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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2018-001924

RECEIVED

JAN 31 2019

SC Court of Appeals

Morgan Conley.....Plaintiff/Appellant,

v.

April Morganson.....Defendant/Respondent.

APPELLANT'S PETITION FOR REHEARING

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INTRODUCTION

Appellant's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated November 6, 2018, requesting that the parties in this Appeal serve and file a Memoranda addressing the issue of appealability within 10 days of Ms. Kitchings' correspondence. Appellant's Memoranda of Law was filed and served on **November 15, 2018** and Respondent's Memorandum of Law was filed and served on **December 13, 2018**. Thereafter, this Court issued its Order filed on January 24, 2019, finding that Appellant's Appeal was premature and allowing Appellant to Appeal after Appellant's receipt of written notice of entry of an Order of the Lower Court. Appellant's Petition for Rehearing follows.

ARGUMENT FOR REHEARING

Apparently, an Order was Requested *Ex Parte*.

The Respondent's Memorandum on Appealability contains statements that may mislead this Court, (hereinafter as, "Respondent's Memorandum"). In Respondent's Memorandum, counsel states that, "...Petitioner fails to inform this Court that the Honorable Clifton Newman (the lower Court Judge), directed counsel for Respondent to prepare a formal order granting the Respondent's Motion for a Directed Verdict." A careful review of the Transcript in this matter, reveals that **the Judge did not, at any time during the Hearing, direct counsel for the Respondent, to prepare a formal Order,** (transcript attached as, Exhibit "A" for your ready reference).

Apparently, Respondent's counsel was directed to prepare a formal Order, *ex parte*. At no time during the Hearing, or in any communication after the Hearing, was Appellant's counsel privy to an *ex parte* communication directing the Respondent to prepare a formal Order, (see Timeline attached hereto as, Exhibit "B"). This Court misapprehended or overlooked this fact.

Appellant's Counsel- No Knowledge of the *Ex Parte* Request for an Order.

Respondent's further statement may mislead this Court, "...the trial judge instructed counsel for the Respondent to prepare such an order and the order was submitted to the court." Factually, Appellant's counsel hand-delivered and served Appellant's Notice of Appeal on October 25, 2018 and **Respondent's counsel did not submit a proposed Order until, November 6, 2018, some twelve days after Appellant had served her Notice of Appeal on October 25, 2018.** Respondent's counsel finally submitted a proposed Order to the Lower Court, on November 6, 2018, **which was the first time Appellant's counsel learned that the Trial Judge had made an *ex parte* request to Respondent's counsel, for an Order.** Accordingly, **Appellant's counsel could not have delayed filing her Notice of Appeal beyond thirty days past the Judge's oral decision,** with no knowledge that there was an *ex parte* request for an Order from the Lower Court, to Respondent's counsel, (see Timeline attached hereto as, Exhibit "B"). This Court misapprehended or overlooked this fact.

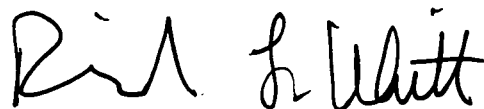
Appellant's Counsel Acted Prudently.

Because as is outlined hereinabove, Appellant's counsel was not aware that an apparent, *ex parte* request for an Order, was transmitted to Respondent's counsel, Appellant's counsel prudently appealed within thirty days of the lower court's oral decision, unaware that an *ex parte* request for an Order had been transmitted to Respondent's counsel. When the Appeal deadline approached, Appellant's counsel still had no knowledge of the *ex parte* request for a written Order and it was prudent to Appeal, when she did. It is not apparent to Appellant's counsel why Respondent's counsel waited more than thirty days to submit the Order that was requested *ex parte* by the Trial Judge. Furthermore, it is unknown why Respondent's counsel waited twelve additional days from the date Appellant served her Notice of Appeal on October 25, 2018, to finally submit the Order requested *ex parte* by the Trial Judge, to the Lower Court on November 6, 2018, (see Timeline attached hereto as, Exhibit "B"). This Court misapprehended or overlooked this fact.

CONCLUSION

Based on the foregoing, this Court should rehear the issue of appealability and find that because (i) Appellant's counsel had no knowledge that the Trial Judge had made an *ex parte* request to Respondent's counsel for a proposed Order and (ii) Appellant's counsel prudently appealed within thirty days of the Lower Court's oral decision, unaware that an *ex parte* request for an Order had been transmitted to Respondent's counsel. Appellant's Appeal should proceed as originally filed.

AUSTIN & ROGERS, P.A.



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January 30, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No. 2018-001924

RECEIVED

JAN 31 2019

SC Court of Appeals

Morgan Conley.....Appellant,

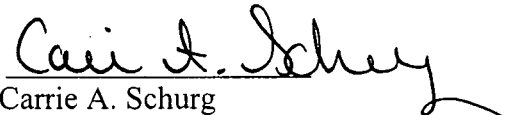
v.

April Morganson.....Respondent.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused Appellant's Petition for Rehearing and this Proof of Service, to be served on January 31, 2019, via hand-delivery, as addressed below.

S. Jahue Moore, Jr., Esquire
Moore, Taylor Law Firm P.A.
1700 Sunset Boulevard
West Columbia, South Carolina 29169


Carrie A. Schurg

January 31, 2019
Columbia, South Carolina

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State of South Carolina
County of Richland

Morgan Conley,)
)
Plaintiff,)
vs.)
April Morganson,)
)
Defendant.)

Court of Common Pleas

Transcript of Record

2016-CP-40-04139

September 28, 2018
Columbia, South Carolina

B E F O R E:

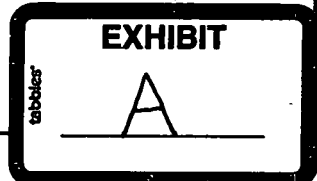
The Honorable Clifton Newman, Judge

A P P E A R A N C E S:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
On behalf of the Plaintiff

S. Jahue Moore, Jr., Esquire
On behalf of the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter



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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Defendant's 1	E-mail Communications	16	40
Defendant's 2	Lease Agreement	32	32

1 (The following proceedings were held on September 28,
2 2018, beginning at 9:31 AM.)

3 **MR. GRIFFITH:** Court come to order. All rise.
4 Please make sure your cell phones are all off.
5 You may be seated.

6 **THE COURT:** Good morning.

7 **MR. WHITT:** Good morning.

8 **MR. MOORE:** Good morning, Your Honor.

9 **THE COURT:** What do we have this morning?

10 **MR. GRIFFITH:** Your Honor, Jeff Griffith for the
11 Plaintiff, Morgan Conley. How are you this morning?

12 **THE COURT:** I'm good.

13 **MR. GRIFFITH:** Your Honor, we have a dispute over a
14 rental agreement. We believe that our client -- our
15 client has pled that she entered into a rental agreement
16 and that the rental agreement didn't work out, she asked
17 for her deposit back and she asked for her prepaid rent
18 back, and it was not returned to her in an appropriate
19 time.

20 And, Your Honor, just a housekeeping matter, we pled
21 that prepaid rent was \$960. We've corrected it in an
22 affidavit that the prepaid rent is actually \$920. So
23 just for the record I wanted to make sure that the Court
24 understands we're talking about the correct amount.

25 **THE COURT:** All right.

1 Yes, sir.

2 **MR. MOORE:** Good morning, Your Honor. How are you?
3 Jake Moore for the Defendant.

4 Judge, that's somewhat right and somewhat wrong from
5 our position. Judge, basically they have sued us. They
6 acknowledge that there was a written lease agreement that
7 was signed by the parties. When -- what I say was wrong
8 about what my colleague said, they say that the lease
9 agreement didn't work out. What happened was -- after the
10 lease was signed by everyone and there was an understanding
11 and a lease agreement in place, what happened was the
12 Plaintiff notified my client and said I can't do it, I'm
13 not going to be able to pay the rent, I want out, I want
14 my security deposit back and I want my prepaid rent back.
15 There was some communication between the parties. My
16 client did exactly what she was supposed to do in that
17 she mitigated her damages and was able to find a tenant
18 two months after the -- the lease was basically breached.

