

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

**RECEIVED**  
MAR 16 2018  
SC Court of Appeals

Case No. 2016-CP-07-01475

Shamsy Madani, ..... Respondent,

v.

Rickey Phelps and Christy Phelps ..... Appellants.

REPLY BRIEF OF APPELLANT

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

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STATE OF SOUTH CAROLINA

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### Arguments

#### I. THE APPELLATE-CIRCUIT COURT IMPROPERLY CONCLUDED THAT THE TRIAL COURT JUDGMENT CONSTITUTED AN IRRECONCILABLE VERDICT

Respondent argues that a finding of zero (0) damages without a subsequent award for other damages under South Carolina Law is irreconcilable. Resp. Int. Pg. 5-6 (Mar. 8, 2018). However, Respondent’s argument is inapplicable where she relies on precedent for common law causes of action such as nuisance and negligence. The statutory remedy available to Appellants reads, “[i]f 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 Appellants as against Respondent for violation of S.C. Code § 27-40-660 with zero (0) actual damages. The parties, having pleaded and previously stipulated, agreed the rent at issue in this

case to be conclusively \$950.00. Where S.C. Code § 27-40-660 requires no finding of actual damages and provides for an award in the alternative based on monthly rent, whichever is greater, Respondent's argument as to irreconcilability based on zero (0) damages in common law causes of action is inapplicable and must fail as damages here are awarded according to statute.

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*).

Appellants 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 Appellants' favor. In relying on the Courts statutory construction in *Prevatte*, Appellants respectfully submit that the appropriate award for Respondent's violation of S.C. Code § 27-40-660 is "three months' periodic rent or twice the

actual damages sustained by them, 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 Appellants 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, Appellants respectfully submit this Court should find judgment in their favor for Respondent's violation of S.C. Code § 27-40-660 in amount of \$2,850.00 is reconcilable and is statutorily prescribed.

Appellants, otherwise, refer to their argument contained in Appellants Final Brief filed on November 30, 2017 and incorporate by reference as if stated herein in the interests of economy. App. Fin. PG. 5-7 (Nov. 30, 201).

## II. THE DUTY TO RAISE THE ISSUE OF IRRECONCILABLE VERDICT(S) LIES WITH THE PARTY SEEKING TO REFORM THE VERDICT NOT THE PREVAILING PARTY

Respondent next argues that it was Appellants duty to raise the issue of irreconcilable verdict and that Respondent further preserved the issue of irreconcilability. Appellants are now incapable of following the argument of Respondent that a party satisfied with the verdicts, and finding the verdicts reconcilable, would be required to raise the issue of irreconcilability. 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).

Appellants did not object to the jury verdict forms submitted or the jury verdict forms as returned before discharge. As provided in *Camden*, "parties seeking to reform a verdict must

first voice their objection before the jury is discharged.” *Id.* The Appellants were satisfied with the finding of the jury, the final application of statutory damages as properly determined by the trial court and as subsequently appealed by the Respondent and former defendant at the trial level.

Further, Respondent continues to fail to reference any objection to the verdicts in the transcript before discharge of the jury such that it is abundantly clear she has not properly preserved the issue of irreconcilability. Appellants continue to respectfully submit the issue of irreconcilability was not preserved for appeal and that the objection was incumbent upon the Respondent who sought reformation. Despite filing post-trial and post-discharge motions the issue was not preserved by Respondent and Appellants respectfully request this Court to find so accordingly.

### III. THE TRIAL COURT POSSESSED SUBJECT MATTER JURISDICTION PURSUANT TO S.C. CODE § 27-40-130 AND S.C. CODE § 22-3-10, OTHERWISE, WHERE NO INDIVIDUAL CLAIM AS PLEADED AMOUNTED TO MORE THAN \$7,500.00.

Respondent argues that the trial court was devoid of subject matter jurisdiction where the amount of the award alleged in Appellants’ 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. Appellants respectfully disagree.

First, none of Appellants 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 trial 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 trial court ordered that Appellants were only entitled to one recovery in the amount of \$2,850.00 despite two jury verdicts finding for each respondent against Respondent for unlawful ouster. By Respondent’s own position, the Appellants can only recover in the amount of \$2,850.00 for Respondent’s unlawful ouster and \$2,850.00 for Respondent’s failure to return the security deposit amount to a

maximum award of \$5,700.00 if the analysis for jurisdiction was based on aggregate value rather than individual claims. Third, Respondent'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 in an action concerning a commercial lease as distinguished from a residential lease as in this case. *Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc.*, 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007). Similarly, Respondent never moved to have the matter transferred to the circuit court such that this argument was not preserved and, in contradiction, admitted the magistrate jurisdiction was appropriate pursuant to her Answer to Second Amended Complaint and Counterclaim. Ans. Sec. Amen. Pg. 1, ¶ 2 (Mar. 8, 2016). S.C. Code § 22-3-10 provides jurisdiction in cases where the "sum claimed does not exceed" \$7,500.00. For the Respondent to properly submit her argument refuting jurisdiction it is Appellants' position that a determination would have to have been made, upon motion of Respondent, as to whether the "sum claimed" as pleaded in any complaint or answer by the trial court exceed S.C. Code § 22-3-10 jurisdictional amount before the issue is properly preserved. S.C. Code § 22-3-10

Finally, and as repeatedly ignored by Respondent, the controlling statute for jurisdiction in matters concerning residential leases as was at issue in this matter is S.C. Code § 27-40-130;

[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.

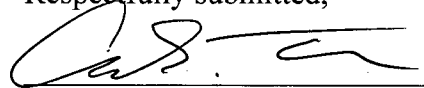
S.C. Code § 27-40-130. S.C. Code § 27-40-130 provides no statutory monetary limit or requirement that the claims involve the possession of property as suggested by Respondent.

Where the trial court had concurrent subject matter jurisdiction over matters concerning the Residential Landlord Tenant Act pursuant to S.C. Code § 27-40-130 Respondent's argument must fail and jurisdiction was proper. Alternatively, Respondent's argument that the trial court lacked subject matter jurisdiction pursuant to S.C. Code § 22-3-10 must also fail where Respondent failed to move to have the case transferred to the circuit court, admitted jurisdiction and the individual claims as pleaded never amounted to more than \$7,500.00.

CONCLUSION

For these reasons, this Court should reverse the judgment of the circuit court reversing the trial judge's finding that the jury verdicts were irreconcilable and remand the matter for further proceedings in accordance with the lawful verdicts.

Respectfully submitted,



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PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Reply Brief 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 March 16, 2018 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

March 16, 2018

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