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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Civil Action No. 2016-CP-07-1475
Appellate Case No. 2017-0001761

RECEIVED

MAR 12 2018

SC Court of Appeals

SHAMSY MADANI.....Respondent,

v.

RICKEY PHELPS AND CHRISTY PHELPS.....Appellants.

INITIAL BRIEF OF RESPONDENT

Submitted by:

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TABLE OF CONTENTS

Table of Authorities ii, iii

Statement of Case 1

Facts 2

Argument 4

 I. THE APPELLATE-CIRCUIT COURT PROPERLY CONCLUDED
 THAT THE MAGISTRATE COURT JUDGMENT CONSTITUTED AN
 IRRECONCILABLE VERDICT..... 4

 II. THE DUTY TO RAISE THE ISSUE OF IRRECONILABLE
 VERDICT AT TRIAL WAS THAT OF PHELPS, NOT MADANI,
 AND MADANI DID PRESERVE THE ISSUE FOR APPEAL
 WHERE THE TRIAL JUDGE CREATED AN IRRECONILABLE
 AND INCONSISTEN VERDICT AFTER THE JURY
 WAS DISCHARGED..... 7

 III. THE MAGISTRATE COURT’S ORDER WAS VOID, OR IN
 THE ALTERNATIVE SHOULD HAVE BEEN RENDERED VOID
 BY THE APPELLATE-CIRCUIT COURT FOR LACK OF
 SUBJECT MATTER JURISDICTION..... 8

Conclusion..... 12

Rule 211(b) Certification..... 13

TABLE OF AUTHORITIES

CASES

<u>Anderson v. Aetna Casualty and Surety</u> , 175 S.C. 254 (1934).....	5
<u>Buxton v Thompson Dental Co.</u> , 415 SE2d 844 (Ct. App 1992).....	5
<u>Camden v. Hilton</u> , 360 S.C. 164 (Ct. App. 2004).....	5
<u>Cast-A-Stone Products of South Carolina, Inc. v. Aetna Cas. & Sur. Co.</u> , 379 F.Supp. 929 (U.S. Dist.Ct. D. S.C., 1974).....	10
<u>Daves v. Cleary</u> , 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003).....	5
<u>Dove v. Gold Kist</u> , 314 S.C. 235, 442 S.E.2d 598 (1994).....	9
<u>Gainey v. Gainey</u> , 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009).....	9
<u>GNOC Corp. v. Estate of Rhyne</u> , 312 S.C. 86, 439 S.E.2d 274 (1994).....	9
<u>Johnson v. Phillips</u> , 315 S.C. 407, 433 S.E.2d 895 (Ct.App.1993), rev'd in part on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995).....	5, 6
<u>Johnson v. State</u> , 319 S.C. 62, 459 S.E.2d 840 (1995).....	9
<u>Krepps by Krepps v. Ausen</u> , 324 S.C. 597 (Ct. App. 1996).....	5
<u>Linda Mc Co., Inc. v. Shore</u> , 375 S.C. 432, 653 S.E.2d 279(Ct. App. 2007).....	8
<u>McDaniel v. U.S. Fidelity and Guar. Co.</u> , 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996).....	8
<u>Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc.</u> , 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007).....	11
<u>Petroleum Transp., Inc. v. Public Service Comm'n</u> , 255 S.C. 419, 179 S.E.2d 326 (1971).....	9
<u>State v. Gorie</u> , 256 S.C. 539, 183 S.E.2d 334 (1971).....	9
<u>Stevens v. Allen</u> , 336 S.C. 439 (Ct. App. 1999).....	5, 6, 7
<u>Universal Benefits, Inc. v. McKinney</u> , 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002)...	8
<u>Ware v. Ware</u> , 404 S.C. 1, 743 S.E.2d 817 (2013).....	8
<u>Watson v. Watson</u> , 319 S.C. 92, 460 S.E.2d 394 (1995).....	9

STATUTES

S.C Code Ann. § 18-7-170.....4,7

S.C. Code Ann. § 22-3-10.....10, 11

S.C. Code Ann. §27-40-410.....9

S.C. Code Ann. §27-40-610.....9

S.C. Code Ann. §27-40-660.....9

OTHER AUTHORITIES

S.C. Rules of Civ. Proc., Rule 60(b)(4).....9

1980 S.C. Op. Atty. Gen. 5 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-1,
1980 WL 81885.....10

STATEMENT OF THE CASE

Plaintiffs-Appellants Rickey and Christy Phelps (“Phelps”) filed this landlord-tenant action against Defendant-Respondent Shamsy Madani (“Madani”) after they had been evicted from their apartment for failure to pay rent.