19 So, essentially, Judge, the case is over a 1,200
20 dollar security deposit and nine hundred and some odd
21 dollars in rent. They want it back and I still haven't
22 figured out exactly what theory would justify them
23 getting it back, especially when the written lease
24 agreement itself basically says okay, you've got to pay
25 rent, they prepaid \$900 rent for May, and then the only

1 other money we ever received was a 1,200 dollar security
2 deposit, we didn't get another tenant in until two months
3 later, and the lease agreement specifically says we can
4 apply the security deposit to rent, which we did, and we
5 communicated to the Plaintiff that that's what we were
6 gonna do.

7 All that aside, Judge, the Plaintiff in this case
8 filed a motion for summary judgment. That order should
9 be, I hope, in the file. Judge Manning signed that order.
10 If you haven't read that order, I would -- I would like
11 you to because essentially, Judge, what that order does is
12 it pretty much -- pretty much dismantles every cause of
13 action that the Plaintiff had.

14 **THE COURT:** I haven't read anything.

15 **MR. MOORE:** Yes, sir.

16 I have that order. If I might hand it up, Your Honor,
17 I'd like to.

18 **THE COURT:** Well, do we have it all on the Internet
19 as part of the binder that was given to me? I haven't
20 seen it yet.

21 **MR. MOORE:** Would you like me to hand it up or can
22 you see it, Judge?

23 **THE COURT:** I have it here.

24 **MR. MOORE:** Okay. Very well.

25 **THE COURT:** And she has the file.

1 **THE CLERK:** Do you want the file?

2 **THE COURT:** Is it some of these are E-filing and some
3 not E-filing or --

4 **THE CLERK:** I took just what was in the file.

5 **MR. MOORE:** I haven't figured out the E-filing yet, I
6 can promise you that.

7 But, anyway, if you read that order, Judge Manning
8 was pretty clear that we follow the lease agreement. We
9 provided the notification that we were supposed to. We've
10 done everything we're supposed to. You've just simply got
11 a Plaintiff who breached the lease agreement that wants
12 their money back. I don't think there are any issues to
13 try today from the Plaintiff's standpoint.

14 Now we have a counterclaim. Our counterclaim is for
15 three hundred and some odd dollars for penalties under the
16 lease and part of the month of July. Quite frankly, we
17 don't want to go forward on that. I would -- I would
18 argue to the Court that based upon Judge Manning's order
19 the proper thing to do today would be to dismiss their
20 complaint because they don't have anything left to stand
21 on after that order. And if Your Honor would do that, we
22 would basically forfeit our opportunity to go forward on
23 the counterclaim, so that's -- that's where we are from
24 our perspective.

25 **THE COURT:** All right.

1 Yes, sir.

2 **MR. GRIFFITH:** Your Honor, Jeff Griffith again. I
3 neglected to introduce my co-counsel, which is with me,
4 Mr. Whitt, and my client, Morgan Conley. But we dispute
5 Mr. Moore's argument that Casey -- that Judge Manning's
6 order is the final determination in this case. There's a
7 bright line rule in South Carolina that an order denying
8 summary judgment settles nothing with finality, and I cite
9 you to the Sims versus Amisub, A-M-I-S-U-B, case. It's at
10 758 S.E.2d 187.

11 If I might approach the bench, Your Honor, I've got a
12 guide here for you.

13 **THE COURT:** All right.

14 **MR. GRIFFITH:** And I've got the case here, Your
15 Honor, but I want to talk about the case.

16 **THE COURT:** Okay. Of course, when we started out I
17 asked what is the case about, what do we have today? I
18 think my question was "What do we have today?" So I've
19 got a good feel of what we have today and I'm not sure
20 at this point whether I am being asked to rule on these
21 questions of law or -- or whether all this will come up
22 during the course of the hearing itself -- or the trial
23 itself.

24 This is a non-jury case?

25 **MR. GRIFFITH:** Yes, sir.

1 **MR. MOORE:** Basically from our prospective, Judge,
2 what we'd ask you to do is look at Judge Manning's order
3 and that order -- although it does not specifically say
4 case dismissed, it justifies our position to the point
5 where they have nothing left to pursue, so that would be
6 our position. So I suppose I am asking you to rule. We
7 would move to dismiss the complaint because the complaint
8 cannot go forward today based upon that order.

9 **MR. GRIFFITH:** And, Your Honor, again, the Amisub
10 case says that a previous ruling on a summary judgment has
11 no impact. A denial of summary judgment does not finally
12 determine anything about the merits of the case and it
13 does not have an effect of striking any defense since that
14 defense may be raised again in a later proceeding.

15 **THE COURT:** All right. I'll be happy to look at that.
16 Amisub, 2014.

17 **MR. GRIFFITH:** Yes, sir.

18 **THE COURT:** Well, it is odd to receive a four-page
19 order denying summary judgment. Typically when summary
20 judgment is denied, it's denied on a Form 4 because the
21 denial of the summary judgment is interlocutory and you
22 don't have to make findings of facts, so it's rare that
23 you see findings of fact denying summary judgment.

24 And I'm gonna take a moment and read through the
25 order and the case and then we'll see where we're going

1 here.

2 **MR. GRIFFITH:** Your Honor, just for the Court's
3 elucidation, it's on page -- the printed page up at the
4 top right. It's on Page 6 of 8 --

5 **THE COURT:** All right.

6 **MR. GRIFFITH:** -- up under the Number 1,
7 appealability and preservation, in the third paragraph,
8 last sentence.

9 **THE COURT:** All right.

10 (Pause in proceedings.)

11 **THE COURT:** This matter is here for trial on its
12 merits and I agree with Plaintiff's counsel that the
13 denial of a summary judgment does not establish any
14 findings on the merits. The net effect of Judge Manning's
15 order in which findings were made but summary judgment
16 denied, the net affect of it is -- all the other language
17 is superfluous. He denied the summary judgment, so
18 everything is still on the table. All the issues still
19 exist, so we're going to proceed with the trial as
20 scheduled.

21 **MR. MOORE:** Very well.

22 **THE COURT:** We'll start with the Plaintiff. I guess
23 I heard your opening statements?

24 **MR. GRIFFITH:** Yes, sir.

25 **THE COURT:** Then roll with your witnesses.

1 Ms. Morganson about the rental of the townhouse?

2 A. Could you repeat the question?

3 Q. Did you have any preliminary negotiations with

4 Ms. Morganson about the rental of the townhouse?

5 A. Yes, I did.

6 Q. Did you eventually sign a written lease for the

7 rental of the townhouse?

8 A. Yes.

9 Q. Did you have any on-going negotiations with

10 Ms. Morganson after you entered into the lease of the

11 townhouse?

12 A. Yes.

13 Q. Did you pay for prepaid rent in an amount of \$920?

14 A. Yes.

15 Q. And did you pay a security deposit of \$1,200?

16 A. Yes.

17 Q. And those monies went to Ms. Morganson?

18 A. Yes, they did.

19 Q. Did you ever occupy the rental townhouse?

20 A. No, I never stayed one day or one night.

21 Q. Did you request a return of your prepaid rent and

22 security deposit from Ms. Morganson?

23 A. Yes, I did.

24 Q. Did you request that your lawyers request a return

25 of your prepaid rent and security deposit from

1 Ms. Morganson?

2 A. Yes, I did.

3 Q. Did you ever receive either prepaid rent or security
4 deposit from Ms. Morganson?

5 A. No.

6 Q. Did you ever receive a rent -- a written accounting
7 from the landlord showing you how the prepaid rent or --
8 security deposit and the prepaid rent was used?

9 A. No, I did not.

10 Q. And have you received one up until this day?

11 A. No, I have not.

12 **MR. GRIFFITH:** That's all the questions we have for
13 this witness, Your Honor.

14 **THE COURT:** All right. Mr. Moore.

15 CROSS-EXAMINATION

16 BY MR. MOORE:

17 Q. Ma'am, let me ask you this. You just testified that
18 you signed a written lease agreement with my client?

19 A. Yes.

20 Q. Okay. When did you do that?

21 A. It was May of 2016.

22 Q. Okay. Did anybody pressure you or force you to sign
23 it?

24 A. No, I was not pressured.

25 Q. All right. Did you read it?

1 A. Yes, I did read the contract.

2 Q. Did you understand it?

3 A. Yes, I do understand it.

4 Q. All right. Now when you signed it and you read it
5 and you understood it, what was your understanding with
6 regard to your obligation to pay rent?

7 A. I understand that I needed to make a monthly payment
8 in regards to rent.

9 Q. Right. Each month that goes by you pay to live in
10 April's house, right?

11 A. I never lived at that -- at the townhouse.

12 Q. Ma'am, I understand that you never lived there.

13 That's not what I'm asking. Pursuant to the actual signed
14 document that you signed and understood, your obligation
15 was to pay rent for a year, right?

