -- I didn't
15 necessarily agree with you.

16 **MR. TRULUCK:** Well, there's no requirement here,
17 Your Honor, that there be a \$1 sum at all. It
18 just flips between --

19 **THE COURT:** No, I agree with you. There's no
20 requirement, but I'm -- but it sounds like a --
21 it's leaving it kind of in the hands of the --
22 kind of like trebling the damages on the -- on
23 the --

24 **MR. TRULUCK:** Well, it does say whichever's greater,
25 Your Honor.



1 **THE COURT:** -- return of the deposit. I see that it
2 says that.

3 **MR. TRULUCK:** I think that's rather convincing that
4 it's either three times or two times.

5 **THE COURT:** Do y'all know whether there's any law on
6 it?

7 **MR. TONEY:** Well, Your Honor, it's -- I mean, you
8 know, we deal with statutory construction all
9 the time and the word may, and, or, or shall
10 all have very specific meanings. And as the
11 Court has pointed out, the word may is stuck in
12 a conspicuous place here that the tenant may
13 recover possession or terminate the rental
14 agreement, and in either case recover an amount
15 equal to three months periodic rent or twice
16 the actual damages. All those clauses come
17 after the may provision and that the -- the
18 jury in this case rendered a verdict in favor
19 of the Phelps for zero dollars for each of
20 their causes of action. It is -- it's --
21 without talking to the jury and having them
22 explain to what they are -- were doing, it is
23 clear from what they filled out on that form
24 that they found that they were locked out, but
25 they didn't suffer any damages, so they



1 shouldn't receive any damages. Why should
2 somebody that was -- that wasn't at the
3 apartment and had notice that the locks had
4 been changed receive three months of rent if
5 they didn't actually suffer any damages, they
6 didn't present any damages to the Court today.

7 **MR. TRULUCK:** Your Honor, the legislature creates
8 that opportunity. It's obviously intended that
9 that be the possibility. Your Honor, opposing
10 counsel says may recover possession or
11 terminate the rental agreement and, in either
12 case, whether they recover possession or
13 terminate the rental agreement, they can
14 recover an amount equal to three months rent or
15 twice the actual damages sustained by him,
16 whichever is greater. And it doesn't prescribe
17 that to anyone other than we've given that
18 question to, Your Honor, which was the jury.
19 They found for us and, Your Honor, the greater
20 of those two is three months the rent, which we
21 had already stipulated to, Your Honor. I don't
22 think there's any question that it should be
23 three months, the greater of two.

24 **MR. TONEY:** There's nothing in this -- in this -- in
25 this statute that says -- that shall or must



1 award that amount of damages. It --

2 **THE COURT:** Well, here's what I'm going to do. I'm
3 tired and so I want to think -- I want to do
4 the right thing obviously and so I want to
5 think about it and I'm going to (a) invite you
6 both to -- in the next week or so e-mail me at
7 ndsadler@gmail.com and copy the other one --
8 copy each other with any communication, and if
9 there's any law on it, and I'm going to look
10 too just to see if there's -- I'm not aware of
11 any, but -- and we'll figure it out when I have
12 a little bit clearer mind.

13 **MR. TRULUCK:** Your Honor, are there any other
14 questions --

15 **THE COURT:** I get dull at the end of the day.

16 **MR. TRULUCK:** -- with regard to rest? Is there's
17 any contention about the security deposit
18 division? That doesn't -- I don't --

19 **THE COURT:** Now, I do think that that's in my
20 discretion, don't you think, the treble
21 damages? There's a case on that. Is there
22 not a case? I mean, I'm pretty sure there is.

23 **MR. TRULUCK:** I won't say there's not, Your Honor.

24 **THE COURT:** Okay.

25 **MR. TRULUCK:** I'll never say unless I am sure.



1 THE COURT: Okay.

2 MR. TRULUCK: I'm not aware of any case commenting
3 on this provision.

4 THE COURT: On the security deposit?

5 MR. TRULUCK: Yes, I'm not -- well, actually, no,
6 let me take that back, Your Honor. A lot of
7 the provisions don't have any case law in the
8 Residential Landlord Tenant Act.