The Magistrate Court jury trial of this case occurred on Monday, April 18, 2016. The jury returned a verdict in favor of Madani in the amount of \$301.85 for damages caused by Phelps to Madani’s apartment, and returned a verdict in favor of Madani for \$1,050.00 for Phelps failure to pay rent, for a total verdict in favor of Madani of \$1,351.85

The jury returned a verdict in favor of Phelps in the amount of \$950 for Madani’s failure to return the security deposit, and returned a verdict in favor of each of the Phelps for \$0.0 for Madani’s unlawful ouster of Phelps. Madani’s judgment exceeded that of Phelps by \$401.85. The jury found that Phelps breached the lease, which required the award of attorney fees and costs to Madani.

The Magistrate’s Court issued an Order on Post Trial Motions of the Parties on April 28, 2016. The Magistrate’s Court April 28, 2016 Order, awarded the Phelps the following: \$2,850.00 for Madani’s breach of S.C. Code §27-40-660 and \$2,850.00 for Madani’s breach of S.C. Code §27-40-410. The April 28, 2016 Order also awards to Madani \$1,316.85, finds that both parties are entitled to an award of attorney fees and costs, and offers to hold a hearing with counsel to determine the award of attorney fees;

On May 12, 2016, the Magistrate’s Court issued an Order on Post Trial Motions of the Parties. The Court’s May 12, 2016 Order, upholds its previous rulings and awards

only Phelps' attorney fees and costs in the amount of \$5,080.00, for a total award to Phelps of \$10,780 and a total award to Madani of \$1,316.85.

In response to the Court's May 12, 2016 Order, Madani's counsel timely filed a motion to reconsider, which the Court accepted and considered. The Magistrate's Court issued its Final Order on June 6, 2016, confirming its award.

Thereafter, Madani appealed the Magistrate's Court Judgment to the Beaufort County Court of Common Pleas. On August 3, 2017, the Beaufort County Court of Common Pleas issued its order reversing and remanding the Magistrate Court's Order and ordering a new trial. This appeal followed.

FACTS

This is an alleged breach of the South Carolina Landlord Tenant Act case brought by Phelps against Madani.

Beginning on March 20, 2015, Phelps rented an apartment from Madani for \$950/month, Phelps paid a \$950 security deposit, and the lease agreement expired on March 1, 2016. (R. pp. 137-140). Phelps admittedly failed to pay rent for the months of September, October, and November 2015. (R. pp. 83-85). On October 2, 2015, Madani changed the lock of Phelps' apartment door and put a notice on Phelps' door of the changed lock and informed the Phelps to contact Madani for the new key. (R. pp. 149-151). This was done because neighbors complained of unidentified third-parties attempts to access the apartment and, thereby, damaging the apartment's lock. (R. p. 150).

Phelps called Madani when they saw the notice regarding the key and testified that they were locked out of the apartment for either one week or two weeks (they could not verify how long they allege to have been locked out), and did not testify as to where

they stayed or as to any damages incurred. (R. p. 91) Phelps obtained a key to the apartment and continued to live in the apartment for at least another month and a half without paying rent. (R. p. 63).

By Order of the Bluffton Magistrate, Phelps were evicted from the apartment on November 13, 2015. (Writ of Eviction). Phelps never provided Madani notice of their new address or demanded return of their security deposit, presumably because they had not paid three months rent and had been evicted. (R. p. 180).