16 A. Yes.

17 Q. Okay. And you were gonna pay monthly for a year to
18 live in Ms. April's home, right?

19 A. I agreed to a contract, yes.

20 Q. Okay. So we know there was a contract, right?

21 A. Yes.

22 Q. Okay. Who was the person to breach the contract?

23 A. In my knowledge, it was April that breached.

24 Q. I see. Now let me ask you this. After you signed
25 the agreement, did you send Ms. April an e-mail or a text

1 message that said I can't do this?

2 A. I sent an e-mail stating that I needed a roommate to
3 make the 1,200 dollar a month payment.

4 **MR. MOORE:** Your Honor, if I may, I've got a copy
5 of the exhibit. Actually I probably need to mark it
6 for identification purposes, if that would be okay,
7 Your Honor?

8 **THE COURT:** All right.

9 **MR. GRIFFITH:** Excuse me, Your Honor. Are we marking
10 the entire sheath of papers or just one of them?

11 **MR. MOORE:** Your Honor, there are a lot. We've
12 exchanged these in discovery. There's a lot of
13 communication between the parties. My preference would
14 be for simplicity concerns just mark it as one exhibit.
15 I'll probably need to ask her about a lot of things -- a
16 lot of these communications, but if we need to do them
17 one at a time certainly I'm happy to do that as well.

18 **MR. GRIFFITH:** Just asking for my edification, Your
19 Honor, so I know whether we're gonna have one exhibit or
20 whether we're gonna have multiple exhibits.

21 **THE COURT:** Yes, sir.

22 **MR. MOORE:** It's up to you.

23 **THE COURT:** I don't care.

24 **MR. MOORE:** Okay. If that's the case, I'd prefer
25 to just mark it as one.

1 (Defendant's Exhibit Number 1 was marked for
2 identification.)

3 BY MR. MOORE:

4 Q. And, ma'am, let me show you what's been marked
5 Defendant's Exhibit Number 1. Do you see here at the
6 bottom -- I suppose this would be a text message or an
7 e-mail. Do you remember sending that?

8 A. Where?

9 Q. Right here at the bottom. Do you see that big
10 paragraph right there? Did you send that?

11 A. Yes, I did send this message.

12 Q. All right. Now it says here that you sent it on
13 May the 9th at 9:34 PM. Is that when you sent it?

14 A. Yes.

15 Q. And that would have been a couple of days after you
16 had actually signed the actual lease agreement, right?

17 A. May the 9th, yes.

18 Q. Yeah.

19 All right. Now it says here "I wanted to touch base
20 with you. I have a few reservations regarding our lease
21 agreement. I have reviewed my finances, prayed about the
22 situation and with the roommate search coming up short, I
23 am a bit stressed about having the funds to pay the rent
24 and utilities for the rental term. With this said, going
25 forward would you be willing to break the lease as I have

1 not moved in? I believe with the rent for this property
2 I have gotten in over my head and I haven't even started
3 yet. I do apologize in advance. Please let me know your
4 thoughts."

5 You certainly sent that, right?

6 A. That is what the message said, yes.

7 Q. Okay. Now you asked April to break a contract that
8 the two of you had signed and you just testified that you
9 understood requiring you to pay rent for a year, right?

10 A. Yes.

11 Q. Now prior to this event, prior to you actually
12 sending that text message or e-mail or whatever it is,
13 there certainly were communications between you and
14 April about the premises, right?

15 A. We did communicate about the premises, yes.

16 Q. You had to negotiate the terms of the lease, right?

17 **THE COURT:** Yes, sir.

18 **MR. GRIFFITH:** Your Honor, we'll stipulate that they
19 entered into a lease agreement. The question is did they
20 follow the law once the agreement came to an end really.

21 **THE COURT:** All right.

22 **MR. MOORE:** I don't know if that has any bearing on
23 what I'm doing right now, Judge. I mean, it all goes back
24 to what I said in the beginning. Every -- the facts in
25 the case pretty much stipulate and the -- the order from

1 Judge Manning. It's perfectly clear what happened, but
2 I've got -- if we're gonna go forward and their argument
3 is nothing really matters from that summary judgment
4 argument and we've got to go to trial today, I've
5 certainly got to ask her questions about what happened.

6 **THE COURT:** You may proceed. He offered to stipulate
7 to it.

8 **MR. MOORE:** Yes, sir.

9 **THE COURT:** Do you accept the stipulation?

10 **MR. MOORE:** Sure. Sure.

11 **THE COURT:** All right. Yes, sir.

12 BY MR. MOORE:

13 Q. All right. Now you had prior communications with
14 April about the lease, right?

15 A. Yes, we spoke.

16 Q. You spoke. You had to negotiate the terms, right?

17 A. There was no negotiation in my mind. I understood
18 that I was giving -- I was given a piece of paper with
19 information on it and that is what I read.

20 Q. Let me ask you this. You certainly saw the premises
21 before you moved in, right?

22 A. Yes.

23 Q. April had to take the time to show it to you, didn't
24 she?

25 A. Yes.

1 Q. All right. And that took -- that took time out of
2 her schedule to do, didn't it?

3 A. Yes.

4 Q. When did you first even lay eyes on this property or
5 even think about leasing this property?

6 A. I don't recall the specific date and time.

7 Q. When you told April -- when you asked her if she
8 would mind if you broke the contract that you had entered
9 into, what did she say?

10 A. There was a communication back. To my knowledge, it
11 was a reminder of -- of the agreement, the communication.

12 Q. Yeah. So was she mean or nasty to you?

13 A. I do believe the communication was via e-mail, so
14 there was no social interaction for this.

15 Q. Okay. Well, let me ask you about that communication.
16 She offered to try to help you to a certain extent, didn't
17 she, by leasing --

18 **MR. GRIFFITH:** Your Honor --

19 Q. -- by listing the property for lease again, didn't
20 she?

21 **MR. GRIFFITH:** We object. We don't know that any of
22 this information is relevant to the question of -- we got
23 to the lease, the lease came to an end and then what did
24 the landlord do? Did the landlord comply with the laws of
25 the state of South Carolina as set forth in the Landlord

1 and Tenant Act? So all of this preliminary to'ing and
2 fro'ing, while it's -- I don't see any relevance to that.
3 The lease was entered into and then we had the lease come
4 to an end. What did the landlord do under the appropriate
5 statute?

6 **THE COURT:** Well, part of the question is did the
7 lease come to an end?

8 **MR. GRIFFITH:** Yes.

9 **MR. MOORE:** Sure.

10 **THE COURT:** That's part of the question.

11 **MR. GRIFFITH:** We'll stipulate that it came to an
12 end, but this is all preliminary.

13 **THE COURT:** At what point of time?

14 **MR. GRIFFITH:** I beg your pardon?

15 **THE COURT:** It came to an end at what point in time?

16 **MR. GRIFFITH:** I believe it came to an end in June
17 of 2016 -- May 10, 2016.

18 **THE COURT:** And when was it entered into?

19 **MR. GRIFFITH:** May the -- signed April 21st, Your
20 Honor, and came to an end --

21 **THE COURT:** It was a one-year lease?

22 **MR. GRIFFITH:** It was.

23 **THE COURT:** Is that part of the evidence in the case
24 or do y'all plan for it to be?

25 **MR. GRIFFITH:** We do not.

1 **MR. MOORE:** What's interesting, Judge, is they put
2 their client on the witness stand, not introduced the
3 lease agreement and -- and I have all the respect in the
4 wide world for opposing counsel, but to me I think it's
5 a little disingenuous to come in and basically say that
6 we'll stipulate the lease came to an end. Where I'm from,
7 that's called a breach, and I've got a counterclaim for
8 breach of contract. I will accept the stipulation that
9 they breached the contract and then we can certainly then
10 argue damages on my part. But, you know, it's just --
11 it's not semantics, it matters. This is not a situation
12 where we just have an oh, we just mutually ended.

13 **THE COURT:** Well, I'm not attempting to short circuit
14 anything with regard to the evidence. I am just absorbing
15 this case and the issues. Of course, dealing with leases
16 and landlord/tenant matters and the like is probably
17 something that many of us have dealt with for many, many
18 years and anyone who rents anything would deal with a
19 lease, commercial or residential, so. And we have a
20 Landlord and Tenant Act and we have contract law, so we'll
21 let it all absorb. And y'all have asked me to decide it,
22 so I have to go with y'all -- what the confusion is.

