

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2017-000203

R. Jay Lagroon, ... Appellant,
v.
SBA Communications Corp., ... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Must the appeal be dismissed because the Notice of Appeal to the Circuit Court was not timely filed or served?
- II. Was the Circuit Court's affirmance of the Magistrate Court's finding that SBA paid rent in March, 2014 unsupported by the evidence or affected by errors of law?
- III. Did the Motion to Reconsider in the Cease and Desist Action deprive the Magistrate Court of subject matter jurisdiction?
- IV. Did the Circuit Court correctly find that the Magistrate Court did not abuse his discretion in denying Dr. Lagroon's motion for continuance?

INTRODUCTION

The central issue in the trial of case was whether SBA paid \$1,957.15 in rent to Appellant R. Jay Lagroon (“Dr. Lagroon”) in March 2014 for a cellular communications tower on Dr. Lagroon’s property. SBA’s business records showed that it deposited \$1,957.15 into a bank account at First Citizens’ Bank as directed by Dr. Lagroon. First Citizens’ business records showed that it credited the \$1,957.15 payment into Dr. Lagroon’s bank account, but since the account had been closed, First Citizens issued a cashier’s check for \$1,957.15 that was subsequently cashed. SBA’s and First Citizens’ business records both showed that SBA made the rent payment to Dr. Lagroon for each month prior to March 2014.

After SBA provided notice that it was terminating the ground lease between the parties, Dr. Lagroon barred SBA’s access to the property and brought a magistrate court action, contending that the March 2014 rent payment had not been paid. Specifically, Dr. Lagroon contended at trial that the \$1,957.15 deposit reflected in the First Citizens Bank account (and subsequent cashier’s check) was not SBA’s rent payment. Instead, Dr. Lagroon argued that those funds represented a cash deposit made by his employee on behalf of a stroke victim pursuant to an entirely different lease for a different property.

The Magistrate Court allowed Dr. Lagroon the opportunity to present his evidence and testimony on the merits in a full-day trial. After weighing the evidence presented by both parties, the Magistrate Court found that SBA made the disputed March 2014 rent payment. The Circuit Court, sitting as an appellate court, granted Dr. Lagroon another hearing that examined the merits of his claims, granted him the opportunity to present supplemental briefing with the assistance of counsel, and reviewed both the trial transcript and exhibits offered at trial in addition to the

Magistrate Court's Returns. After examining the entire record, the Circuit Court affirmed the Magistrate Court's decision finding in favor of SBA.

The record in this action has been obscured through a number of irrelevant filings, appeals of procedural orders, attempts to conflate a separate civil action into this case, and other tactics that have created confusion and delayed the administration of this action. Now, as this magistrate court case enters its fourth year of litigation, Dr. Lagroon invites this Court to conduct a third comprehensive review of his claim that SBA failed to pay rent in March 2014. The Court should not entertain Dr. Lagroon's request.

Two courts—a trial court and an appellate court—have reviewed the substance and procedure of this action and found in favor of SBA. Dr. Lagroon has failed to demonstrate that the Circuit Court erred in affirming the Magistrate Court's factual findings or that the Circuit Court's affirmance was affected by an error of law. As a result, under this Court's standard of review for orders of circuit courts acting as appellate courts, the Court must affirm the Circuit Court's order.

STATEMENT OF THE CASE

I. The Rent Action.

A. Background.

This action arises out of a contractual dispute between Dr. R. Jay Lagroon and SBA. Dr. Lagroon leased property to SBA for a cellular communications tower. In December 2013, SBA decided to decommission and take down the tower. (Dec. 22, 2014 Order p. 2, R. 243.) On February 25, 2014, independent contractors hired by SBA attempted to access the tower site, but were prohibited from doing so by Dr. Lagroon. (*Id.*)

On March 24, 2014, Dr. Lagroon filed a *pro se* Rule to Vacate or Show Cause against SBA in McCormick County Magistrate Court ("the Rent Action"). The Rule to Vacate or Show Cause

alleged that SBA failed to pay March 2014 rent and violated the parties' ground lease by failing to give Dr. Lagroon advance notice before its contractors entered the property. (Rule to Vacate or Show Cause, R. 216.) SBA asserted a counterclaim for breach of the lease and sought to recover all rents paid to Dr. Lagroon after March 2014, when the contractual relationship between the parties would have ended had the tower been taken down in February 2014.¹ (Resp. to Rule to Vacate or Show Cause, R. 217.)