On December 1, 2015, Phelps filed a lawsuit against Madani, alleging unlawful ouster as their sole cause of action. (Phelps' Complaint). On January 11, 2016, Madani answered Phelps' complaint and counterclaimed for breach of lease for Phelps' failure to pay several months rent and damage caused to the apartment. (Madani Answer and Counterclaim). Madani's claim that Phelps failed to pay several months rent placed them on notice that Madani claimed damage in excess of Phelps' \$950 security deposit.

On January 16, 2016, more than 60-days after being evicted, Phelps sent a letter to Madani requesting return of the security deposit, which Madani did not respond to due to her counterclaim encompassing damages in excess of the \$950 security deposit. (R. p. 67). On January 22, 2016, Phelps filed their amended complaint, adding as a cause of action general violation of the South Carolina Landlord Tenant Act. (Phelps' Amended Complaint). Madani answered the amended complaint and counterclaimed, once again, for breach of lease for Phelps' failure to pay rent and damage caused to the apartment by Phelps. (Madani Answer to Amended Complaint and Counterclaim)

On February 26, 2016, Phelps, without leave of court, once again amended their complaint to add as a cause of action failure to comply with SC Code §27-40-410 for

failing to respond to Phelps' request for return of their security deposit, despite Madani having done so in her counterclaim contained in her answer to the original and amended complaints. (Phelps Second Amended Complaint).

Each of the Phelps claimed damages caused by Madani's alleged unlawful ouster, for a total claim of \$5,700 and the Phelps together claimed violation of the security deposit statute in the amount of \$2,850, exclusive of claimed damages for general violations of the South Carolina Landlord Tenant Act, attorney fees and costs. In total, by the face of the second amended complaint, Phelps' claims totaled \$8,550.00, exclusive of claimed damages for general violations of the South Carolina Landlord Tenant Act, attorney fees and costs. The case remained in Magistrate's Court.

At trial Phelps presented only themselves as witnesses and did not offer one piece of evidence as to any damages sustained by them as a result of Madani's alleged actions. Madani testified on behalf of herself and introduced as damages \$3,725.00 in unpaid rent and late rent charges, and \$815.38 in actual damages caused by Phelps use of the apartment, for a total damage claim of \$4,540.38. (R. pp. 160-178; R. pp. 183-184)

ARGUMENT

1. THE APPELLATE-CIRCUIT COURT PROPERLY CONCLUDED THAT THE MAGISTRATE COURT'S JUDGMENT CONSTITUTED AN IRRECONCILABLE VERDICT

In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. S.C Code Ann. § 18-7-170.

The Appellate-Circuit Court granted a new trial as it was evident from the jury's verdict and the final order of the trial Court that such verdict was so confused that it is not

absolutely clear what was intended. See Anderson v. Aetna Casualty and Surety, 175 S.C. 254 (1934); Camden v. Hilton, 360 S.C. 164 (Ct. App. 2004).

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge should not be required to guess as to what the jury sought to render. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). The trial court did not abuse its discretion by granting a new trial under the “thirteenth juror doctrine” where the 2 verdicts handed down by the jury were inconsistent and were not justified by the evidence. Buxton v Thompson Dental Co., 415 SE2d 844 (Ct. App 1992).

The court cannot lawfully enter judgment on an inconsistent or incomplete verdict. Stevens v. Allen, 336 S.C. 439 (Ct. App. 1999), Krepps by Krepps v. Ausen, 324 S.C. 597 (Ct. App. 1996).

The jury verdict in this case favors Madani and it is evident from the verdict that the jury found in favor of Madani. (Verdict Form). It is not possible based upon the verdict of the jury that Madani should have been ordered by the Magistrate’s Court to pay in excess of \$9,000 to the losing parties, Phelps.