9 THE COURT: Yeah.

10 MR. TRULUCK: I'm not sure --

11 THE COURT: But I mean, on this, I'm pretty sure
12 there's a case that talks about the treble
13 damage aspect, so I'll look at that. And y'all
14 look at that. And, again, let's just say we're
15 going to take about seven days for y'all to
16 communicate with me, what your arguments are.
17 Although I know from the plaintiffs'
18 standpoint, you want treble damages on your
19 security deposit and three times the rent on
20 your master claim.

21 MR. TRULUCK: Yeah, and inasmuch as the -- that it
22 says that we're entitled to \$950 on that, yes,
23 Your Honor.

24 THE COURT: Okay. And you can argue anything you
25 want to, too. Y'all are preserving your



1 arguments.

2 **MR. TONEY:** Okay. So for now the verdict is \$950
3 for the Phelps --

4 **THE COURT:** Well, for now, it's y'all have motions
5 pending.

6 **MR. TONEY:** It's in abeyance?

7 **THE COURT:** Yeah.

8 **MR. TONEY:** Okay.

9 **MR. TRULUCK:** So just as --

10 **MR. TONEY:** But I'll tell you the difference in the
11 two verdicts is \$401.85, but the actual dollar
12 damage is written on these verdict forms, so.

13 **MR. TONEY:** So the verdict forms list the difference
14 on them?

15 **THE COURT:** No, I did it.

16 **MR. TONEY:** Okay.

17 **THE COURT:** Which -- which I'm not that trustworthy,
18 so let me do it with a calculator. Yeah,
19 \$401.85 is the difference in the amounts.
20 Okay. So Stephanie, I'm gong to leave that
21 with you.

22 **MR. TONEY:** Thank you for your patience today.

23 **THE COURT:** Okay. Well, thank y'all. You both
24 tried good cases.

25 **(End of requested portion of trial.)**

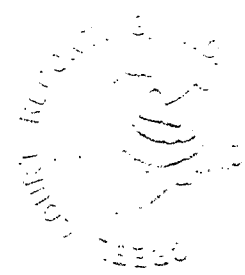


CERTIFICATE

This is to certify the transcript of the hearing consists of twenty eight (28) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this September 8, 2016.



Carenn N. Moore
Carenn N. Moore
Notary Public for South Carolina
My Commission Expires: 3/24/2019

Verdicts

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

vs.)

JURY VERDICT

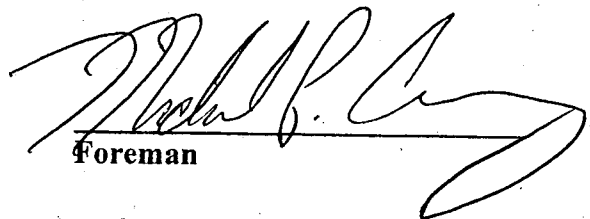
Shamsy Madani,)
Defendant)



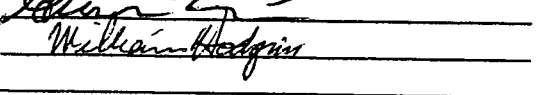
Where Rickey Phelps and Christy Phelps (Plaintiffs) assert Shamsy Madani (Defendant) failed to return to the Plaintiffs the security deposit in compliance with SC Code 27-7-410;

We the Jury unanimously find for;

Plaintiffs where they have proven their claim by a preponderance of the evidence and further find the amount withheld in the amount of \$ 950.00

_____ Defendant where the Plaintiffs have failed to prove their claim by a preponderance of the evidence.


Foreman

JURORS:



William Hodgson

4-18-2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

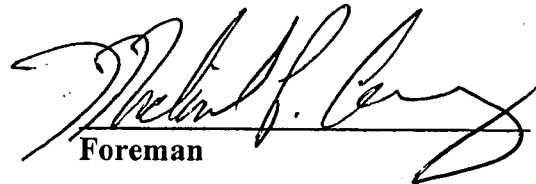
Shamsy Madani,)
Defendant)

Where Christy Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded her from the premises.