The magistrate court trial was scheduled to take place on December 18, 2014. The day before trial, Dr. Lagroon filed: (1) a motion for a continuance based on the posture of an earlier-filed action (addressed below) and because of emotional stress that Dr. Lagroon was suffering as the result of Dr. Lagroon's son being the victim of a serious crime; (2) a motion to change the venue to Greenwood County; and (3) a motion to record the trial by videotape or court reporter. (Dec. 17, 2014 Mots., R. 224-241.)

The parties appeared on December 18, 2014. Prior to trial, the Magistrate Court:

- denied Dr. Lagroon's pre-trial motions on the record following a lengthy hearing;
- granted SBA summary judgment on Dr. Lagroon's claim that SBA breached the lease by failing to give Dr. Lagroon advance notice that its contractors intended to access the site on the grounds that the lease did not require notice; and
- denied summary judgment on the claim that SBA failed to pay the March 2014 rent, finding the existence of issues of fact.

(Second Return to Appeal pp. 2-3, R. 316-17.)

¹ Dr. Lagroon barred SBA from accessing the property while the Magistrate Court Rent Action was pending. As a result, and to ensure it eventually got access to the site to remove the tower, Dr. Lagroon received another rent payment every month that passed until the Magistrate Court Rent Action was resolved. SBA's counterclaim attempted to recoup those rent payments. At trial, the jury found in favor of Dr. Lagroon on SBA's counterclaim, and neither party appealed that finding.

B. The trial of the Rent Action.

At trial, Dr. Lagroon testified that SBA failed to pay rent due for March 2014. (Second Return to Appeal pp. 2-3, R. 316-17; *see also* Tr. 37:2-15, R. 37.) Dr. Lagroon's employee, Sheila Sonnenberg, testified that she deposited \$1,957.15 in cash into an account with First Citizens Bank on behalf of a woman named Ms. Felix in February 2014. (Second Return to Appeal pp. 3-4, R. 317-18; Tr. 68:7-69:19, R. 68-69.) Dr. Lagroon testified that this cash deposit was for rent due from Ms. Felix to Dr. Lagroon pursuant to a commercial lease, and that a cashier's check issued by First Citizens on February 26, 2014 represented this cash deposit. (*Id.*) Dr. Lagroon produced a copy of the commercial lease, which was accepted into evidence. The Felix lease stated that it terminated in September 2013 and that Ms. Felix's rent was \$1,400 per month. (Commercial Lease, R. 273-284.) Dr. Lagroon also entered into evidence a letter to Ms. Felix dated January 18, 2014. (Letter, R. 285.) This letter, written by Dr. Lagroon, stated that Ms. Felix's rent for 2014 would be \$1,957.15 per month. (*Id.*) Dr. Lagroon's letter did not address or explain the termination of the lease in September 2013. (*Id.*) Finally, Dr. Lagroon attempted to enter into evidence an empty envelope postmarked from First Citizens Bank. (Envelope, R. 289.) The Magistrate Court accepted all exhibits submitted by Dr. Lagroon into evidence except the envelope. (Second Return to Appeal p. 4, R. 317; Tr. 72:2-73:9, R. 72-73.)