In part, the jury found in favor of Phelps for the unlawful ouster claim, BUT awarded zero dollars. Once a plaintiff proves damages proximately caused by the defendant, the verdict of zero damages is inconsistent or incomplete as a matter of law. See Stevens, at 449-450. In Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct.App.1993), rev'd in part on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995), this Court held:

In this case, the jury returned a verdict in nuisance of “no dollars” actual damages for the plaintiff. As a matter of law, this was either an inconsistent or incomplete

verdict. If the jury found the defendant did not unlawfully interfere with the plaintiff's use and enjoyment of his land, even though the diversion of surface water was annoying or harmful to him, the verdict was legally inconsistent. On that view of the evidence, the verdict should have been for the defendant. If the jury found an unlawful interference amounting to a private nuisance, but no actual damages resulting to the plaintiff, it should have returned a verdict for the plaintiff and awarded nominal damages (i.e., one dollar). If it found unlawful interference resulting in actual damage to the plaintiff, even if the amount of the damages was difficult to ascertain, the jury had a duty to return a verdict for the plaintiff and to award damages in a specific dollar amount that, in its best judgment, based on the evidence before it, would compensate the plaintiff for his actual loss. Having found the fact of damage, the jury was required to find the amount of damage. In either of these latter cases, a verdict of "no dollars" for the plaintiff is legally incomplete. Since the defendant is liable for violating the plaintiff's substantive right, the plaintiff is entitled by law to an award of damages.

Johnson, 315 S.C. at 415-16, 433 S.E.2d at 900-01.

The South Carolina Supreme Court affirmed the Court of Appeals in Stevens V. Allen, 342 S.C. 47, 536 S.E.2d 663 (2000), and stated:

A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law. We hold that, if a jury finds the plaintiff has failed to prove damages proximately caused by the defendant's negligence, then its verdict should be for the defendant. We agree with the Court of Appeals' conclusion that, under South Carolina law, the proper and most consistent approach of treating such verdicts is to require, upon request, the trial court to re-submit the matter to the jury. If the jury cannot reach a consistent verdict, the trial court may then order a new trial nisi or a new trial absolute.

The Appellate-Circuit Court found that as a matter of law the trial court's verdict was irreconcilable. The only manner in which to remedy an irreconcilable verdict is the granting of a new trial. The Appellate-Circuit Court's Order must be affirmed.

2. THE DUTY TO RAISE THE ISSUE OF IRRECONCILABLE VERDICT AT TRIAL WAS THAT OF PHELPS, NOT MADANI, AND MADANI DID PRESERVE THE ISSUE FOR APPEAL WHERE THE TRIAL JUDGE CREATED AN IRRECONCILABLE AND INCONSISTENT VERDICT AFTER THE JURY WAS DISCHARGED

When the jury presented its verdict at the conclusion of the trial, it found in favor of Madani. In part, the jury found for each of the Phelps and awarded zero dollars. Phelps did not request the trial judge re-submit the matter to the jury. Upon the jury's finding of zero dollars for the Phelps, according to South Carolina law, it was finding in favor of Madani. See Stevens, 342 S.C. 47. It was incumbent upon Phelps, not upon Madani, to request the jury return to reconsider the matter.

Upon the award of the trial judge on April 28, 2016, Madani filed a motion to reconsider and argued, in part, the inconsistency and irreconcilability of the Court's order. (Madani's Motion to Reconsider and New Trial). The trial court considered Madani's Motion to Reconsider and New Trial and issued its final Order on June 6, 2016. (Final Order June 6, 2016). Madani timely brought her motion to the trial Court regarding the trial Court's misapplication of South Carolina law in light of the jury's verdict, and the trial court ruled on such motion. The irreconcilability and inconsistency of the trial court's final order stems from the fact that: 1) upon the jury's award of zero dollars to the Phelps and failure of Phelps to request the jury reconsider, the verdict was in favor of Madani, and, 2) the trial court's subsequent award of monetary damages to Phelps based upon the jury's verdict of zero dollars, and, 3) the ultimate net verdict grossly favoring Phelps, despite the jury's award of a greater amount to Madani.

The Appellate-Circuit Court found that this inconsistency in the final award constituted an irreconcilable verdict. As such, the Appellate-Circuit Court ordered that

the final order of the trial court be reversed and the case be remanded for a new trial. The Appellate-Circuit Court's ruling is the only possible ruling available to it in light of the inconsistent and irreconcilable final verdict awarded. As such, the ruling of the Appellate-Circuit Court must be upheld.

3. THE MAGISTRATE COURT'S ORDER WAS VOID, OR IN THE ALTERNATIVE SHOULD HAVE BEEN RENDERED VOID BY THE APPELLATE-CIRCUIT COURT FOR LACK OF SUBJECT MATTER JURISDICTION.

