

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

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge
Case No. 2016-CP-32-1968
ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854

RECEIVED

MAR 16 2018

SC Court of Appeals

Gerald J. Nagy, Appellant,

v.

Bob Rice Realty, Inc., Respondent,

**RESPONDENT'S RETURN TO APPELLANT'S REPLY TO RESPONDANT'S MOTION
FOR MODIFICATION OF APPELLANT'S RECORD ON APPEAL**

Respondent has sought a modification of the Appellant's Record on Appeal and not files this Return.

I. Matters not Presented to Trial Court

A. It is uncontested that the only exhibit entered into evidence during the trial of this matter was the lease underlying the issues in this appeal.¹ (Respondent's Reply Pg. 1, p. 1). Because the lease is the only exhibit entered into evidence at the trial court, it is the only document, in addition to the pleadings, orders, and transcripts, that the appellate court is permitted to review or consider on appeal. "The Record on Appeal shall not include matter which was not presented to the lower court or tribunal." Rule 210 (c), SCACR. The lower court, or trial court, in this case is the Magistrate Court.

¹ Although Appellant claims the lease is not at issue in this appeal, the lease is the foundation of his appeal. Without reviewing and determining portions of the alleged lease that were not addressed by the appellate court, this Court would be unable to determine if any additional damages are due under the terms of that lease.

B. In the appeal to the Circuit Court, Appellant presented additional documents to the appellate court that were not presented to the trial court, including an email involving settlement negotiations between the parties that was subsequent to the lower court hearing. See attached transcript excerpts. The Appellate/Circuit Court improperly considered this evidence because it had not been presented to the trial court and it involved settlement discussions. It is clear by both the transcript from this hearing and the language contained in the Appellate/Circuit Court's Order that the settlement negotiations influenced the court's decision. It was improper for the Appellate Court to consider this email, both procedurally and substantively. Rule 210 (c), SCACR.

C. Appellant's Reply, Pg. 2, p.5 states, "these matters were entered into evidence during the Circuit Court appeal hearing." First, it is improper for any matters to be presented to the Circuit Court at the appeal hearing. Second, the Circuit Court is not permitted to enter matters into evidence when it is sitting as an appellate court. Third, the Appellant never moved to have any matters or exhibits admitted into evidence and the Court never admitted and matters or exhibits into evidence. Appellant's Reply, Pg. 3, p.5 states, "[t]here were no exhibits presented to Circuit Court during the hearing on September 20, 2016. The Transcript clearly states such." However, the hearing on September 20, 2016 is the same appeal hearing for Respondent states the matters were entered into evidence as referenced above. In either event, the Appellant cannot retry his case by presenting new or additional documents, evidence or information to the Appellate/Circuit Court.

D. Therefore, Respondent moves to exclude from Appellant's record on appeal, pages 37 – 45. Respondent further moves to include the email Appellant presented to the Circuit Court during the appeal (which was also designated by the Respondent in its Designation of Matter, number 5 and is attached hereto.)

II. Matters Designated by Respondent

A. Respondent admits she also incorrectly designated matters or documents that had not been presented to the trial court. However, the fact that both parties erred does not change the appellate court rules, and the matters must be struck and excluded from the record on appeal.

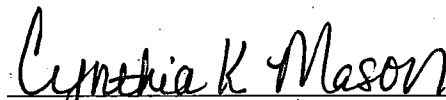
B. Alternatively, Respondent requests that the Appellant's Record on Appeal be modified to include the Respondent's Designation of Matter, as the Record on Appeal filed by the Appellant includes only his own designated matters and fails to include those matters designated by the Respondent. Appellant failed to include Respondent's designated items 5, 8, 11, 14 and 15.

C. Pursuant to Rule 210 (c), SCACR, "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267."

III. Rule 267, SCACR

A. Appellant admits his Record on Appeal and Final Brief do not comply with Rule 267, SCACR.

Respectfully Submitted,



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Fax (803) 252-8290
Attorney for the Respondent

March 16, 2018

IGC Data Services

From: "Terri McLaughlin for Bob Rice Realty" <bobricerealty@gmail.com>
To: "General Delivery" <Catch-All@magyarmail.com>
Sent: Thursday, August 11, 2016 11:47 AM
Subject: From Bob Rice Realty

We would like to drop the eviction with an understanding that we still need the contractor to come in on Monday, August 15th as discussed. His contractor will be purchasing the property. He will need to have inspections done. As specified in SC statutes, landlords are allowed entry into their properties from 8am-8pm when notice has been given. We will give you at least 24 hours' notice when we need to get access for the inspections. At this point, we only need the contractor to enter on Monday. I'll update you from there. The new owner will allow you to stay through the terms of the lease that you are arguing is in effect--through December 31st. After purchase, we will give you a written notice to vacate by December 31st, letting you know he will not be renewing your lease in January. He would also request that you sign a statement, saying you understand your lease will not be renewing in January and that you will be vacated by December 31, 2016.

This is what is happening with the property and we wanted you to be made aware of it.