In response, the Magistrate Court reviewed the original ground lease agreement dated October 26, 2004 between Dr. Lagroon and Nextel (which was subsequently assigned to SBA as the lessee). (*See* Tr. 28:9-32:9, R. 28-32.) The SBA lease provides that rent was \$1,500 for the first year of the lease and increased 3% annually on October 26 of each year. (*Id.* at 43:6-21, R. 43-; Commercial Lease, R. 358-365.) SBA also introduced bank records from First Citizens Bank for an account belonging to Dr. Lagroon, along with affidavits from First Citizens' records custodians.

(Def.'s Exs. 1-4, R. 123-176.) These bank records established that SBA regularly deposited rent into Dr. Lagroon's account at First Citizens. (*See* Second Return to Appeal p. 4, R. 317.) The bank records also established that SBA deposited \$1,957.15 in Dr. Lagroon's account on February 25, 2014, and that the deposit was credited to Dr. Lagroon's account the next day.² (Second Return to Appeal p. 4, R. 317; Def.'s Ex. 1-4, R. 123-176.) Dr. Lagroon had closed the First Citizens account earlier that month, however, so First Citizens issued a cashier's check for \$1,957.15, the same amount as the SBA deposit, on February 28, 2016. (Second Return to Appeal p. 4, R. 317; Def.'s Ex. 1-4, R. 123-176.) The cashier's check was deposited in another account on March 7, 2014. (Second Return to Appeal p. 4, R. 317; Def.'s Ex. 1-4, R. 123-176.)

Based on that evidence, the Magistrate Court was asked to resolve the question of whether the February 26, 2014 cashier's check from by First Citizens in the amount of \$1,957.15 represented SBA's rent payment for March 2014, as SBA contended, or the cash deposit by Dr. Lagroon's employee, Ms. Sonnenberg, that was made on behalf of Ms. Felix pursuant to a different, expired commercial lease, as Dr. Lagroon contended. After weighing the evidence, the Magistrate Court ruled in favor SBA and found that the March 2014 rent due under the ground lease had been paid to Dr. Lagroon. (Second Return to Appeal p. 4, R. 317; Tr. 98:6-15, R. 98.) The Magistrate Court announced his decision from the bench at trial in the parties' presence on December 18, 2014, and subsequently issued a final order dated December 22, 2014. (*Id.*; December 22, 2014 Order, R. 242.) The jury found in favor of Dr. Lagroon on SBA's counterclaim to recoup excess rent, and the jury's decision on the counterclaim was not appealed by either party. (*Id.*)

² \$1,500 compounded by 3% nine times, once per year since October 26, 2004, is equal to \$1957.15.

C. Dr. Lagroon's appeal of the Rent Action.

Dr. Lagroon filed a Notice of Appeal of the Magistrate Court's December 22, 2014 final order on January 28, 2015. (Circuit Court Notice of Appeal, R. 245.) On February 5, 2015, the Magistrate Court filed its first return, stating that Dr. Lagroon's appeal was untimely, and as a result, the Magistrate Court was not required to file a complete return with the Circuit Court. (First Return to Appeal, R. 290.) SBA also moved to dismiss the appeal for lack of jurisdiction on the grounds that the notice of appeal was not timely filed or served. (May 1, 2015 Mot. to Dismiss Appeal, R. 296.) On August 15, 2016, the Circuit Court denied SBA's motion to dismiss and directed that the Magistrate file a complete return. (Aug. 18, 2016 Order, R. 307.)

On September 16, 2016, the Magistrate Court filed a Second Return detailing the merits of the magistrate court proceedings. (Second Return to Appeal, R. 314.) SBA filed its Respondent's Brief on October 17, 2016. (Circuit Court Resp't Br., R. 327.)

On October 17, 2016, the Circuit Court held a hearing on the merits of Dr. Lagroon's appeal. The same day, Dr. Lagroon retained an attorney, and the Circuit Court allowed both parties to submit supplemental briefing. (Circuit Court Appellant's Br., R. 194; Circuit Court Suppl. Resp't Br., R. 340.) By order filed December 7, 2016, the Circuit Court affirmed the decision of the Magistrate Court finding in favor of SBA. (December 7, 2016 Order, R. 202.) Dr. Lagroon's counsel withdrew shortly thereafter, and Dr. Lagroon is again proceeding *pro se*. (Mot. Withdraw, R. 344; Order Granting Mot. Withdraw, R. 346.)