We the Jury unanimously find for;

Plaintiff where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$0.

_____ Defendant where the Plaintiff has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:
Connie R Campbell
William S. West
Barbara J. Farnsworth
William Hodgson

4/18/2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

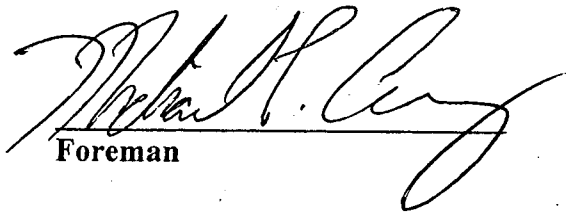
Shamsy Madani,)
Defendant)

Where Rickey Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded him from the premises.

We the Jury unanimously find for;

Plaintiff where he has proven his claim by a preponderance of the evidence and further find actual damages in the amount of \$0

_____ Defendant where the Plaintiff has failed to prove his claim by a preponderance of the evidence.


Foreman

JURORS:

Connie L. Campbell
[Signature]
[Signature]
[Signature]
[Signature]

4/18/2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

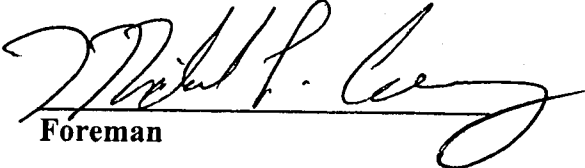
Shamsy Madani,)
Defendant)

Where Shamsy Madami (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) caused damage to the subject rental property;

We the Jury unanimously find for;

Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$301.85

_____ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:
Cornie L. Campbell
[Signature]
[Signature]
[Signature]
William Hodgins

4/18/2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

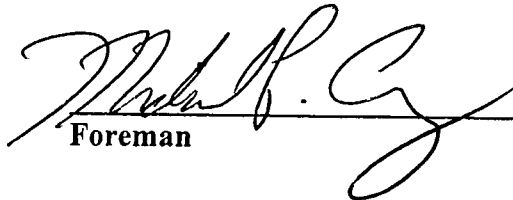
Shamsy Madani,)
Defendant)

Where Shamsy Madami (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) failed to pay rent;

We the Jury unanimously find for;

Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$1,050

_____ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:
Cornel L. Campbell
[Signature]
[Signature]
[Signature]
William [Signature]

4/18/2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Magistrate's Court

Nancy D. Sadler, Beaufort Magistrate's Court Judge

Case No. 2016-CP-07-1475

2016 OCT 26 PM 2:35
RECEIVED
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Ricky Phelps and Christy Phelps, Respondents-Appellants,

v.

Shamsy Madani, Appellant-Respondent.

MEMORANUDM IN OPPOSITION TO APPEALLANT-RESPONDENT'S APPEAL AND IN
SUPPORT OF RESPONDENTS-APPELLANTS' CROSS APPEAL

FACTS

On April 18, 2016 the above listed action came before the magistrate court on Respondents-Appellants ("Respondents") claims for Appellant-Respondent's ("Appellant") violations of S.C. Code § 27-40-660 and violation of S.C. Code § 27-4-410 as well as Appellant's common law breach of contract counterclaim for rent and damages. Prior to trial, both parties stipulated by representation to the court and pleading 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, Appellant moved for directed verdicts awarding unpaid rent for the months of September, October and November as well as dismissal of Respondents claims or defenses made upon allegations Appellant unlawfully gained access to Respondents residence. Both motions were denied. Respondents moved that Appellant's defenses of unclean hands, estoppel and res judicata be dismissed as inapplicable equitable defenses in Respondents action at law and the court, as stated in its return, accepted Appellant's withdrawal of those defenses. Transcript of Record, Phelps v. Madani, No. 2015CV0710301411 (Bluff. Mag. Apr.

18, 2016).