23 **MR. MOORE:** Absolutely. I mean, it goes -- it goes
24 back, again, to what I said in the beginning. You know,
25 to me they want to stipulate to all the facts because

1 truly you could short circuit this because the facts
2 really aren't in dispute. It's just a matter -- he is
3 right. It's just a matter of whether we followed the
4 law. Judge Manning's already made the determination that
5 we have, but, you know, if we're gonna have a trial and
6 their position is you've just got to do it, I'm just
7 trying to do it. And I hate to go back and take up a
8 bunch of the Court's time, but I've got to go back through
9 the history of the case.

10 **THE COURT:** I have nothing but time.

11 **MR. MOORE:** Yes, sir. Very well.

12 **THE COURT:** We're on duty.

13 **MR. GRIFFITH:** Thank you, Your Honor.

14 **MR. MOORE:** Very good.

15 BY MR. MOORE:

16 Q. Well, ma'am -- all right. Now the written
17 communication, after you said I want to -- would you
18 consider breaking this agreement, you basically said --
19 or April wrote back to you and said I can't do that,
20 right?

21 A. Yes, that was the message, that she would not. So,
22 yes.

23 Q. Okay. Now she benefitted from this contract, right?

24 A. She owns the property, yes.

25 Q. Right. Okay. So she benefitted from it and you

1 benefitted from it, too, because you were gonna have a
2 place to stay for a year, right?

3 A. Under this, yes, I would have housing.

4 Q. Okay. Do you find any fault with April at all in
5 informing you that she was not prepared to break the
6 lease agreement like you wanted?

7 A. We had communication, but that's -- I have that right
8 as a tenant.

9 Q. All right. That wasn't my question. My question was
10 do you find any fault with April about not wanting to do
11 what you wanted to do with regard to just tearing up this
12 lease?

13 A. In this matter, my -- does my opinion matter?

14 Q. Okay. Ma'am, I would just instruct you to answer the
15 question.

16 A. Could you repeat the question, please?

17 Q. Of course I can. Do you find any fault on April's
18 part or anything wrong with what April did when she wrote
19 to you and said no, ma'am, I am not prepared to break the
20 lease?

21 A. I understand the message that she gave to me.

22 Q. All right. She had the right to do that, didn't she?

23 **MR. GRIFFITH:** Objection, Your Honor. That calls
24 for a legal conclusion.

25 **THE COURT:** Let me hear the question one more time.

1 **MR. MOORE:** Because you testified that there was a
2 contract between the two of you and you testified that
3 you wrote her and asked her if she -- if she would
4 consider breaching the contract and you -- and she
5 basically told you that she would not do that, she had
6 the right not to do that under the contract that you
7 testified about, right?

8 That was the question.

9 **THE COURT:** Then I overrule the objection.

10 **MR. GRIFFITH:** Thank you, Your Honor.

11 **THE WITNESS:** I see that she owns the property,
12 therefore, she manages the property, so, yes.

13 BY MR. MOORE:

14 Q. Yes, what?

15 A. She has an opinion to tell me that.

16 Q. Certainly, but she's got a right, too, under the
17 actual contract that you signed, right?

18 A. She has a right to speak with me about the contract,
19 yes.

20 Q. And she's got a right to follow it, doesn't she?

21 A. Yes.

22 Q. Okay. Well, then if she's got a right to follow the
23 contract, you've got an obligation to follow it, too,
24 don't you?

25 A. Yes.

1 Q. And part of your obligation is to pay rent for an
2 entire year, right?

3 A. Under these terms, the agreement was a 12-year {sic}
4 term.

5 Q. And you didn't do that, did you?

6 A. No, I never moved into the property.

7 Q. All right. But that wasn't my question. I did not
8 ask you a single thing about moving into the property,
9 ma'am. What I asked you very clearly was you did not pay
10 rent for a year, did you?

11 A. I paid rent for the first month.

12 Q. Right. That's what you were supposed to do, wasn't
13 it?

14 A. In the terms of the lease, yes.

15 Q. Right. Okay. So you complied with the lease and
16 paid the first month's rent, right?

17 A. I paid \$920 in prepaid rent.

18 Q. Okay. And there was a -- let me ask you this, okay?
19 Prepaid rent. You paid rent before you moved in, right?

20 A. I paid a sum of \$920 as prepaid rent for the month
21 of May.

22 Q. Okay. And that's what you were supposed to do under
23 the terms of the agreement, right?

24 A. In my mind, that's what I needed to do as in any
25 other agreement.

1 Q. And now today you have sued April to get money back
2 that you paid pursuant to the agreement, right?

3 A. Yes.

4 Q. Okay. So April wouldn't undo the agreement and so as
5 a result of that you sued her to undo it; is that right?

6 A. In my mind, the lease was not valid.

7 Q. I see. So the lease that you signed, put your name
8 on, April put her name on, in writing, everybody got it,
9 you understood it, read it, weren't coerced, in your mind
10 we just don't have anything and you just want your money
11 back; is that what you're telling this Court?

12 **MR. GRIFFITH:** Asked and answered, Your Honor.

13 **THE COURT:** I'll overrule it.

14 BY MR. MOORE:

15 Q. Is that honestly what you are telling this Court
16 today?

17 A. What is the question?

18 Q. You testified previous to that last question that in
19 your mind the lease was invalid. What I want to know is
20 this. You have testified there was a written agreement,
21 you testified that you signed it, you testified that my
22 client signed it, you testified you weren't coerced, you
23 testified that you understood it, you testified that you
24 sent her an e-mail asking if she would break it and tear
25 it up, but your position today and your testimony is that

1 just in your mind this thing, this agreement, is just
2 invalid; is that what you're honestly telling this Court?

3 A. We entered an agreement for housing. I never moved
4 into it.

5 Q. Whose decision was that?

6 A. It was my decision not to move in.

7 Q. I see. So April had nothing to do -- April's
8 obligation under the terms of this lease was not to come
9 and get you and take your property and move it into her
10 house, was it?

11 A. No.

12 Q. Okay. Now when you asked her if she would mind
13 tearing up this lease, breaching -- and breaking it, she
14 said no, but she didn't say go to blazes, I'm not gonna
15 help you, did she? She actually tried to help you, didn't
16 she?

17 A. She did put the property on -- up for lease again,
18 yes.

19 Q. That was a nice thing for her to do, wasn't it,
20 because it means that if she were to get it re-leased,
21 that would mean that your obligation to pay rent would
22 then terminate, right?

23 A. If she found another tenant to move into the place,
24 yes.

25 Q. And that benefits you because you didn't want to

1 move in and couldn't move in, right?

2 A. In the beginning, yes, I wanted to move into the
3 property.

4 Q. All right. But then you told her you couldn't and
5 so she put the thing back on the market so that she could
6 get somebody else in there, right?

7 A. Yes, she made an attempt to put someone else in the
8 property.

9 Q. All right. Now let's talk about the actual lease
10 agreement, okay? We've talked about this rent. The
11 agreement -- the lease agreement was from May the 7th
12 until May the 7th of the following year, correct?

13 A. Yes, it was.

14 Q. All right. Now May the 7th was supposed to be the
15 start date. When, to your knowledge, was April finally
16 able to get another tenant in the building?

17 A. I believe there was an e-mail to me stating that she
18 had a tenant moving in in July of 2016.

19 Q. Okay. So May, June, July, all right? Three months,
20 right? That's -- May, June, July, that's three months,
21 right?

22 A. Yes, that's three months; May, June, July.

23 Q. Okay. So would you say that April made an effort to
24 get somebody into the building?

25 A. She placed the property up for rent, yes.

1 Q. All right. And she was successful in getting
2 somebody else in there, right?

3 A. I wasn't there when she signed another lease.

4 Q. Well, she certainly hadn't asked you for any more
5 rent, has she?

6 A. I have no communication asking for additional rent,
7 no.

8 Q. Okay. Now your prepaid rent that you say you want
9 back, we know that under the terms of the lease agreement
10 you're on the hook for three months of rent, right?

11 A. Yes; May, June, July.

12 Q. Okay. And we know that you only paid for one -- you
13 only made one rental payment, right?

14 A. I paid \$920 in prepaid rent.

15 Q. Got you. So one rental payment for three months.
16 That's not all you owe, is it?

17 A. So the e-mail communication that I was sent stated
18 that the new tenant was supposed to start May 8th --
19 July 8th.