On December 21, 2016, Dr. Lagroon moved to reconsider the December 7, 2016 order. (Mot. Reconsider, R. 356.) On January 13, 2017, the Circuit Court denied the motion to reconsider. (January 13, 2017 Order, R. 215.) On February 2, 2017, Dr. Lagroon filed his Notice of Appeal of the Circuit Court's December 7, 2016 Order to this Court. (Notice of Appeal, R. 347.)

II. The Cease and Desist Action:

Another matter involving these same parties was also pending in December 2014 when the present Rent Action was tried. This other matter (“the Cease and Desist Action”) has been fully resolved by the Circuit Court and is not at issue on this appeal.³ Two of Dr. Lagroon’s grounds for appeal in this matter refer to the Cease and Desist Action, however, so that matter is addressed briefly here.

As noted above, Dr. Lagroon physically barred SBA’s contractors from accessing the tower site in February 2014. Afterwards, one of the contractors (unbeknownst to SBA) contacted Magistrate Judge Long of McCormick County about their inability to access the tower site, and on March 21, 2014, Judge Long entered an uncaptioned Order directing Dr. Lagroon to cease and desist from inhibiting SBA’s rights under the ground lease. Dr. Lagroon appealed to the Circuit Court, arguing that the cease and desist order was null and void because it was issued without notice and outside the context of a pending legal action. (Notice of Appeal, *Robert Jay Lagroon v. SBA Steel, LLC*, Case No. 2014-CP-35-0034, R. 349.)

On October 27, 2014, with SBA’s consent, the Circuit Court issued an Order declaring the cease and desist order null and void, dismissing the appeal, and providing that both parties shall bear their own costs. (Oct. 27, 2014 Order, Case No. 2014-CP-35-0034, R. 353.) Dr. Lagroon filed a motion to alter or amend the Circuit Court’s order and requested that the court award him \$1,961.12 in costs incurred in preparing his appeal from the cease and desist order. (Mot. Reconsider, Case No. 2014-CP-35-0034, R. 356.)

³ *Robert Jay Lagroon v. SBA Steel, LLC*, Case No. 2014-CP-35-0034 (McCormick County Court of Common Pleas).

The day before trial in the Rent Action, Dr. Lagroon moved to continue of the trial in the Rent Action on the grounds that the motion to alter or amend in the Cease and Desist Action was still pending, which, he argued, deprived the Magistrate Court of jurisdiction over the Rent Action. As explained above, the Magistrate Court denied the motion for a continuance and the trial of the Rent Action went forward on December 18, 2014.

The Cease and Desist Action was subsequently resolved in March 2016 by the Circuit Court when it denied the motion to reconsider. (Order Den. Mot. to Reconsider, Case No. 2014-CP-35-0034, R. 380.) That order is not at issue in this appeal and was not appealed by either party.

STANDARD OF REVIEW

The standard of review applied by a circuit court to an appeal of a magistrate court's judgment is to "give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. 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. § 37-7-170. This Court, however, has a more limited standard of review of an appeal of a circuit court's order that affirms a magistrate court's judgment. "[T]he Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law." *Bowers v. Thomas*, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007) (citation omitted). "When there is any evidence, however slight, tending to prove the issues involved, [the appellate court] may not question a magistrate court's findings of fact that were approved by a circuit court on appeal." *S.C. Law Enf't Div. v. 1-Speedmaster S/N 00218*, 397 S.C. 94, 96, 723 S.E.2d 809, 810 (Ct. App. 2011) (citation omitted). This Court still retains de novo review of whether the facts

show that the circuit court's affirmance was controlled or affected by errors of law. *Bowers*, 373 S.C. at 245, 644 S.E.2d at 753 (citation omitted).