At the conclusion of trial the Jury returned a verdict in favor of Rickey Phelps, Respondent-Appellant, as against Appellant for violation of S.C. Code § 27-40-660 with zero (0) actual damages, in favor of Christy Phelps, Respondent-Appellant, as against Appellant for violation of S.C. Code § 27-40-660 with zero (0) actual damages and in favor of Respondents as against Appellant for violation of S.C. Code § 27-4-410 with a finding of the amount of security withheld of \$950.00. The Jury also returned a verdict in favor of Appellant against Respondents 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. The court dismissed the Jury without further inquiry or request from Appellant. The court ordered, by way of execution on April 27, 2016, for the consolidation of Rickey Phelps and Christy Phelps Jury Verdict's for Defendant's violation of South Carolina Code Section 27-40-660, unlawful ouster, amending the potential award from \$5,700.00 to \$2,850.00. By order of the court on May 12, 2016, the award of attorney's to both parties was reversed and an attorney fee award was ordered for the Respondents only as the recognized prevailing party. The court contemporaneously denied Respondents motion for reconsideration in opposition to the court's consolidation of Rickey and Christy Phelps individual award for Appellant's violation of S.C. Code § 27-40-660. By order of the Court on June 1, 2016, Appellants Motion for Reconsideration and New Trial made upon seven (7) separate arguments was denied. This appeal and cross appeal timely followed.

SUBJECT MATTER JURISDICTION WAS PROPER PURSUANT TO S.C.

CODE § 27-40-130(a)

Appellant argues that this court is devoid of subject matter jurisdiction where the amount of award alleged in Respondents Amended Complaint could have exceeded the statutory limit set forth in S.C. Code § 22-3-10 such that the matter should have been transferred to the Circuit Court. Respondent respectfully disagrees.

First, none of Respondents individual claims, as pleaded or in any eventuality amounted to more than \$2,850.00 each. Similarly, Appellants counterclaim for contractual breach, as plead or upon evidence submitted at trial, could not amount to more than \$7,500.00. Second, Appellant previously, and successfully, argued before the magistrate court that “[t]here was one rental lease in this case . . . the Tenant(s) . . . have one cause of action against their landlord . . . [and] [t]here cannot be double recovery.” Def. Mot. New. Trial. Pg. 11 (Apr. 25, 2016). The

magistrate court ordered that Respondents were only entitled to one recovery in the amount of \$2,850.00 despite two jury verdicts finding for each respondent against Appellant for unlawful ouster. By Appellant's own position, the Respondents can only recover in the amount of \$2,850 for Appellant's unlawful ouster and \$2,850 for Appellant's failure to return the security deposit amounting to a maximum award of \$5,700.00. Third, Appellant's reliance on *Mosseri v. Austin* is misguided where the Court found transfer to the circuit court was appropriate where an individual claim was pleaded above \$7,500.00 and the motion to transfer was made at action concerning a commercial landlord tenant action as distinguished from residential leases. Additionally, Appellant never moved to have the actions transferred to the Circuit Court upon grounds that the allegations contained in the pleadings potentially could exceed the statutory limits contained in S.C. Code § 22-3-10.

Finally, Appellants incorrectly rely on S.C. Code § 22-3-10 as the jurisdictional statute. The controlling statute, S.C. Code § 27-40-130, provides:

[t]he circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by this chapter [, the Residential Landlord Tenant Act,] or with respect to any claim arising from a transaction subject to this chapter.

S.C. Code § 27-40-130. S.C. Code § 27-40-130 provides no statutory monetary limit or requirement that the claims involve the possession of property.

Where the court had concurrent subject matter jurisdiction over matters concerning the Residential Landlord Tenant Act Appellants argument must fail, jurisdiction was proper and Appellants appeal should be denied.

APPELLANT'S APPEAL SHOULD BE DENIED WHERE THE JURY'S VERDICT WAS NOT IRRECONCILABLE AND APPELLANT ACQUIESCED

Appellant next argues the lower courts order of judgment should be reversed where the jury's verdict in favor of Respondents as to Appellant's violation of S.C. Code § 27-40-660 for unlawful ouster was irreconcilable as a matter of law. Appellant characterizes 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 where none were presented and that, in the alternative, S.C. Code § 27-40-660 provides for statutory damages by way of trebling rent and awarding attorney's fees for a simple violation of S.C. Code

§ 27-40-660. Similarly, Appellant 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 Appellant.

