THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and
Beaufort County Special Court Judge

Case No. 2012-CP-07-1530
Court of Appeals Number:
2013-000305

RECEIVED
JAN 09 2014
SC Court of Appeals

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince d/b/a The Law
Office of Beth Anne Gilleland, LLC,

Appellant.

FINAL BRIEF OF RESPONDENT

Beth Ann Prince
P.O. Box 2797
Bluffton, SC 29910
(843) 473-0745
Attorney for Appellant

Russell P. Patterson
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES AND RULES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court Properly Find the Tenant Responsible For Future Rents?

II. Did the Trial Court Make Any Evidentiary Rulings Requiring Reversal?

III. If This Court Should Determine the Lease is Ambiguous, the Landlord is Still Entitled to Future Rents (Additional Sustaining Ground, Rule 208(b)(2) SCACR)

STATEMENT OF FACTS

On or about January 1, 2009 Bluffton Towne Center, LLC ("Landlord"), entered into a long-term rent and lease agreement with Beth Ann Gilleland-Prince ("Tenant") and Miguel Pico ("Pico"), for office space in Bluffton, South Carolina (R.pp. 81-84, Ex. 1). The lease provided for monthly payments of $1,825 for a three (3) year term commencing January 1, 2009 and ending December 31, 2011. Tenant operated her law practice from the leased premises. (R.p. 31, lines 1-6). Pico has moved from the area and was never served with the Complaint. Thus, no judgment was rendered against Pico at trial.

On December 18, 2009, the Tenant wrote the Landlord advising that she had accepted a position as a magistrate court judge, would be closing her law office and would probably stay in the premises through the end of February, 2010 (R.p. 85, Ex. 2). She stated she hoped to be able to work something out with the Landlord amicably, acknowledging that the lease would not expire for another year. The Landlord acknowledged receipt of the notice and stated he assumed the Tenant would honor the lease as an attorney and judge, confirming that she was liable for the remaining term of the lease. (R.p. 85, Ex. 2)

On February 26, 2010, the Landlord sent written notice to the Tenant requesting the rent due for February, 2010, that she vacate the property within ten (10) days, and confirming that she

was still obligated and responsible for all rents that continued to accrue under the remaining term of the lease (R.p. 86-87, Ex. 3). Thereafter, counsel for the Landlord on March 28, 2010 notified the Tenant that the Landlord requested the rent for February and March, 2010, as well as all monthly payments during the remaining term of the lease. (R.p. 88, Ex. 4) Tenant responded that she would be happy to help in trying to find a new tenant, but that she was unable to pay the rent or else she would pay same. (R.p. 89, Ex. 5) The Tenant vacated the premises and turned over the keys in April, 2010. (R.pp. 91-93, Exs. 7, 8, 9)

In an effort to mitigate its damages, the Landlord leased the property to two separate (2) tenants for a portion of the remaining term, at reduced rates. After the term of the lease had expired, Landlord filed suit for damages on December 31, 2012. At trial the Landlord provided undisputed testimony that its total damages for nonpayment of rent was $35,784. Landlord's counsel introduced an Affidavit of Attorney's Fees for an additional recovery of $3,843.55, for total damages of $39,627.55 that were awarded by the Trial Court. The Tenant put up no evidence at trial, simply arguing that under the lease provisions she was not responsible for future rents accruing after she vacated.

STANDARD OF REVIEW

This matter was heard by the Beaufort County Master-in-Equity pursuant to an Order of Reference with finality. An action for collection of rents due under a lease is an action of law. Sapp v. Wheeler, 402 S.C. 502, 741 S.E.2d 565 (S.C.App. 2013). This Court cannot disturb the trial court's findings of fact unless no evidence reasonably supports its findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The appellate court can correct errors of law. Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct.App. 2003).

ARGUMENT

1. The Trial Court Properly Found the Tenant Responsible for Future Rents

The Trial Court found that Tenant owed the Landlord for future rents after the Tenant vacated in the amount of $35,784, applying the more "modern rule" for landlord's damages after termination of a lease as set forth in United States Rubber Company v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956), Alternately, the Trial Court also applied the standard set forth in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927) to reach the same result. A review of the apparent separate and distinct remedies available under Simon and U.S. Rubber find that the Trial Court reached the correct result, regardless if Simon has been modified by U.S. Rubber, as discussed below.