ARGUMENT

I. The appeal must be dismissed because the Notice of Appeal to the Circuit Court was not timely filed or served.

The Court must dismiss this appeal because Dr. Lagroon's appeal from the Magistrate Court to the Circuit Court was not timely filed and served. Section 18-7-20 of the South Carolina Code provides that an appeal from magistrate's court to the circuit court must be served with thirty days after written notice of judgment has been given to the appellant, "except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary[.]" S.C. Code Ann. § 18-7-20. Rule 74 of the South Carolina Rules of Civil Procedure provides that the notice of appeal shall be filed within the time provided by statute for service of the notice of appeal. Rule 74, SCRPC.

The Magistrate Court announced his decision at trial on December 18, 2014 in Dr. Lagroon's presence:

THE COURT: All right. Based on the evidence presented before me here in this case with regards to your application for an ejectment on failure to pay rent, I am going to find that you have not met your burden. In fact, I am going to find otherwise, that proof has been shown that rent has been paid for each and every month, or at least for the month of March for which you have complained of. And I am going to deny the eviction, which leaves the only other matter to address here today is that of [SBA's counterclaim for] breach of contract.

(Tr. 98:6-15, R. 98; *see also* December 22, 2014 Order, R. 242 (stating that the decision was announced in the parties' presence).) Accordingly, Dr. Lagroon had thirty days from December 18, 2014 to file and serve his notice of appeal to the Circuit Court. Dr. Lagroon's Notice of Appeal

was filed on January 28, 2015, forty-one days after the decision was announced in his presence. (Circuit Court Notice of Appeal, R. 245.) As such, it was untimely.

Even calculating off the day that Dr. Lagroon allegedly received written notice of the Magistrate Court's order, Dr. Lagroon's appeal to the Circuit Court was still untimely. In his Notice of Appeal, Dr. Lagroon stated that he received the Magistrate Court's written order on December 28, 2014. (*Id.*) The Notice of Appeal was filed on January 28, 2015, thirty-one days later.⁴ (*Id.*) Dr. Lagroon never served counsel for SBA with a copy of the Circuit Court Notice of Appeal (or any other filing). (*See* Hodges Aff., R. 301.) Dr. Lagroon thus failed to comply with the plain language of Section 18-7-20, and his failure to serve the Notice of Appeal within thirty days renders the appeal untimely.

The failure to comply with the procedural requirements for an appeal divests the appellate court of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). Because this Court lacks appellate jurisdiction, it cannot reach the merits of the appeal. The appeal must be dismissed.

II. The Circuit Court's affirmance of the Magistrate Court's finding that SBA paid rent in March 2014 is supported by the evidence and was not affected by errors of law.

A. The record evidence supports the Magistrate Court's finding that SBA made the March 2014 rent payment.

Dr. Lagroon's first issue on appeal regards the merits of his claim that SBA failed to pay rent in March 2014.⁵ Because at least some evidence in the record supports the Circuit Court's

⁴ The Circuit Court noted that thirty-one days had elapsed between Dr. Lagroon's alleged receipt of the Magistrate Court's written order and the day he filed the notice of appeal, yet the Circuit Court denied SBA's motion to dismiss the appeal. (*See* August 18, 2016 Order p.3 n.3, R. 309.)

⁵ In his brief, Dr. Lagroon argues that SBA failed to pay rent in February 2014. (App. Br. p. 4.) At trial, Dr. Lagroon contended that SBA failed to pay rent in March 2014. Regardless, the First Citizens records show that SBA paid rent for February 2014 on January 30, 2014. (Def.'s Ex. 1, Tr. 135, R. 135.)

affirmance of the Magistrate Court's decision finding that SBA paid rent in March 2014, this Court must affirm.