Finally, Appellant allowed the court to release the jury without any attempt to discover the jury's intentions. 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 jury 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*, Appellant failed to bring her concerns of confusion or irreconcilability to the attention of the court and submit inquire to the jury before dismissal. Appellant's plea to this Court for review of the jury's verdict in favor of the Respondent should not be allowed where Appellant has acquiesced to the finding. Similarly, Appellants request for relief should be denied where the jury's verdicts were reconcilable as found by the lower court.

**APPELLANT'S APPEAL SHOULD BE DENIED UPON LACK OF
PRESERVATION OF ISSUE REGARDING S.C. CODE § 27-4-410 AND WAIVER OF
AFFIRMATIVE DEFENSES OF RES JUDICATA AND COLLATERAL ESTOPPEL**

Appellant next argues that the case below should be reversed where the court refused to grant judgment for Appellant where she argued S.C. Code § 27-4-410's notice and itemization of security deposit to tenant was satisfied by a prior ejection proceeding or the filing of her counterclaim. Appellant similarly seeks reversal on the grounds of res judicata and collateral estoppel.

At the close of the evidence, before submission of the issues to the jury, Appellant first moved for a directed verdict finding that Appellant was entitled to an award of three month's rent where Respondents testified they had not paid rent for September, October and November. Appellant second moved for a directed verdict finding that Respondent had not presented

sufficient evidence to present the claim or defense of the landlord's unlawful access into the residential property. Both Appellant's motions were denied. Appellant made no other motions but specifically Appellant did not move for a directed verdict finding that Appellant's prior ejection proceeding and/or counterclaim satisfied the notice and itemization requirement provided for in S.C. Code § 27-4-410. Additionally, the court recognized Appellant's pleaded affirmative defenses of res judicata and collateral estoppel as withdrawn and so were not submitted to the jury by way of instruction.

As provided by the Court in *Smith v. Ridgeway*, "If 'no motion was made for a directed verdict at the conclusion of the trial, no motion for relief as a matter of law is available after the jury verdict.'" *Smith v. Ridgeway*, 302 S.C. 303, 305-6, 395 S.E.2d 742, 743-44 (Ct. App. 1990).

"The rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of all the evidence is a strict one. The rules which govern our appellate jurisdiction and determine which issues are preserved for appeal are equally strict." *Hendrix v. Eastern Distribution*, 316 S.C.34, 446 S.E.2d 440, 442 (Ct. App. 1994).

Where Appellant failed to move for directed verdicts finding that Appellant's prior ejection proceeding and/or counterclaim satisfied the notice and itemization requirement provided for in S.C. Code § 27-4-410 the issue is not properly preserved for appeal and should be denied. Similarly, where Appellant waived certain defenses she cannot now assert them on appeal.

APPELLANT'S REQUEST FOR REVERSAL OF THE LOWER COURTS FINDING OF THE AWARD OF TREBLE DAMAGES SHOULD BE DENIED

Application of Treble Damages in the Amount of Three Months' Periodic Rent for Violation of S.C. Code § 27-40-660

"If a landlord unlawfully removes or excludes the tenant from the premises . . . the tenant may recovery . . . an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees." S.C. Code § 27-40-660. On April 18, 2016, the Jury, hearing the case above listed, returned a verdict in favor of Rickey Phelps as against Defendant for violation of S.C. Code § 27-40-660 with zero (0) actual damages and in favor of Christy Phelps as against Defendant for violation of S.C. Code § 27-40-660 with zero (0) actual damages. The parties, having pleaded and stipulated previously,

agreed the rent at issue in this case to be conclusively \$950.00.

The Court of Appeals stated as follows in *Prevatte v. Asbury Arms* as to the statutory construction of the phrase “the tenant may recover” as provided in the Residential Landlord Tenant Act:

The word 'may' does not refer to the judge, but to the tenant. It gives the tenant a right he does not have at common law: the tenant may elect to seek recovery under the statute rather than the common law. To the extent that the word 'may' connotes discretion, it is a discretion vested in the tenant to elect his remedies, not in the court to deny a remedy clearly provided for by the statute. The Judge erred when he stated: 'Under 27-40-410(b) it says the court may award' [Emphasis added.] That is not what the statute says

The appellate courts of this state have never construed this language as giving the trial judge discretion to award or deny

The statute is unambiguous and absolute. The use of the 'the tenant may recover' rather than 'the tenant shall recover' does not give the court any discretion. Rather it is a statement of the steps the tenant, as a matter of right, may take if the landlord does not comply with the statute."

Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642, 643-644 (Ct. App. 1990) (finding the prescriptions in the damages provision mandatory and not discretionary); *Parker v. Brown*, Op. No. 2008-UP-324 (Ct. App. 2008) (finding a treble award of the previously returned security deposit appropriate where the itemization was untimely sent); *Schumacher v. Hoover*, Un. Pub. Op. No. 2013-UP-432 (Ct. App. 2013) (affirming Judge Casey Manning's application of treble damages pursuant to *Prevatte v. Asbury Arms*).

Plaintiffs filed suit pursuant to S.C. Code § 27-40-660 and specifically elected the remedy of statutory damages in the amount of \$2,850.00 and continue to seek this remedy from the Court upon the return of the verdicts in Plaintiffs' favor. In relying on the Courts statutory construction in *Prevatte*, Plaintiffs respectfully submit that the appropriate award for each of Defendant's violation S.C. Code § 27-40-660 is “three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees” where the Court in *Prevatte* has concluded the word “may,” as preceding the available remedy, is not discretionary as to the Court. S.C. Code § 27-40-660. In the present case, the Jury determined that Plaintiffs' suffered zero (0) actual damages, however, the rent has been conclusively established at \$950.00. Where three months' periodic rent equals \$2,850.00, greater than zero (0) actual damages,

Plaintiffs respectfully submit this Court should grant judgment in their favor for both of Defendant's violation of S.C. Code § 27-40-660 in amount of \$2,850.00 for each violation.

In the event Defendant submits to this Court the finding provided in *Rice v. Multimedia, Inc.* otherwise contradicts the finding in *Prevatte*, Plaintiff brings to the Court's attention that the finding in *Rice* is inapplicable to this case for three reasons. First, the statute at issue in *Rice* provides for the additional language in the subject penalty provision of "as the court may allow," however, omitted in § 27-40-660. *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E.2d 381, 383 (1994). Specifically regarding the "court" as a finder of damages in that provision is markedly and significantly different from the current provision which delegates no such authority to this Court. Second, the Court in *Rice* only allows the Defendant to avoid the trebling of damages where he asserts a valid affirmative defense of good faith. *Id.* The Defendant failed to assert the defense of good faith and, in any event, no defenses asserted by Defendant survived Plaintiff's motion for directed verdict to strike the pleaded defenses at the close of evidence. Finally, *Rice* is undeniably inapplicable where the Court found *Prevatte v. Asbury Arms* inapplicable to wage disputes but allowed it to remain as controlling in Residential Landlord Tenant disputes in stating:

Rice cites *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990), in which the Court of Appeals construed similar language in the Landlord and Tenant Act as mandatory, not discretionary. Since the Landlord and Tenant Act is of quite different subject matter than the Wage Payment Act, *Prevatte* is not controlling here. See *Spartanburg County v. Arthur*, 180 S.C. 81, 185 S.E. 486 (1936) (Court should interpret statute based on similar language in other statute dealing with same or similar subject matter.)

Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381, 384 (1994). The Supreme Court of South Carolina has recognized *Prevatte* and has not chosen to otherwise alter or invalidate the opinion such that it remains good law. Further, any imposition of the availability of a good faith defense by this Court would be without authorization and beyond the pleadings, available statutory and case law. Plaintiff now respectfully requests this court to affirm the trebling of the monthly rent of \$950.00 for Defendant's violation of S.C. Code § 27-40-660 and affirm Judgment in the amount of \$2,850 for Rickey Phelps and \$2,850.00 for Christy Phelps.

Application of Treble Damages in the Amount of Three Times the Amount Wrongfully Withheld for Violation of S.C. Code § 27-40-410

S.C. Code § 27-40-410 provides:

(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy . . .

(b) If the landlord fails to return to the tenant any prepaid rent or security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover . . . money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees.

(d) this section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or otherwise.

S.C. Code § 27-40-410.

As provided above, where the Court in *Prevatte* has concluded the word "may" preceding the available remedy is not discretionary as to the Court, Plaintiffs respectfully submit the appropriate award for Defendant's violation of S.C. Code § 27-40-410 is \$2,850.00, as "an amount equal to three times the amount wrongfully withheld," where the Jury returned a verdict in favor of Plaintiffs and determined the amount withheld to be \$950.00. *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642, 643-644 (Ct. App. 1990) (finding the prescriptions in the damages provision mandatory and not discretionary); *Parker v. Brown*, Op. No. 2008-UP-324 (Ct. App. 2008) (finding a treble award of the previously returned security deposit appropriate where the itemization was untimely sent); *Schumacher v. Hoover*, Un. Pub. Op. No. 2013-UP-432 (Ct. App. 2013) (affirming Circuit Court Judge Casey Manning's application of treble damages pursuant to *Prevatte v. Asbury Arms*).

Upon these arguments, Respondents respectfully submits trebling of the statutory damages was properly applied to Plaintiffs' Jury verdicts and Appellant's appeal should be denied.

**RESPONDENT'S CROSS APPEAL SHOULD BE GRANTED UPON EXPRESS
CONSENT OF APPELLANT**

The Jury returned verdicts in favor of Rickey Phelps as against Defendant for violation of S.C. Code § 27-40-660 and in favor of Christy Phelps as against Defendant for violation of

S.C. Code § 27-40-660 and for Respondents for violation of S.C. Code § 27-40-440. As provided above, Appellant previously, and successfully, argued before the magistrate court that “[t]here was one rental lease in this case . . . the Tenant(s) . . . have one cause of action against their landlord . . . [and] [t]here cannot be double recovery.” Def. Mot. New. Trial. Pg. 11 (Apr. 25, 2016). The jury verdicts returned, as a submitted without objection by the Appellant, found for both Plaintiffs individually, however, the magistrate court treated the verdicts as one finding as a matter of law that there could only be a single recover for unlawful ouster. The Appellant has now submitted to this court that Respondent’s complaint prayed for relief for violations of S.C. Code § 27-40-660 for both Respondents in addition to Respondents single claim of violation of S.C. Code § 27-40-440 which would total a claim for three violations in the amount of \$8,550.00 instead of two violations in the amount of \$5,700.00.

Respondents again argue that the consolidation of the jury’s verdicts in favor of Respondents reducing their claim from \$5,700.00 to \$2,850.00 was improper. The Court in *Camden v. Hilton* provided:

A trial court may amend a verdict in matters of form, but not of substance. A change of substance is a change affecting the jury’s underlying decision, but a change in form is one which merely corrects a technical error made by the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. After the amendment, the verdict must be not what the judge thinks it ought to have been but what the jury intended it to be.

Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88 (Ct. App. 2004) (finding the trial courts reformation of a defense’s verdict to find in favor of an identical plaintiff’s verdict was outside the court’s authority). To now find that the Jury improperly determined that both Plaintiffs suffered violation by Defendant is tantamount to invalidate one of its Verdicts. Additionally, Defendant has waived any opportunity to reform the verdict where the Jury has been discharged. “That parties seeking to reform a verdict must voice their objection before the jury is discharged has been followed in South Carolina since at least 1920. *Id.* at 171.

Similarly, any motion for judgment notwithstanding the verdict (“JNOV”) “is available to one suffering an adverse ruling of the jury only when the same issues were submitted to the judge at the directed verdict stage.” *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 395

S.E.2d 742, 743-44 (Ct. App. 1990). “A motion for directed verdict is a prerequisite to a motion for judgment notwithstanding the verdict and a motion for a new trial on the grounds that the evidence does not sufficiently support a cause of action.” *Parr v. Gaines*, 309 S.C. 477, 424 S.E.2d 515, 519 n.1 (Ct. App. 1992). If “no motion was made for a directed verdict at the conclusion of the trial, no motion for relief as a matter of law is available after the jury verdict.” *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C 303, 305-06, 395 S.E.2d 742, 743-44 (Ct. App. 1990).

