

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

535 Brookwood Apartments,

Case No: 2017-CP-23-04933

Appellant,

v.

**ORDER DENYING APPELLANT'S
APPEAL FROM MAGISTRATE COURT**

Jonathan Mitten and Judie Mitten,

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JAN 02 2018

Respondents

SC Court of Appeals

This matter comes before the Court upon Appeal from Magistrate's Court in which the Magistrate denied Appellant's Application for Ejectment and Rule to Vacate and Show Cause. For the foregoing reasons, the Court denies Appellant's appeal.

In appeals from the magistrate court, the circuit court "may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties or for errors in law or fact." S.C. Code Ann. § 18-7-170. However, the circuit court can only consider questions which have been raised in the magistrate's Court and cannot consider questions not presented to the magistrate or properly presented on appeal.

In order to perfect an appeal, the appellant must:

within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded. S.C. Section 18-7-20.

Further, the Appellant must state, in its Notice of Appeal "what particular or particulars he claims the judgment should have been more favorable to him." S.C. Code Ann. § 18-7-30. The appeal is "heard by the court upon all the papers in the case, including the testimony on the trial,

which shall be taken down in writing and signed by the witnesses, and the grounds of exception made...." S.C. Code Ann. § 18-7-130. (emphasis added). In Indigo Associates v. Ryan Investment Company, 314 S.C. 519, 523, 431 S.E.2d 271, 273 (Ct.App. 1993), the South Carolina Court of Appeals held it was reversible error for the circuit court to rule on an issue that was not contained within the appellant's exception, although "the magistrate, at least arguably, ruled on [the] issue...." See 314 S.C. at 524, 431 S.E.2d at 274. Here, the Appellant's Notice of Appeal states:

535 Brookwood Apartments appeals the order of the Honorable Laura Saunders granting judgment to the Defendant(s) and denying Plaintiff's request for eviction. The order is attached as Exhibit A. Appellant received electronic notice of the order on July 10, 2017.

The Appellant's Notice of Appeal does not state why the judgment should have been more favorable to him. The grounds for appeal, argued by the Appellant at the hearing, was the Magistrate Judge's interpretation of Paragraph 19 of the lease and whether it required evidence of criminal conduct. However, these grounds are not presented in the Appellant's Notice of Appeal. Therefore, it does not appear that the Appellant has properly perfected its appeal and the Court finds that the Appeal should be dismissed accordingly.

Further, the record shows that Magistrate Saunders found that the Respondent had not committed any "criminal activity" in violation of the lease and therefore denied the Appellant's Application for Ejectment. On Appeal, the Appellant argues that the lease does not require "criminal activity", but whether the tenant(s) engaged in conduct that threatened the health and safety of others in the complex. This additional ground was not argued by the Appellant in the hearing before the Magistrate. The attorney for the Appellant, Ryan Huggins, specifically states to the Magistrate that "we are here today seeking repossession of a rental unit based on alleged lease violations due to criminal activity" (Tr p5, L13-16) and Appellant proceeds to establish the

alleged criminal activity. At the appeal, the Appellant has changed the basis for the eviction and attempts to tie it more closely to the language in the lease. In Indigo Associates v. Ryan Investment Company, 314 S.C. 519, 523, 431 S.E.2d 271, 273 (Ct.App. 1993), the Court of Appeals stated that "the parties to an appeal from the magistrate court are restricted to the theory on which the case was tried in the magistrate court." The Court, must therefore, consider the record in light of theory on which the case was tried and determine if the Appellate established "criminal activity". The Appellant did not present admissible evidence of any "criminal activity" and the Court affirms the ruling by the Magistrate.

Finally, even considering the actual language of the lease, this Court does not find the Appellant provided competent evidence that Respondent violated the terms of the lease warranting eviction. The Appellant's allegations against the Respondent was not substantiated by any admissible evidence that the health or safety of other children was at risk in the apartment complex. The Appellant attempted to present evidence of various improper conduct by occupants of the Respondent's apartment, but it was all in the form of hearsay testimony to which the Respondent's counsel objected. The Court finds the Appellant has not established that Respondent violated the terms of the lease and affirms the finding by the Magistrate.

Therefore, based on the foregoing reasons, this Court affirms the Magistrate's ruling and the Appeal is dismissed.

IT IS SO ORDERED.

November 22, 2017
Greenville, S.C.

Perry H. Gravelly
Circuit Court Judge

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2304933

535 Brookwood Apartments Jonathan Mitten Judie Mitten

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY

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SC Court of Appeals

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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge 2755 11/22/2017
Judge Code **Date**

For Clerk of Court Office Use Only

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

Lee Anne Walters One Carriage Lane, Bldg. I Charleston, SC 29407

Melegia Lee Daniels Jr. 1200 Woodruff Road Suite A-3 Greenville, SC 29607

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

**Paul B. Wickensimer Greenville County Clerk
Of Court - Clerk of Court**

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: 535 Brookwood Apartments VS Jonathan Mitten , defendant, et al

Case Number: 2017CP2304933

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755