20 Q. Right. I understand, but I didn't ask you about
21 the new tenant. I asked you very simply if you paid for
22 one month of rent that you keep calling prepaid rent, but
23 you owe two more, that means that you haven't met your
24 rent obligation under the terms of the lease, have you?

25 A. I have not made any additional payments.

1 Q. All right. So I suppose then the answer to my
2 question is that's right, Mr. Moore, I have not made my
3 rental obligation under the lease agreement. Would that
4 be right?

5 **MR. GRIFFITH:** Asked and answered, Your Honor.

6 He asked her if she paid it, she said she paid one
7 -- she said she paid the one payment and no more.

8 **THE COURT:** All right. I overrule the objection.

9 BY MR. MOORE:

10 Q. So by paying that one month in rent, you haven't met
11 your rental obligation, have you, for the three months?

12 A. I have not made a payment for June or July, no.

13 Q. Okay. And that's what you answered last time.

14 That's not my question. My question -- I know -- we know
15 what you did. We know that you paid one month's rent and
16 didn't pay two more, all right? And if we know that the
17 rental agreement that you signed obligates you to pay once
18 a month, we would know then that you have not met your
19 obligation under the lease as it relates to paying rent,
20 right?

21 A. No.

22 Q. Okay. So as we sit here today, you've sued my
23 client; yet you come into court and acknowledge that you
24 haven't met your obligation under the lease, have you?

25 A. My actions are what I -- I understood to be right.

1 Q. Okay. So you're -- what you understood to be right
2 was to pay one month's rent, ask April to tear up the
3 lease and when she doesn't you just stop paying rent?
4 That's what you're supposed to do?

5 A. In terms of the agreement, no.

6 Q. All right. I'm not sure I understand that, but let's
7 move on to something else. The security deposit, okay?
8 You paid a security deposit, didn't you?

9 A. I made a payment of \$1,200 towards a security deposit,
10 yes.

11 Q. And rent is actually \$1,200 a month, isn't it?

12 A. Yes, the agreement was \$1,200 per month.

13 Q. The reason why the prepaid rent is a little bit less
14 is because April did you a favor and basically prorated
15 the rent a little bit so you could move in later, right?

16 A. No.

17 Q. Okay. You certainly didn't pay \$1,200, did you, for
18 the first prepaid rent?

19 A. The reason why it started May 7th is Ms. -- the
20 Defendant still lived in the property.

21 Q. Okay. Let me ask you this. The 1,200 dollar
22 security deposit -- okay. Now do you remember what's in
23 Paragraph 22 of the actual lease agreement?

24 A. I would need to see that document.

25 **MR. MOORE:** Your Honor, I have the lease agreement

1 and would like to mark it as -- for identification
2 purposes, please.

3 **THE COURT:** All right. Plaintiff's 2.

4 **MR. MOORE:** Defendant's 2.

5 (Defendant's Exhibit Number 2 was marked for
6 identification.)

7 BY MR. MOORE:

8 Q. Let me show you Defendant's Exhibit 2, which has
9 been marked for identification purposes. Is that the
10 lease you signed with April?

11 A. Yes, this is the agreement I signed with my initials.

12 Q. Okay.

13 **MR. MOORE:** Your Honor, we would offer Defendant's 2
14 into evidence, please.

15 **THE COURT:** Any objection? Any objection to
16 Defendant's Number 2 coming into evidence?

17 **MR. GRIFFITH:** No objection.

18 **THE COURT:** All right. Does that pertain to Number 1
19 as well? Did you ever offer that in as well?

20 **MR. MOORE:** I haven't, Judge.

21 **THE COURT:** Okay. Defendant's 2 is in evidence.

22 **MR. MOORE:** Thank you.

23 (Defendant's Exhibit Number 2, a lease agreement, was
24 admitted into evidence.)

25 BY MR. MOORE:

1 Q. Now, ma'am, let's look at Paragraph 22. You say you
2 don't remember it. You've sued my client for shenanigans,
3 I suppose, with the security deposit. There's the
4 paragraph dealing with security deposits. Could you read
5 that for us?

6 A. Number 22, security deposit. Tenant agrees to
7 deposit with landlord a security deposit of \$1,200 to be
8 held as security for the full and faithful performance of
9 the tenant of all terms and conditions herein. It being
10 understood and agreed to that no part of the deposit is
11 to be applied to any rent which may become due under this
12 rental agreement. Upon termination of the tenancy,
13 property or money held by the landlord as security may be
14 applied to the payment of accrued rent in the amount of
15 loss of rents or damages which the landlord has suffered
16 by reason of the tenant's noncompliance with the South
17 Carolina Residential Landlord and Tenant Act. Any
18 deduction from the security deposit must be itemized by
19 the landlord in a written notice to the tenant together
20 with the amount due, if any, within thirty days after
21 termination of the tenancy and delivery of possession and
22 demand by the tenant, whichever is later. The tenant shall
23 provide the landlord in writing with a forwarding address
24 or new address to which the written notice and amount due
25 from the landlord may be sent.

1 Q. Okay. Now let's talk about that for a minute.
2 Clearly under this lease agreement it says that the
3 security deposit may be used to cover rent if you failed
4 to pay rent, right?

5 A. My understanding is that, yes.

6 Q. Okay. And we all know now that you failed to pay
7 rent, right?

8 A. I did not make any additional payments other than
9 the prepaid rent.

10 Q. Okay. So under the actual lease agreement itself,
11 April is perfectly justified in taking your security
12 deposit and putting it toward your failure to pay rent,
13 right?

14 A. I did not get communication as to where the money
15 was going to be applied.

16 Q. Okay. So let me get this straight. All right.
17 We'll get to that in a minute, I suppose, but I just
18 want to make sure I've got this straight. You didn't pay
19 rent like you were supposed to under the agreement, you
20 acknowledge there was an agreement, you acknowledge that
21 the security deposit can be used for your failure to pay
22 rent, and your legal justification and basis for this
23 lawsuit is you didn't get a letter saying where the money
24 was gonna go?

25 **MR. GRIFFITH:** Objection, Your Honor. I think that

1 it does call for a legal conclusion. He's asked her her
2 legal basis for bringing this lawsuit. He can ask about
3 the factual basis for bringing it, but I don't think he
4 can ask her for a legal conclusion.

5 **THE COURT:** Well, it's practically one and the same
6 in relation to the question. I overrule the objection.

7 **MR. MOORE:** Thank you.

8 BY MR. MOORE:

9 Q. Ma'am, your basis for this lawsuit -- entire basis
10 for this lawsuit is yeah, I acknowledge I didn't do what
11 I was supposed to do under the lease, but she didn't send
12 me a letter saying how the money was supposed to be used,
13 so I'm entitled to get my money back plus treble damages?

14 A. I was not given written notice as to how the funds
15 were going to be applied.

16 Q. Let me ask you this. We'll go back to Defendant's
17 Exhibit Number 1. Let me draw your attention here to an
18 e-mail, May the 17th, did you get that e-mail from April?

19 A. May 17th from April to Morgan. Yes, I received this.

20 Q. Wonderful. It says here I will not be returning any
21 portion of the security deposit or May rent since this is
22 still part of the contractual rental agreement. Since
23 you've decided not to uphold your end of the contract,
24 you will be forfeiting any return on your security deposit
25 due to the extra costs to re-list the property. Also

1 since you took upon yourself to turn off the electricity
2 to the property without -- whatever.

3 Ma'am, she told you that she wasn't gonna give the
4 security deposit back since you haven't paid the rent,
5 all right? What more in a written communication would you
6 have her do other than tell you exactly why the security
7 deposit is not coming back and why it's being kept? You
8 testified she gave you no written communication, didn't
9 you?

10 A. Written communication via mail.

11 Q. Ah. The e-mail is not -- the words in the e-mail --
12 the written -- the written words that you actually saw on
13 a computer screen, your theory of the case factually is
14 that if it were on a piece of paper and you had seen it,
15 then somehow, some way this lawsuit would have never been
16 brought?

17 A. To my knowledge, in business when you make a payment
18 you are to be given a receipt of transaction. That -- I
19 never got a receipt of transaction.