Similarly, finding that Defendant’s violation is born by Plaintiffs jointly denies the requirement of standing. Under this finding, if Rickey Phelps is unlawful ousted but not Christy Phelps, Christy Phelps can bring suit in Rickey Phelps’ name which is in contradiction with notions of standing. “Standing is ‘a personal stake in the subject matter of a lawsuit.’” *Newman v. Richland Co. Historic Preservation Comm.*, 325 S.C. 79, 480 S.E.2d 72, 74 (1997). “To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e., one must be a real part in interest. A real party in interest is one with a real, material or substantial interest.” *Glaze v. Grooms*, 324 S.C. 249, 478 S.E. 2d 841, 845 (1996).

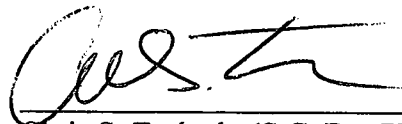
Finally, Respondents respectfully submit that Appellants now expressly consent to Respondents appeal and reversal of the magistrate court order consolidating the jury’s finding where Appellant has now made submission to this Court in agreement that both Respondents could have recovered individually. Upon these arguments, Respondent is entitled to reversal of the magistrate’s court order invalidating one claim against Respondents upon Appellants current submission, Appellant’s failure to move for directed verdict, Appellant’s failure to object to the two jury forms and where consolidation would affect the substance of the jury’s findings.

CONCLUSION

Respondents respectfully request that this Court of Appeals deny Appellants appeal to void the lower court’s judgment where there was subject matter jurisdiction pursuant to S.C. Code § 27-40-130, affirm the lower court’s finding that the jury’s verdicts were either reconcilable or Appellant waived her opportunity to contest reconcilability, deny hearing

Appellant's appeal for relief pursuant to defenses of res judicata and estoppel where these defenses were abandoned to submission of the issues to the jury, deny hearing Appellant's appeal for failure to preserve the issue of notice by way of prior hearing or counterclaim for her violation of S.C. Code § 27-4-410, affirm the lower court's findings that trebling of damages was appropriate under South Carolina statutory and common law and reverse the lower courts order consolidating Respondents verdicts for Appellants violation of S.C. Code § 27-40-660 where Appellant failed to move for directed verdict, approved the individual forms and failed to inquire as to the intention of the jury in granting these verdicts before the jury's release.

October 24, 2016



Chris S. Truluck, (S.C. Bar 77829)

1720 Main Street

Columbia, SC 29201

Tel: (803) 556-7285

Facsimile: (843) 620-0502

ctruluck@trulucklawfirm.com

Attorney for Respondents-Appellants

STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Magistrate's Court

Nancy Sadler, Beaufort Magistrate's Court Judge

Case No. 2015CV0710301411

2016 OCT 26 PM 2:50
JERRI ANN ROSENBERG, J.
BEAUFORT COUNTY
CLERK OF COURT

Ricky Phelps and Christy Phelps, Respondents-Appellants,

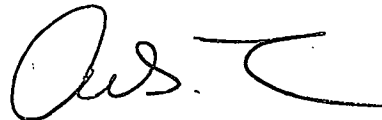
v.

Shamsy Madani, Appellant-Respondent.

CERTIFICATE/PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of Respondents-Appellants, as above listed, Memorandum in Opposition to Appellant-Respondents Appeal and in Support of Respondent-Appellants Cross Appeal in the above-referenced case has been served upon Andrew J. Toney by delivering same this date to him by U.S. Mail to Post Office Box 5969, Hilton Head Island, SC 29938.

October 24, 2016

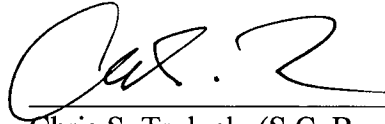


Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street
Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Attorney for Respondents-Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 28, 2017



Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellant

RECEIVED

NOV 30 2017

SC Court of Appeals