The definition of "void" under the voidness provision of relief-from-judgment rule...encompasses...judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. Linda Mc Co., Inc. v. Shore, 375 S.C. 432, 653 S.E.2d 279(Ct. App. 2007); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002); McDaniel v. U.S. Fidelity and Guar. Co., 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996).

For purposes of applying the rule authorizing a trial court to grant a party relief from a void judgment, a "void judgment" is one that, from its inception, is a complete nullity and is without legal effect; the definition of "void" under the rule only encompasses judgments from courts which...lacked subject matter jurisdiction or personal jurisdiction. Ware v. Ware, 404 S.C. 1, 743 S.E.2d 817 (2013).

Definition of "void," under rule which allows court to relieve a party or his legal representative from a final judgment, order, or proceeding if the judgment is void, only encompasses judgments from courts which...lacked subject matter jurisdiction...Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010).

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment on motion for relief from judgment. S.C.

Rules Civ.Proc., Rule 60(b)(4). Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009).

It is well-settled that issues relating to subject matter jurisdiction may be raised at any time. See Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995); GNOC Corp. v. Estate of Rhyne, 312 S.C. 86, 439 S.E.2d 274 (1994); State v. Gorie, 256 S.C. 539, 183 S.E.2d 334 (1971). The question of lack of subject matter jurisdiction may be raised at anytime during the action and cannot be waived or conferred by consent. Petroleum Transp., Inc. v. Public Service Comm'n, 255 S.C. 419, 179 S.E.2d 326 (1971). Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598 (1994); Watson v. Watson, 319 S.C. 92, 460 S.E.2d 394 (1995).

In this case, the Phelps' causes of action were as follows:

- 1) Noncompliance by Landlord in General Pursuant to S.C. Code §27-40-610, wherein the Phelps sought actual damages, attorney's fees and costs, and punitive damages;
- 2) Unlawful Ouster Pursuant to S.C. Code §27-40-660, wherein each of the Phelps demanded \$2,850, or three months periodic rent, for a total of \$5,700, attorney fees, and punitive damages; and,
- 3) Failure to Return Security Deposit Pursuant to S.C. Code §27-40-410, wherein the Phelps sought three times the security deposit, or \$2,850, attorney fees, and punitive damages. (Phelps' Second Amended Complaint)

By the face of the second amended complaint and the argument of Phelps' counsel at trial, Phelps' damages, before attorney fees or punitive damages, total \$8,550. (Phelps' Second Amended Complaint).

South Carolina has determined that "wherein treble damages are sought by the plaintiff, the amount in controversy which would determine the jurisdiction of magistrate's court to hear the case is the trebled amount being sought." See 1980 S.C. Op. Atty. Gen. 5 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-1, 1980 WL 81885.

Additionally, a reasonable attorney's fee and costs allowed by statute or contract is not interests or costs, but is a part of the amount in controversy. See Cast-A-Stone Products of South Carolina, Inc. v. Aetna Cas. & Sur. Co., 379 F.Supp. 929 (U.S. Dist.Ct. D. S.C., 1974).

The amount prayed for in the Phelps' second amended complaint exceeds the jurisdictional limit of the Magistrate's Court and the amount actually awarded exceeds the jurisdictional limit of the Magistrate's Court.

Pursuant to S.C. Code §22-3-10, Magistrates have concurrent civil jurisdiction in the following cases:

- (1) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;
- (2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars;
- (3) in actions for a penalty, fine, or forfeiture, when the amount claimed or forfeited does not exceed seven thousand five hundred dollars...

(12) in all actions provided for in this section when a filed counterclaim involves a sum not to exceed seven thousand five hundred dollars, except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land...

S.C. Code Ann. §22-3-10.

Part "10" of S.C. Code §22-3-10 does not control or allow the Magistrate's Court to have subject matter jurisdiction in this case. South Carolina's courts have found that where "tenant's counterclaim for damages, alleging constructive eviction, conversion, unjust enrichment, loss of business revenue, and failure to return deposit, was not within the scope of exception to jurisdiction limits of magistrate's court for disputes involving "landlord and tenant and the possession of land," and thus transfer of case to court of common pleas was required; two of tenant's counterclaims exceed magistrate's jurisdictional limit of \$7,500, and the action did not involve possession of the property." See Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc. , 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007).