20 Q. A receipt of transaction. What exactly do you mean
21 by that?

22 A. I never received an invoice or receipt of movement
23 of money.

24 Q. Ma'am, she sent you an e-mail that said we're not
25 giving your security deposit back because you haven't

1 paid rent. What more do you want?

2 A. I expected to get a certified piece of mail with an
3 invoice of transaction.

4 Q. Okay. Now your expectation of this certified piece
5 of mail, all right, where in Defendant's Exhibit Number 2
6 does it call for or provide you with the expectation of
7 receiving a certified piece of mail?

8 A. To my knowledge, it's not written on that document.

9 Q. Okay. So we know that the document that you actually
10 agreed to, the agreement that we have in place, the lease
11 agreement, there's nothing in that lease agreement that
12 would require either one of you to send certified mail,
13 right?

14 A. To my knowledge, it's not written.

15 Q. Okay. Well, ma'am, it certainly requires though
16 that some things be done in writing, right?

17 A. Certainly there are things that need to be in
18 writing, yes.

19 Q. For instance, hey, if we're gonna take your security
20 deposit, this is why? That would be one of those things,
21 wouldn't it?

22 A. I would expect a transaction piece of paper that
23 states where the money was moving to.

24 Q. You got an e-mail, didn't you?

25 A. I received an e-mail, yes.

1 Q. Okay. Now the e-mail, you would agree with me that
2 that is writing, that's not the spoken word, that's not
3 a smoke signal, that is the actual written word, right?

4 A. I received an e-mail.

5 Q. Okay. Well, I know you received an e-mail. An
6 e-mail is writing, isn't it?

7 A. It's -- to my knowledge, it's typed.

8 Q. Okay. I see. So the e-mail's insufficient, but
9 the e-mail -- let's -- let's take all of that and throw
10 it out the window, okay? Let's take all of the technical
11 requirements and the lease and let's just throw it out
12 the window and just talk basic fairness in business and
13 landlord and tenant situations. Let's talk about that
14 for a minute. You didn't hold up your end of the bargain,
15 did you?

16 A. As stated, I made a payment for security and prepaid
17 rent.

18 Q. Okay. That wasn't my question. You didn't hold up
19 your end of the bargain because this was supposed to be a
20 year long lease and you didn't do that, did you?

21 A. I performed the first task requested of me.

22 Q. Very good. But you didn't perform the last task that
23 was asked of you, did you?

24 A. The specific last task?

25 Q. Yes, the last month's rent. You never paid that,

1 did you?

2 A. I did not make any additional payments, no.

3 Q. Okay. So then we know that under the lease if
4 you're supposed to make twelve and you only made one,
5 you didn't hold up your end of the bargain with regard to
6 payment of rent? We covered this a little bit, right?

7 A. Yes.

8 Q. Okay. And then with regard to the security deposit,
9 we know that because you didn't pay rent the lease
10 agreement calls for the security deposit to be -- that it
11 can be used to fulfill your obligation to pay rent if you
12 failed to do it, which you've acknowledged that you have,
13 right?

14 A. Yes.

15 Q. Okay. So as a matter of fairness today, April took
16 the time to lease you this property, showed you this
17 property, made it available to you, took your money,
18 certainly took your money, and your lawsuit wants the
19 money back despite your failure to comply with the
20 agreement. Is that my -- is that my understanding of
21 what we're here for today?

22 A. Yes.

23 Q. I see. Now Defendant's Exhibit 1, we have only
24 talked about a couple of pages here. What I'd like you
25 to do since we've only marked it as one exhibit, I would

1 like you to thumb through there and tell me if every
2 page of that is a legitimate communication between you
3 and April.

4 A. Yes, this is communications via e-mail with myself.
5 Yes.

6 Q. Okay. Are those fair and accurate depictions of
7 those communications?

8 A. Yes, those are communications between --

9 Q. You and April, right?

10 A. Yes.

11 Q. Okay.

12 **MR. MOORE:** We would offer Defendant's Exhibit
13 Number 1 into evidence, please.

14 **MR. GRIFFITH:** No objection.

15 (Defendant's Exhibit Number 1, e-mail communications,
16 was admitted into evidence.)

17 BY MR. MOORE:

18 Q. Now the last thing I want to ask you about is a
19 little about our counterclaim here. You certainly
20 acknowledge pursuant to Defendant's Exhibit Number 2,
21 which is the lease agreement, that down here it says
22 that you are supposed to pay a penalty if you're late in
23 paying rent, right?

24 A. Yes, this document says that there is a penalty.

25 Q. Does it say anything about we've got to give you

1 certified written notice about whether we choose to
2 collect on that penalty?

3 A. There's no communication on how it needs to be paid.

4 Q. I see. So there's no -- there's no requirements
5 pursuant to this lease, it's just a matter of fact if
6 you're late in making the payment there's a 20 dollar per
7 day late charge, isn't there?

8 A. According to the document, yes, there is a late fee.

9 Q. And we know that you paid for one month, but didn't
10 pay for two. That would be about sixty days of late fees,
11 right?

12 A. There is a document saying that there is a late fee.

13 Q. Yes, ma'am. But what I'm asking -- we've covered
14 that. The lease calls for a penalty if you're late making
15 the rent, right?

16 A. Yes.

17 Q. And we know you didn't pay rent for two months,
18 right?

19 A. I did not make any additional payments, no.

20 Q. Right. And we're not talking late fees being
21 counted as rent. These are actually penalties on top
22 of the failing to pay the rent -- or on top of the rent
23 itself, right?

24 A. There is -- there's a penalty, yes.

25 Q. All right. Let's talk about the penalty then. I

1 want to make sure we understand what the timeframe is
2 for this penalty. The penalty -- if you only made one
3 payment, that one payment would be for one month's rent,
4 right?

5 A. Payment, yes.

6 Q. Okay. And if we know that April got somebody in mid
7 July, that would mean June and July, I suppose, halfway
8 through July -- I take that back. It wouldn't be sixty
9 days, it would be about forty-five days, wouldn't it,
10 where you just didn't pay rent?

11 A. I did not make any additional payments.

12 Q. All right. So you would testify then, I would
13 assume, that if you didn't make any additional payments
14 for those forty-five days you owe April \$20 a day, don't
15 you?

16 A. According to the contract, there is a late fee.

17 Q. That's not what I asked you. We have clearly
18 established that there is a late fee. My question is
19 very, very specific. Pursuant to that lease agreement
20 and pursuant to the late fee, your testimony today would
21 be that you owe April \$20 a day for forty-five days?

22 A. Yes.

23 Q. Okay. So you have sued April asking for your money
24 back, but you actually owe April some money, don't you?

25 A. I never moved into the property; therefore, I never

1 used the service.

2 Q. Okay.

3 **MR. MOORE:** Ma'am, that's all I have.

4 Judge, that's all I have. Thank you, sir.

5 **THE COURT:** All right.

6 **MR. GRIFFITH:** May it please the Court, Your Honor?

7 **THE COURT:** Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. GRIFFITH:

10 Q. Ms. Conley, do you have Defendant's Exhibit 2
11 available to you?

12 A. I do.

13 Q. Would you look on Page 1 at Paragraph 1 and publish
14 that, please.

15 A. Page 1, Paragraph 1. Landlord Tenant Act. This
16 rental agreement is governed by the South Carolina
17 Residential Landlord and Tenant Act.

18 Q. All right. And now turn to Page 4, Paragraph 22.
19 Do you see that?

20 A. I do.

21 Q. Could you read the sentence -- next to the last
22 sentence beginning any deduction?

23 A. Any deduction from the security deposit must be
24 itemized by the landlord in a written notice to the
25 tenant together with the amount due, if any, within

1 thirty days after termination of the tenancy and delivery
2 of possession and demand by the tenant, whichever is later.
3 The tenant shall provide the landlord in writing with a
4 forwarding address or new address to which the written
5 notice and amount due from the landlord may be sent.

6 Q. Did you receive a written notice from the landlord
7 showing an itemized reconciliation of what was done with
8 the security deposit and the prepaid rent?

9 A. I did not receive an itemized communication, no.

10 Q. That's required under this contract; is it not?

11 A. As stated on this page, yes.

12 Q. All right. Did you receive any written
13 reconciliation of any sort from the Defendant as to
14 where your money went, how your money was spent? Did
15 you receive it in the mail?

16 A. I did not receive anything in the mail, no.

17 **MR. GRIFFITH:** That's all.

18 **THE COURT:** And you forwarded a written -- you
19 provided a forwarding address?