A. The Tenant is Responsible for Future Rents Under Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927)

Assuming, *arguendo*, that Simon is still valid and controlling, the Tenant is responsible for the future rents after the Tenant vacated under the terms of the subject lease, as found by the Trial Judge. In Simon, the lessee refused to take delivery. The Court stated that the lessor had three remedies available, as follows:

> (1) Sue under a breach of contract theory for the full amount of damages, present and prospective, which were the result of the violation of the contract, citing Cleveland v. Bryant, 16 S.C. 634 (1882). The measure of damages under this remedy was the rent fixed under the lease, less the rental value of the premises for the remaining term, together with any special damages; or
>
> (2) Sue for damages actually sustained, calculated at the rental rate provided in the lease less the actual rents received, or which should have been received, upon due diligence by the Landlord; or
>
> (3) The lessor could re-enter and repossess the premises and expel and remove the lessee. Under that option, the lease is deemed terminated.

The court in Simon stated that once the lease was terminated, regardless of the method of termination, the tenant's estate ends, the tenant is responsible for the stipulated rent as damages up to the date of termination, and the tenant has no further obligations ". . . unless the lease shall provide that, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations." Simon 139 S.E. at 618 (emphasis added). This limitation of remedies of the landlord is based on the historical nature of a lease, as a conveyance of land. From a property law perspective, the rationale for this approach is that once the tenant no longer has access to the property, it should no longer be responsible for rent. 2 R. Powell, The Law of Real Property, §16.02(1)(a)(2000); Schneicker v. Gordon, 732 P.2d 603 (Colo. 1987).

The court in Simon made it clear that the tenant would be responsible at the termination of the lease for such future rent as damages, if the lease so provided, since no rent could be due since the lease was deemed terminated. As no language expressing an intent to bind the tenant for future damages was present in the lease in Simon, the tenant was found not to be responsible for rents accruing after termination. The Tenant in the instant case is arguing that under Simon this requirement was not met as there was no special language as to obligating a tenant for rent after termination.

Unlike the lease in Simon, the Trial Court in this case correctly held the subject lease clearly contained language that upon termination, the tenant was not relieved of future obligations for damages in the form of rent. In the default section of the subject lease (R.pp. 81-82, Ex. 1), this reservation of right is clearly and unambiguously stated as follows:

> "**DEFAULTS.** *** Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), **and without prejudicing Landlord's right to damages**. *** Tenant shall pay all costs, **damages**, and expenses (including reasonable

attorneys fees and expenses) **suffered by Landlord by reason of Tenant's defaults**." (emphasis added)

Unlike the lease in Simon, the instant lease specifically reserved the right for the Landlord to take possession of the property without prejudicing its right to "damages". The third sentence under the same default provision provides the Tenant shall pay all costs and "damages" and expenses as a result of its default. It is well understood in South Carolina that " [t]he intent of the parties is to be determined solely from the language of the contract, if that language is clear and unambiguous." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Havird, 355 S.C. 642, 518 S.E.2d 48, 50 (1999). In addition, the "... court should give the terms of an unambiguous contract their plain, ordinary and popular meaning." *Id.* 518 S. E.2d at 50. The common, ordinary and popular definition of the term "damages" under a lease clearly encompasses the payment of rent. This is especially true as to this lease, where there are no other material monetary obligations of the Tenant. The Tenant has provided no other alternative meaning for the term "damages" in the lease which would give logical meaning to all provisions of the lease. The Court must construe the terms and provisions of an agreement to give affect to all provisions, and not create an ambiguity by an unreasonable interpretation of a particular word. Middleton v. Eubank, 388 S.C. 8, 694 S.E.2d 31 (S.C.App. 2010).

In Simon, the Court throughout its opinion, equates damages with the non-payment of rents in its discussion of the landlord's remedies. This is because once the lease is deemed terminated, the tenant no longer owes any rent, but may have liability for certain damages. Certainly a drafter of a lease, after reading Simon, would be confident the use of the same term "damages" would include rents in a lease. The application of these rules of construction and the Simon decision is entirely consistent with the Trial Court's conclusion damages includes rents under the lease.

Tenant relies heavily in her arguments as to her interpretation of the lease on the well-established line of South Carolina cases that hold that where there is an ambiguity in a contract, the ambiguity is to be construed against the party which drafted same. Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007). This rule of construction has no application for three (3) reasons. First, there is absolutely no evidence in the record that the Landlord drafted the lease. In fact, the record is devoid of any testimony as to who prepared same. Counsel's own statements and arguments to the Court that the Landlord drafted the lease are clearly not admissible testimony as to this issue.