SBA deposited rent payments into a First Citizens bank account⁶ each month from November 2013 to February 2014. (*See* Def.'s Ex. 1, Tr. 128, 133, 135, R. 128, 133, 135.) The First Citizens account was closed in February 2014, and a credit in the amount of SBA's rent payment was posted to the account on February 26, 2014, after the account was closed. (*See* Def.'s Ex. 2, Tr. 140-48, R. 140-48.) On February 28, First Citizens issued a cashier's check in the amount of SBA's rent payment to Kelli Barnett, and that the check was negotiated and debited from the First Citizens account. (*Id.*) SBA's internal records show that rent was paid to Dr. Lagroon from April 2013 to May 2014. (*See* Def.'s Ex. 5, Tr. 185-86, R. 185-86.) Each rent payment shown on First Citizens' account records is in the same amount as the corresponding rent payment on SBA's internal records. Additionally, each rent payment shown on First Citizens' account records was posted to the First Citizens account one day after the rent payment was made, according to SBA's internal records. The same is true for the disputed March 2014 rent payment.

The Magistrate Court carefully reviewed and compared the internal SBA records and the records from the First Citizens account. The Magistrate Court also heard the testimony of Dr. Lagroon and his witness, observed their demeanors, and judged the credibility of their testimony and that of the exhibits offered by Dr. Lagroon. The Magistrate Court was in the best position to weigh all of the evidence, and after allowing both parties a full opportunity to present that evidence and arguments in support thereof, the Magistrate Court found in favor of SBA. The Circuit Court

⁶ Kelli Barnett is the named accountholder on the First Citizens account. Dr. Lagroon has never contended that the Barnett account was not the correct account for SBA's rent payments or that SBA failed to pay rent in any month prior to March 2014.

reviewed this same evidence and affirmed the Magistrate Court's decision. The evidence in the record supports these decisions.

In his brief, Dr. Lagroon identifies a number of purported factual inconsistencies in the Record, such as whether SBA paid too much rent in January 2014. (*See* Appellant's Br. pp. 4-7.) These factual inconsistencies are not relevant to this Court's determination. This Court must only determine whether there is "any evidence, however slight, tending to prove" the Magistrate Court's factual findings. *S.C. Law Enf't Div. v. 1-Speedmaster S/N 00218*, 397 S.C. 94, 96, 723 S.E.2d 809, 810 (Ct. App. 2011) (citation omitted). There is ample evidence in the record that SBA paid rent in March 2014. Accordingly, this Court must affirm the Circuit Court's affirmance of the Magistrate Court's finding in favor of SBA.

B. There are no errors of law in the record.

Dr. Lagroon's fourth issue on appeal is that the Magistrate Court erred by failing to include his exhibits in the Record. (Appellant's Br. pp. 9-10.) This is the only error of law that Dr. Lagroon identifies in connection with this appeal. Neither the Magistrate Court nor the Circuit Court committed any error in connection with the inclusion or exclusion of Dr. Lagroon's trial exhibits.

Under South Carolina law, when a magistrate's judgment is appealed, the magistrate court makes a return of the testimony, proceedings, and judgment and files it in the circuit court. S.C. Code Ann. § 18-7-60. There is no requirement that the magistrate court record or transcribe the testimony or provide the exhibits to the circuit court. Accordingly, the Magistrate Court did not err by filing the Return without including Dr. Lagroon's trial exhibits.

Regardless, all of Dr. Lagroon's trial exhibits were included in the Circuit Court's record on appeal because Dr. Lagroon attached all of them to his Notice of Appeal. (Circuit Court Notice of Appeal, R. 245.) Accordingly, the Circuit Court's order affirming the Magistrate Court's

decision could not be affected by the failure to include the exhibits in the Magistrate Court's Return.

III. The Motion to Reconsider in the Cease and Desist Action did not deprive the Magistrate Court of subject matter jurisdiction.