Thanks,
Terri

"Terri Mac"

Terri Lynn McLaughlin
Property Manager and Sales Broker, Bob Rice Realty
HABLO EL ESPANOL
201 Marshall Street--Columbia, S.C.--29203
03-200-7154 (Cell)
03-779-2600 (Office)
03-403-8914 (Fax)

1 And so my argument essentially is that the judge
2 misinterpreted that particular section of the
3 statute. Having said that, in not doing that, then
4 there was no argument for any of the claims that I
5 have had.

6 They have continually and habitually changed
7 what they want. I have tried to accommodate them as
8 much as I possibly can. Just as an example of the
9 stuff that I have had to deal with them, for
10 instance, even in dealing with this case, they're
11 intending to try to sell the house. We've had
12 numerous correspondence about when they are supposed
13 to be sending over an inspector. Every time I have
14 to wait for them, I'm not able to do anything that
15 day towards moving.

16 I am out of town a lot. I contract, and when
17 I'm out, I'm out for a weekly contract. On two
18 occasions, I've had to cancel a contract. And I
19 realize there's no compensation for lost wages in
20 this situation that I can find, but I've had to
21 cancel contracts in order to be able to appear in
22 court and deal with these issues.

23 ~~As a case in point -- if you would like to hand~~
24 ~~this up. Thank you, sir.~~

25 ~~This just shows the kind of stuff when -- the~~

1 ~~actual portion of the first page, but I have printed~~
2 ~~out the entire correspondence. They wanted to~~
3 ~~settle this thing when we were here last time.~~ I
4 suggested that if they have to retain counsel, it
5 was going to be very expensive. In an attempt to
6 try to accommodate with them, I said, Why don't we
7 work this thing out? And they said, Oh, no problem.

8 They came back about a day later and said, It's
9 not an issue; yeah, let's go ahead and let's make
10 this thing go away. And I said, Well, we have to
11 execute an agreement for both the circuit court and
12 the magistrate's court. And at this point, it's
13 beyond my capability, as I don't consider myself to
14 be a bad pro se litigant, but this gets into stuff I
15 don't know.

16 John Hughes Cooper, an attorney I worked with
17 on numerous occasions, I've done forensic work for
18 him, I called him. And he said, No problem; they
19 just got to have their attorney get in touch with me
20 so we can work out the details on how we want to get
21 this thing settled. He has never heard anything
22 from them. And then Friday they sent an e-mail to
23 him saying, We've just decided -- we just want it to
24 go away.

25 Well, I don't think it works that way last time

1 dollar a month repair credit as long as I paid my
2 payments on time, which they have not contested that
3 one bit. And so when I attempted to avail myself of
4 that, they said, Oh, no, no, you can't do that,
5 that's only for some of our tenants not for you.
6 And so I would request that I also be allowed to
7 remove that from the next rental payment or have
8 them refund it back to me and let me pay them the
9 875, the reduced amount, as long as it's a timely
10 payment based on, again, the terms of their own
11 lease.

12 And so -- like I say, the issues that I have
13 with them, Your Honor, they just -- they constantly
14 change their mind, they really don't care. They've,
15 quite frankly, I think, at this point, shown
16 contempt for the process in just by saying, as
17 evidenced even in that e-mail, Well, we just changed
18 our mind, forget about it. And so with all the time
19 and the effort that I've had to put into it and the
20 time that the courts have spent on this, and they
21 just change their mind, and I just don't believe
22 that that's the way things should be done.

23 ~~THE COURT: All right. So they say in their~~
24 ~~e-mail they're willing for you to stay until~~
25 ~~December. Is that satisfactory to you or you want~~

1 ~~To stay longer than December?~~

2 **MR. NAGY:** No, sir, that's satisfactory to me,
3 but I would also ask because of -- which is fine,
4 which is what now I had made plans to do which is to
5 -- because the lease renewed, is to stay in there
6 until the end of December, which is the termination
7 time of the lease at this point. And so I'm okay
8 with that part of it.

9 But my problem is now is that because now
10 they've changed their mind, I still have all this
11 time and all the expenses involved in this. And, I
12 mean, they've just been, I hate to say it, I feel
13 like they've been beating on me with the court
14 system and now they decided, well -- when the judge
15 ordered them to retain counsel, I'm sure they got a
16 price as to what it was going to cost to defend this
17 action, said, ah, it's just cheaper to make it go
18 away. Well, you know, you got us here and now they
19 just changed their mind, and that's the other --
20 that's the other thing that I have a problem with.
21 So I believe damages would be in order on this, Your
22 Honor.

23 **THE COURT:** Well, as far as your claim for some
24 of these expenses, I'm not inclined to award you any
25 -- I mean, filing fees, that's basically the only

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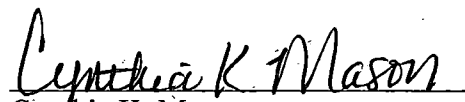
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PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Reply to Respondant's Motion for Modification of Appellant's Record on Appeal on the following by depositing a copy of it in the United States Mail, postage prepaid, on March 16, 2018, addressed as follows to the following:

Gerald J. Nagy
911 Old Barnwell Road
Mail Stop 149
West Columbia, SC 29170


Cynthia K. Mason
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Fax (803) 520-0233
Attorney for the Respondent

March 16, 2018