Secondly, neither party at trial asserted that the lease was ambiguous, and in fact the Tenant affirmatively represented to the Court that she was not asserting in this case that it was ambiguous (R.p. 58, lines 9-25; pp. 183-186, Def. Post-Trial Brief). The Trial Court found correctly the lease was unambiguous (R.pp. 3-9, § 17, Order). Finally, the Tenant has asserted for the first time on appeal that the lease is ambiguous. Since this theory was not argued or asserted at trial, it cannot be raised for the first time on appeal. McCain v. Brightharp, 39 S.C. 240, 730 S.E.2d 916 (S. C. App. 2012).

The Tenant's argument suggests that there exists under South Carolina case law some type of "bright line" test requiring specific language in a lease in order to be entitled to the recovery of future rents after termination under Simon. Not only does Simon not require such special language, none of the cases applying Simon contain any such language.

In Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), the court allowed the recovery by the landlord of two months rent, plus commissions after the lease was terminated. The landlord notified the tenant of the breach of the lease, that it would attempt to rent the building and would expect the tenant to be responsible for any loss. There was no discussion of

any special reservation of rights under the lease, although future rents were allowed to be received.[1]

In Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950) the Federal court, applying South Carolina state law, held that a lease did reserve the right of the landlord to sue for future damages under Simon. The language relied upon by the court in section 19 of the lease provided the landlord the right to re-let the premises, with the tenant remaining liable for any deficiency. The court in Richman simply found that the lease stated an intention of the parties for the tenant to be responsible for damages for future rents, just as such intention is found in the instant lease under the default section. (R.pp. 81-84, Ex. 1)

In U.S. Rubber, the Court, citing Simon, found that the relationship of landlord and tenant came to an end upon the tenant's abandonment of the property and default of payment of rent. The Court confirmed the tenant had no further obligation for future rent under Simon, but did still have a liability for damages under a breach of contract theory. The measure of damages was the rent provided for in the lease under the remaining term, less the monies actually received, assuming the landlord properly mitigated its damages. U.S. Rubber, 97 S.E.2d at 409. There was no review or discussion by the Court of any language (special or otherwise) in the lease which provided upon the termination, the tenant was still liable or responsible for future rents. Rents due after termination of the lease were thus recovered by the landlord.

In Blumberg v. Nealco, Inc., 307 S.C. 537, 416 S.E.2d 211 (Ct. App. 1992) *aff'd as modified*, 310 S.C. 492, 427 S.E.2d 659 (1993), the court found that the lease was properly terminated and that the landlord could recover future rents after termination because the lease specifically reserved said rights. The reservation of rights under the lease read as follows, in section 20.01:

[1] Note, this is virtually identical to the notice provided the Tenant in this case, as discussed on pp. 18-20 herein.

> "But the exercise or non-exercise by lessor of such right of termination shall not prejudice any other rights which the lessor may have against the lessee hereunder, and shall not operate to relieve the lessee of its obligations to pay rent or of its obligations under any other covenants and agreements herein contained."

In summary, the requirement for any bright line, special language by our courts since Simon in order for a landlord to recover future rents after a lease has been terminated simply does not exist, and in some cases has not been required at all. (See: U.S. Rubber; Camden Inv. Co.) In Richman and Blumberg, where language was present, all that was required was the intention in the lease of the landlord to hold the tenant responsible for future rents. Under the existing language of the subject lease, this intention is clearly stated and should be enforced by the Court. The reservation of the right to collect damages clearly meets this requirement.

B. The Trial Court Properly Ruled That Simon Has Been Modified by United States Rubber Company

The Trial Court held that U.S. Rubber stated the "modern rule" for recovery of damages upon abandonment of a lease by a tenant and that Simon was no longer controlling. A close review of U.S. Rubber and the law in other jurisdictions confirms this was the correct result.

In U.S. Rubber, the parties were disputing the disposition of a $7,000 security deposit under a lease where the landlord was seeking rent due after termination of the lease. The court, citing Simon, found that the relationship of landlord and tenant came to an end upon the tenant's abandonment of the property and default of payment of rent, citing § 27-35-140 and § 27-35-150 of the S.C. Code of Laws (1976). While the Court held the tenant had no further obligation for future rent under Simon, it further ruled the tenant did have a liability for damages under a breach of contract theory. The measure of damages was the rent provided for in the lease under the remaining term, less the monies actually received, assuming the landlord properly mitigated

its damages. U.S. Rubber, 97 S.E.2d at 409. There was no review by the Court of any language in the lease which provided upon the termination, the tenant was still liable or responsible for future rents, as was previously required under Simon. Rents due after termination of the lease were thus recovered by the landlord.