20 **THE WITNESS:** Yes, I did.

21 **THE COURT:** Any further questions, Mr. Moore?

22 **REXCROSS EXAMINATION**

23 **BY MR. MOORE:**

24 Q. Ma'am, are you a hundred percent sure that you gave
25 her a forwarding address?

1 A. I gave a forwarding address verbally.

2 Q. Verbally? All right. So the lease says -- they
3 asked you about this. The tenant shall provide the
4 landlord in writing with a forwarding address. You told
5 the judge that you did, but actually what you did was
6 give a verbal address, right?

7 A. I don't know.

8 Q. Well, all right. Now we've got a couple of
9 different answers, don't we? You testified that you gave
10 her a verbal address and now you've just testified that
11 you don't know. Which one is it?

12 A. I know that I gave the verbal forwarding address.

13 Q. All right. Then what you just testified to a second
14 ago when you said I don't know, that wasn't true, was it?

15 A. I certainly mean that I said this verbally. I do
16 not know if I wrote the message down on a piece of paper
17 to give to her.

18 **MR. MOORE:** Your Honor, that's all we have.

19 **MR. GRIFFITH:** Nothing further.

20 **THE COURT:** All right. Thank you. You may step
21 down.

22 (Witness excused.)

23 **MR. GRIFFITH:** That's the Plaintiff's case, Your
24 Honor.

25 **THE COURT:** All right. Mr. Moore.

1 **MR. MOORE:** Your Honor, at this point we would
2 move for a directed verdict. The facts are pretty clear
3 obviously with what happened. Truth be told, we didn't
4 have a huge dispute over what they were before we even
5 came in today and the bottom line is there was a lease
6 agreement, the Plaintiff reached out, said and I can't
7 do it and my client in order to mitigate the damages
8 immediately tried to re-lease the premises and did that
9 and was finally able to get somebody in it in July.
10 We're not talking six months or any kind of unreasonable
11 delay. I think a 45-day turnaround is pretty good for
12 what we're dealing with here.

13 You know, the basis for this case, and I'll just
14 never understand it as long as I live. I may get my
15 clock cleaned today, but I just -- I'll never understand
16 it. I signed an agreement, I didn't do right under the
17 agreement, I told them that I couldn't do it, they went
18 and mitigated damages for me, but now somehow, some way
19 I'm entitled to rent back even though I'm obligated to do
20 it under an agreement and I'm entitled to my security
21 deposit back even though the lease agreement says we can
22 apply it to the rent.

23 Now in a nutshell that's what you have. Now my
24 colleagues over here will tell you well, pursuant to the
25 South Carolina Landlord and Tenant Act we've got to give

1 a fancy notification as to what we did with the security
2 deposit and so forth and there's time constraints and
3 there are -- it's got to be in a certified letter as
4 opposed to an e-mail. Judge, I've looked at the law and
5 the statutes under the Landlord and Tenant Act basically
6 provides that -- the Landlord and Tenant Act is almost
7 like a safety net. You can contract outside of the
8 Landlord and Tenant Act, but you can have it as a safety
9 net to govern those things that aren't specifically dealt
10 with in the contract. Well, the contract never once
11 calls for certified mailing. It just says they've got to
12 give notice. And as far as the security deposit goes, all
13 we have to do is tell them what we're using the security
14 deposit for. Now I've seen very formal accountings where
15 money goes and so forth and, you know -- but this is not
16 a fancy case. This is a Landlord and Tenant Act for a
17 place that's \$1,200 a month, it's a townhouse, and all my
18 client had the audacity to do was send her an e-mail, the
19 way they had been communicating in the past, and tells her
20 I am applying your security deposit to rent because you
21 haven't paid it.

22 Now the law also, Judge, under the Landlord and
23 Tenant Act, and this is one thing throughout this case
24 they continue to ignore, and they -- and they'll leave
25 this part of the statute out any time -- when it came to

1 arguing the motion for summary judgment, they submitted
2 a brief and they left this part of the statute out, but
3 the statute says in 27-40-240 a person notifies or gives
4 a notice of notification to another person by taking steps
5 reasonably calculated to inform the other in ordinary
6 course whether or not the other actually comes to know
7 of it. A person receives a notice or notification when,
8 number one, it comes to his attention, or, and then it
9 goes on to say -- talk about certified letters and so
10 forth. The bottom line is the Plaintiff in this case has
11 acknowledged that she received notification from my client
12 by e-mail. It's a written communication however you slice
13 it. It's not a verbal communication, it is written, and
14 she had notification of it, and pursuant to 27-40-240
15 that's all she's got to do even if the lease does not
16 apply and all you did was apply the Landlord and Tenant
17 Act.

18 So, Judge, for those reasons we would move for a
19 directed verdict assuming Your Honor would grant that,
20 which we would hope you would. We would then be in a
21 position -- we're not interested in recovering three
22 hundred and some odd dollars under our counterclaim, we
23 would abandon that, but I just don't think they've proven
24 a case today.

25 **THE COURT:** How much money did the Plaintiff pay?

1 How much money did she give to your client?

2 **MR. MOORE:** It was \$1,200 for the security deposit
3 and nine hundred and --

4 **MR. GRIFFITH:** Twenty.

5 **MR. MOORE:** -- \$920 for the first month's rent.

6 **THE COURT:** All right. Response?

7 **MR. GRIFFITH:** Yes, Your Honor.

8 Mr. Moore set the law out pretty clearly, but I want
9 to call Your Honor's attention to the notebook we handed
10 up there. Under Tab 3, security deposits and prepaid
11 rent, upon termination of tenancy, any property or money
12 held by landlord as security must be returned less amounts
13 withheld by the landlord for approved rent and damages
14 which the landlord has suffered by reason of the tenant's
15 noncompliance. Here's the important part. Any deduction
16 from the security slash rental deposit must be itemized
17 by the landlord in a written document -- notice -- in a
18 written notice to the tenant together with the amount of
19 money -- excuse me -- with the amount due, if any, within
20 thirty days after termination of the tenancy and delivery
21 of possession and demand by the tenant, whichever is later.
22 Under Tab 4 it deals with Part B, which is the prepaid
23 rent or security deposit required to be sent by landlord
24 pursuant to Subsection A, that the tenant may recover three
25 times their actual damages.

1 And Mr. Moore points out appropriately that under
2 the notice statute how do we get notice? Now we've
3 established that this contract says that it is subject
4 to the South Carolina Landlord and Tenant Act. We've
5 also established that in Paragraph 22 that -- almost
6 that precise language that's in 27-40-410(a) is in the
7 contract. So when we look at Part B, under notice, a
8 person notifies or gives a notice to another person by
9 taking steps reasonably calculated to inform the other in
10 ordinary course whether or not the other actually comes
11 to know of it. This thing says -- then the next sentence
12 says a person receives a notice or notification. Now
13 that's a person. That's not a particular person, that's
14 anyone under this Landlord and Tenant Act. But
15 then you go onto Sub 3 and we specifically define how a
16 tenant receives notice and a tenant -- it's not how the
17 tenant receives it. The landlord must give notice under
18 410 and they must give the accounting, they must give the
19 reconciliation. In Paragraph 3, it says in the case of
20 a tenant it is delivered in hand. Nobody says that they
21 ever gave anybody any written communication in hand or by
22 mail, by registered or certified mail. There's been no
23 indication that there has been registered or certified
24 mail sent to Ms. Conley and the statute is what controls
25 here, not the contract. The contract -- the law says

1 under -- the law in South Carolina says under Section
2 27-40-330 under prohibited provisions in rental
3 agreements, it says a rental agreement may not provide
4 that the tenant agrees to waive or forego rights or
5 remedies under this chapter, and so Ms. Conley hasn't
6 -- even if it were in the contract, she could not be
7 prohibited from expecting to receive under the law of
8 this state, the statutory law of this state, that she
9 is to receive registered or certified notice or a
10 hand-delivered notice, this is where your money went.
11 I don't think that an e-mail -- if you look at these
12 e-mails, there's a lot of to and fro. There's a lot of
13 well, you know, you might owe this, you might owe that.
14 There's some -- there's no itemized reconciliation as
15 contemplated by the statute and we believe that we have
16 certainly put forward enough evidence to survive a motion
17 for directed verdict and we believe the law is with us.

18 **THE COURT:** What do you say to that?