Possession of property must be in dispute for the case to fall under S.C Code § 22-3-10 (10) and (12). See Id. As to any action brought in a magistrate's court for past due rent not brought as an action for distraint or ejection, such action must be brought pursuant to one of the jurisdictional grants of authority, other than that as to landlord-tenant matters, provided by S.C. Code Ann. § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply.

In this case the sum claimed by Phelps and the counterclaiming Madani exceed the jurisdictional limit of the Magistrate's Court and possession of the property is not in

dispute. (Phelps' Second Amended Complaint; Madani's Answer to Second Amended Complaint and Counterclaim). As such, the Magistrate Court's judgment is void and a new trial should have been ordered by the Appellate-Circuit Court. Additionally, the affidavit of Phelps' counsel as to attorney's fees and costs, and the award of the Magistrate's Court, prove that the amount in controversy exceeded the jurisdictional limit of the Magistrate's Court. (Affidavit of Chris Truluck, Esq.; Magistrate's Court Final Order).

Because the Magistrate Court's final Order is void, the Appellate-Circuit Court should have ordered that such judgment be stricken and that the case must be refilled in the Court of Common Pleas.

CONCLUSION

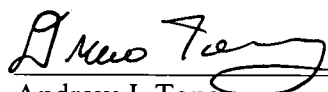
The fundamental question presented in this appeal is whether the Phelps can be awarded a zero dollar verdict, which in South Carolina constitutes a verdict in favor of Madani, and, yet, receive an ultimate Magistrate Court verdict award of \$9,463.15 greater than that of Madani, the prevailing party. The Appellate-Circuit Court recognized the inconsistency of such verdict award and ordered the only possible solution, that being reversing the Magistrate Court's order and remanding the case for a new trial. The Appellate-Circuit Court's Order must be affirmed and this case reverse and remanded to the Magistrate's Court.

In the alternative, the Magistrate's Court's Order is void pursuant to South Carolina law. The Magistrate's Court lacked subject matter jurisdiction and, as such, its judgment is void. Because the final Order is Void, this Court should vacate the judgment and order the case be filed in the Court of Common Pleas.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Initial Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew J. Toney", is written over a horizontal line.

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March 8, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Civil Action No. 2016-CP-07-1475
Appellate Case No. 2017-0001761

SHAMSY MADANI.....Respondent,

v.

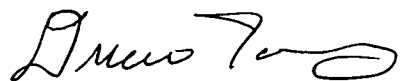
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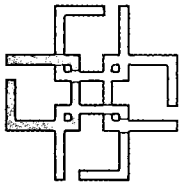
PROOF OF SERVICE

This is to certify that I have on this 8th day of March, 2018 delivered a true and correct copy of Respondent's Initial Brief and Certificate of Service in the above captioned case by depositing a copy of the same in the United States Mail with correct postage to ensure delivery to:

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March 8, 2018

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MAR 12 2018

SC Court of Appeals

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1015 Sumter Street (29201)
Post Office Box 11629
Columbia, SC 29211

RE: *Shamsy Madani v. Rickey Phelps and Christy Phelps*
Case No.: 2017-001761

Dear Ms. Kitchings:

Please find enclosed the original and one copy of the Initial Brief of Respondent and the Designation of Matter to be Included in the Record on Appeal regarding the above referenced matter. I would appreciate if you would please file the originalS and return the clocked copies in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me. Thank you in advance for your assistance with this matter. I remain,

George E. Mullen

Robert L. Wylie, IV

Francis E. Grimball

James E. Lady

Amy W. Wates

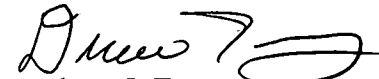
Allison B. Thompson

Andrew J. Toney

Lauren M. Thomas

Very truly yours,

MULLEN WYLIE, LLC


Andrew J. Toney

AJT/pm
Enclosures

cc: Chris S. Truluck, Esquire