

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

RECEIVED
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SC Court of Appeals

Shamsy Madani, Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

APPELLANTS' MOTION TO AMEND THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL PURSUANT TO RULE 212, SCACR

APPELLANTS HEREBY MOVE PURSUANT TO RULE 212, SCACR, for this Court to allow the amendment of appellants', Rickey Phelps and Christy Phelps ("Appellants"), Designation of Matter to Be Included in the Record on Appeal ("Designation") filed on October 4th, 2017.

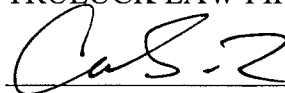
On October 4th, 2017 Appellants filed their Initial Brief citing Appellants Memorandum ("Memorandum") in Opposition to Shamsy Madani's ("Respondent") first appeal as previously filed in the lower court on October 26, 2016, however, failed to designated the Memorandum. A copy of the Memorandum is hereby attached as **Exhibit A**. Pursuant to instructions from this Court to file their final briefs on or before November 4th, 2017 and where Respondent has failed to file an initial brief, Appellants now seek to amend the Designation to include the Memorandum as cited in Appellants' Brief where no material prejudice will result.

WHEREFORE, having fully set forth in this motion to allow amendment of Appellants' Designation of Matter to Be Included in the Record on Appeal ("Designation") filed on October 4th, 2017, Appellants pray that this Honorable Court order as follows:

1. that the Designation of Matter to be Included in the Record on Appeal be amended to include the Memorandum in Opposition to Shamsy Madani's first appeal as previously filed in the lower court on October 26, 2016; a copy of Appellants' amended Designation of Matter to be Included in the Record on Appeal is hereby attached as **Exhibit B**.

November 16, 2017

TRULUCK LAW FIRM, LLC



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

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Attorney for Appellant

EXHIBIT A

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, Respondent,

v.

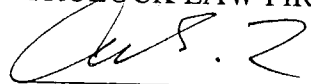
Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Motion to Amend the 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 November 16, 2017 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

RP
RP
November 16, 2017

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)
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STATE OF SOUTH CAROLINA
In The Court of Common Pleas

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CLERK OF COURT
STATE OF SOUTH CAROLINA

APPEAL FROM BEAUFORT COUNTY
Magistrate's Court

Nancy D. Sadler, Beaufort Magistrate's Court Judge

Case No. 2016-CP-07-1475

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 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*, 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).

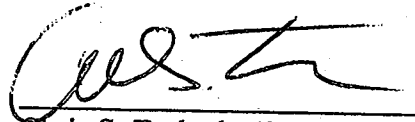
Finally, Respondents respectfully submit that Appellants now expressly consent to Respondents appeal and reversal of the magistrate court order consolidating the jury's finding where Appellant has now made submission to this Court in agreement that both Respondents could have recovered individually. 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



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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

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BEAUFORT COUNTY
CLERK OF COURT

Ricky Phelps and Christy Phelps, Respondents-Appellants

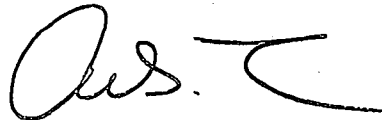
v.

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



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Attorney for Respondents-Appellants

EXHIBIT B

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475

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AMENDED DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

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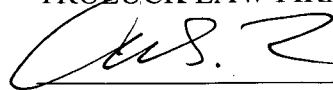
1. Appellants' Complaint
2. Respondent's Answer
3. Partial Transcript
4. Verdicts
5. Order of Judge Sadler; June 1, 2016
6. Order of Judge Dukes; August 3, 2017
7. Appellant's Memorandum in Opposition; October 24, 2016

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

[Signature page to follow]

November 16, 2017

TRULUCK LAW FIRM, LLC



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Attorney for Appellant

STATE OF SOUTH CAROLINA

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APPEAL FROM BEAUFORT COUNTY
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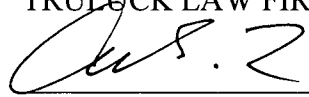
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30th

30th

November 16, 2017

TRULUCK LAW FIRM, LLC



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