19 **MR. MOORE:** Thank you, Judge. Just briefly. Again,
20 one of the things that I forgot to mention, you know, the
21 -- the Plaintiff herself acknowledges that she has not
22 specifically followed this agreement by providing the
23 written notification of her forwarding mailing address.
24 So they want to hold my client to the absolute letter of
25 the law with regard to the contract, the statute and

1 everything else, but it's okay for them to just pick and
2 choose which sections they want to follow. I just --
3 it's just a matter of general fairness and equity. I
4 just don't see this as being the case. They just haven't
5 proven in my mind anything that would justify damages.
6 They haven't proven anything to justify treble damages.
7 It is our contention that we've followed the statute,
8 we've followed the contract, we've done everything we
9 possibly can and I just don't see what else they want as
10 far as an accounting of where the security deposit goes.
11 The security deposit is going towards the unpaid rent,
12 that's the e-mail, and I just -- I don't know what else
13 -- advising a client moving forward who has tenants what
14 am I to tell them? I don't know how else to tell a client
15 to put in writing that your money's being used for unpaid
16 rent. I don't know how to do it.

17 **THE COURT:** Would you hand me the lease?

18 **MR. MOORE:** I'll get it.

19 **MR. GRIFFITH:** Your Honor, while he's grabbing the
20 lease, just to point out a final thing. In 27-40-240(3),
21 it's incumbent upon the landlord to send it, it's not
22 incumbent upon the tenant to receive it, and even though
23 there may be a question about where the tenant lives, it
24 says or in the absence of the designation to the tenant's
25 last known place of address. So if they had sent it, it

1 would have been returned to them.

2 **THE COURT:** This lease is written pretty much in
3 accordance with the requirements of the Residential
4 Landlord and Tenant Act. Section 27-40-20, purposes;
5 rules of construction of the Landlord and Tenant Act says
6 that underlying purposes and policies of the chapter are
7 to simplify, clarify, modernize, and revise the law
8 governing rental of dwelling units and the rights and
9 obligations of the landlords and tenants.

10 So consistent with the act, this lease agreement
11 was drafted, so I think it is time to simplify, clarify,
12 modernize, and revise the laws concerning landlords and
13 tenants. And this Act was adopted, I guess, in -- it
14 looks like 1986 because most of it refers to the history
15 of 1986 and certainly that was prior to e-mail as far as
16 what was in existence at the time. But as far as what
17 exists now, and the purpose of the Act was to simplify,
18 clarify, modernize, I think we must consider what currently
19 exists, and that is e-mail being a recognized form of
20 communication.

21 One thing that hasn't been touched upon that's,
22 you know, in the testimony, the tenant talks about she
23 cancelled the lease, she didn't move in, she wanted her
24 money back, and also the obligations that flow from the
25 landlord and the tenant. Once a landlord rents a place

1 to a tenant and signs a lease with the tenant, the
2 landlord cannot rent it to anyone else. So in the
3 portion of the lease agreement, Paragraph 22, that upon
4 termination of the tenancy security may be applied to
5 the rent accrued and the amount of the loss of rents or
6 damages which the landlord suffered as a result by reason
7 of the tenant's noncompliance, the lease contemplates
8 that and the security deposit contemplates that if you
9 rent -- agree to rent me your place, you can't rent it to
10 anyone else, you're -- the place must stay right there
11 until you move in, and so when the tenant doesn't move in
12 the landlord -- it's part of the lease that the landlord
13 is suffering damages because she can't rent it to anyone
14 else until the situation is resolved with the tenant.

15 Now the parties were in constant communication,
16 there's no -- was no lack of understanding as I can see
17 it as to what was going on between the two. I believe
18 that the landlord has fully complied with the notice
19 requirements considering where I started with, and that
20 is e-mail didn't exist in 1986, but it exists now, and the
21 provisions regarding notice that counsel cited, a person
22 has notice of a fact if the person has actual knowledge of
23 it, received notice and notification of it and everything
24 and has reason to know it exists, it's clear that the
25 tenant was fully informed as to what the landlord was

1 considering, trying to do. The landlord's damages
2 exceeded what the tenant paid as a result of the tenant
3 not moving in and complying with the lease.

4 You know, we all have to make choices and when you
5 sign a contract -- you know, when you have the Kirby
6 vacuum cleaner man coming by your house and they talk you
7 into buying a vacuum cleaner, you're stuck with buying
8 it; the contract, once you sign it, and the Legislature
9 realized well, hey, that's just -- you need time to
10 reconsider, you need time to think about it and so they
11 changed it to give you an out to say, well -- I think
12 it's three days or whatever period of time it was you
13 can change your mind on that contract. And many other
14 instances. I think even on a loan closing it gives you
15 an opportunity to change your mind, a three-day right of
16 rescission. There's no such right of rescission in a rental
17 agreement on property, so once you signed the contract
18 it's an agreement, which is binding on both sides.

19 Now there are many unsuspecting landlords who get
20 caught with this provision that the Plaintiff is seeking
21 to -- to pin on the landlord in this case about well, you
22 didn't give me an itemized statement, you didn't comply
23 with the Act with regard to the itemization of damages, and
24 that typically applies where someone moves out at the end
25 of a lease and the landlord has a right to go in and

1 inspect for damages and repairs and all those things and
2 the tenant wants their deposit back and the landlord is
3 wanting to keep the money and the landlord does not comply
4 with the Act and then the tenant is entitled to the money
5 back plus treble damages, and that certainly has its place
6 to apply, but it does not apply in this case.

7 In many instances people incur hardships and -- as
8 the Plaintiff says that she did, she decided that she made
9 a bad choice because she -- because of poor planning or
10 circumstances or whatever might have existed that she did
11 not want to go through with it, but as a result of her
12 entering into the agreement the landlord suffered damages
13 that the -- that she's entitled to under the Landlord and
14 Tenant Act. Of course, the argument is that the landlord
15 must give notice beyond what is indicated in the statute.
16 And Mr. Moore is absolutely correct that the statute
17 says if the tenant does not provide written notice of a
18 forwarding address or whatever, the specific language of
19 the statute, then the tenant is not entitled to damages,
20 but I don't believe that that really applies because the
21 landlord has complied and given notice and Plaintiff was
22 fully informed of the landlord's basic good faith efforts
23 to minimize and mitigate the damages by finding someone
24 else as soon as possible.

25 So based on the testimony that I have heard, the

1 Plaintiff has not established a prima facie case. The
2 Plaintiff has acknowledged that they entered into a
3 contract, that she breached the contract and that the
4 landlord sought to mitigate the damages, that she was
5 in communication through all these e-mails that are in
6 Exhibit Number 1 and through her acknowledged testimony.
7 And so whereas Judge Manning's summary judgment order
8 does not have any control and effect, it is a summary of
9 everything that we've heard all over here today in effect
10 and I am granting the defense's motion for directed verdict
11 and ending this case.

12 **MR. MOORE:** Thank you, Your Honor.

13 **THE COURT:** And that's the order of the Court.

14 **MR. MOORE:** I appreciate it.

15 **MR. GRIFFITH:** Thank you, Your Honor.

16 **THE COURT:** All right.

17 (Whereupon, the proceedings were concluded at
18 11:19 AM.)
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C E R T I F I C A T E

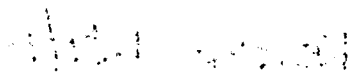
I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced in
the hearing of the captioned case in Circuit Court
on the 28th day of September, 2018.

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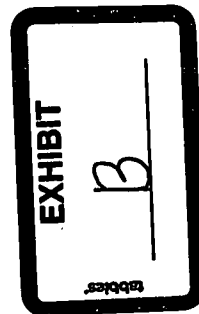
I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

December 3, 2018


STACY S. JOHNSON
CIRCUIT COURT REPORTER



2018



From **September 28, 2018**, until **October 25, 2018**, Appellant is unaware that the Court has made an ex parte request for an Order from Respondent's counsel, therefore Appellant files and serves Notice of Appeal before the passage of 30 days, since the Lower Court's oral decision on **September 28, 2018**

September 28, 2018

Oral Decision by Lower Court
– No instruction given in open Court for anyone to prepare an Order

October 25, 2018

Appellant files/serves Notice of Appeal

November 6, 2018

Respondent's counsel finally submits proposed Order, **12 days** after a Notice of Appeal was served on Respondent's counsel. Respondent's counsel also waited **40 days** after the Court's oral decision on September 28, 2018, to submit a proposed Order on November 6, 2018.

12 days