Dr. Lagroon's second issue on appeal is that his motion to the Circuit Court for reconsideration of its October 27, 2014 Order in the Cease and Desist Action, which was still pending as of December 18, 2014, deprived the Magistrate Court of subject matter jurisdiction in this Rent Action. (Appellant's Br. pp. 7-8.) Dr. Lagroon contends that the trial in the Rent Action on December 18, 2014 was thus conducted without subject matter jurisdiction. This contention is without legal support.

The Magistrate Court had subject matter jurisdiction over the Rent Action because it was an action on a contract for the recovery of less than \$7,500 and was between a landlord and tenant. S.C. Code Ann. § 22-3-10(1) & (10). The pending motion to reconsider in the Cease and Desist Action had no effect on the Rent Action and did nothing to divest the Magistrate Court of subject matter jurisdiction. Although the same parties were involved in the Rent Action and the Cease and Desist Action, they involved different issues (whether SBA paid the March 2014 rent in the Rent Action, and the validity of a Cease and Desist Order in the Cease and Desist action). There is no basis in law for depriving one court of subject matter jurisdiction or requiring the continuance of a trial because of a pending motion to reconsider involving the same parties in a different action involving different issues and claims. The Magistrate Court had subject matter jurisdiction over the Rent Action.

IV. The Circuit Court correctly found that the Magistrate Court did not abuse his discretion in denying Dr. Lagroon's motion for continuance.

Dr. Lagroon's third issue on appeal is that the Magistrate Court abused his discretion in denying his motion for continuance, which he made the afternoon prior to trial on the grounds of his emotional distress. (Appellant's Br. pp. 8-9.) The Magistrate Court did not abuse its discretion in denying the motion for continuance.

"The grant or denial of a continuance lies with the sound discretion of the trial court and such ruling will not be reversed absent a clear showing of abuse of discretion." *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 474-75, 666 S.E.2d 262, 265 (Ct. App. 2008). "A tribunal necessarily exercises wide discretion in managing a case, and decisions denying a request for a continuance are 'rarely' overturned." *Trotter v. Trane Coil Facility*, 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011) (citations omitted). "Every reasonable presumption in favor of a proper exercise of the trial court's discretion will be made." *Id.* (citation omitted).

Although the circumstances identified in Dr. Lagroon's motion are serious, the Magistrate Court was in the best position to weigh the ability of the parties to proceed to trial on the morning of December 18, 2014. The Magistrate Court observed Dr. Lagroon's demeanor in the pre-trial hearing and allowed Dr. Lagroon to explain the basis for the requested continuance. After hearing the explanation, the Magistrate Court concluded that the motion for a continuance was a delay tactic. (Tr. 9:12-17:16, R. 9-17.) Dr. Lagroon's motion for a continuance was made at the last hour on the day prior to trial even though the issues leading to his request were present weeks or months prior to the trial date.⁷ No prejudice appears from the record; Dr. Lagroon was able to prepare

⁷ Dr. Lagroon prepared and filed three written motions with numerous attachments on the eve of trial, which is inconsistent with his claim that he was unable to adequately prepare for trial. Dr. Lagroon claims that an attorney, Edward McCallum, "assisted" him with the motions but was "unable to appear" at trial. (Appellant's Br. p. 9.)

multiple motions, testify, and present additional evidence and witnesses at trial. The record reveals that, after the motion for continuance was denied, Dr. Lagroon's responsiveness and ability to fashion arguments improved. (*See id.* at 44:2-9, R. 44.) The Magistrate Court is vested with wide discretion in ruling on motions for a continuance and there is no indication this discretion was abused or should be overturned here. There is no basis in the record for the Court to overturn this discretionary decision and remand this three year old rent dispute for further proceedings.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the Circuit Court affirming the Magistrate Court's finding that SBA paid rent in March 2014 or dismiss Dr. Lagroon's appeal for lack of appellate jurisdiction.

Respectfully submitted,

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Columbia, South Carolina
August 1, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2017-000203

R. Jay Lagroon,..... Appellant,

v.

SBA Communications Corp.,..... Respondent.

CERTIFICATE OF COUNSEL

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

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