While the Court in U.S. Rubber, nor any other South Carolina appellate court decision, directly states the rule requiring an express reservation of the recovery of future rents in a lease is no longer required, as announced in Simon, the result reached in U.S. Rubber implicitly leads to the conclusion a change in said requirement has been made by our Court. Such a change in our state law has been recognized by at least one other Court. In Schneicker, 732 P.2d at 608, the Colorado court provided a very good summary of the remedies of a landlord upon terminating a lease. The Court noted that U.S. Rubber, and other similar cases, recognized that although the relationship of landlord and tenant may end upon the termination of a lease, the right of the landlord to pursue its contractual remedies for damages clearly survived said termination.

The traditional interpretation of leases as just an interest in real estate when fashioning remedies for a landlord against a tenant in default are now changing. As explained by the Court in Schneicker, 732 P.2d at 607-608,

> "The traditional emphasis of the courts on the lease as a conveyance, to the exclusion of its contractual characteristics, has generated much criticism by commentators. E.g., 1 American Law of Property, supra, § 3.11; Hicks supra; Love, supra; *608 McCormick, The Rights of The Landlord Upon Abandonment Of The Premises By The Tenant, 23 Mich.L.Rev. 211 (1925); Weissenberger, supra. In recognition of the increasing importance of the covenants found in modern leases, as well as the policy of discouraging economic and physical waste, courts in recent times have begun to look to principles of contract law in analyzing the rights and obligations of a landlord and a tenant upon abandonment of premises by a tenant. E.g., Danpar Associates v. Somersville Mills Sales Room, Inc., 182 Conn. 444, 438 A.2d 708 (1980); Wichita Properties v. Lanterman, 6 Kan.App.2d 656, 633 P.2d 1154 (1981); Bernstein v. Seglin, 184 Neb. 673, 171 N.W.2d 247 (1969); Sommer v. Kridel, 74 N.J. 446, 3378 A.2d 767 (1977); MAR-SON, Inc. v. Terwaho Enterprises, Inc., 259 N.W.2d 289 (N.D. 1977); Wright v. Baumann, 239 Or.

410, 398 P.2d 119 (1965); United States Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956)."

The Court in Schneicker, citing U.S. Rubber and other similar cases, found that while the acceptance of surrender or abandonment ends the real property relationship between the parties, it does not impact the contractual remedies available to the landlord for damages.

The myriad problems and pitfalls that exist for a landlord upon the termination of the lease by the tenant upon abandonment, and the application of various remedies, many times inconsistent and conflicting, based upon ancient real property applications have been well documented by commentators. Love, Landlord's Remedies When the Tenant Abandons: Property, Contract and Leases, 30 U. Kan. L. Rev. 533 (1981-1982); Hicks, The Contractual Nature of Real Property Leases, 24 Baylor L. Rev. 443 (1972); Weissenberger, The Landlord's Duty to Mitigate Damages on the Tenant's Abandonment: a Survey of Old Law and New Trends, 53 Temp. L. Q. 1 (1980). As noted by said commentators and the Court in Schneicker, the application of the contractual remedies in the case of an abandonment of a lease by the tenant provides the best balance of equities for the parties to said contract.

In U.S. Rubber our Court has clearly made this transition, although perhaps not as clearly stated or explained as in Schneicker. The Trial Court's reliance on the contractual remedy set forth in U.S. Rubber was thus valid and correct and leads to a fair and equitable result. The Tenant is responsible for only the actual damages sustained by the Landlord when she abandoned the premises.

The arguments of the Tenant in the present case best illustrate the dilemma of a landlord under the outdated Simon rule and the unfair potential result. In this case, Tenant voluntarily moved out, closed her law office, quit paying rent and returned the keys to the Landlord. She

announced directly I am not going to pay rent under the lease. All of the communications from the Landlord confirmed in every instance it intended to hold the Tenant responsible for the future rents (R.p. 59, lines 16-23; pp. 85-89, Ex 2- 5). The Tenant properly mitigated it damages by procuring leases during the remaining term, still being left with a short fall of over $35,000 in unpaid rent. Under the rationale of Simon, these events are to be deemed an "acceptance" by the Landlord of Tenant's "offer" of the return of the premises, the termination of the lease and an "agreement" to release the Tenant from future rents. Such an agreement surely requires the consent of the Landlord, which is clearly not present in this case.

The application of contractual remedies for this clear breach of the lease provides a more realistic, fair result, without the use of legal fictions (ie., acceptance by landlord of return of premises upon condition of no liability by tenant for future rents) that was never intended by the parties. The result proposed by the Tenant is patently unfair to the Landlord. In addition, the application of contractual remedies eliminates the clearly conflicting duties of the Landlord to mitigate its damages by re-letting the premises while at the same time allowing the Tenant possession and control of the premises so future rent can be collected under Simon.

Finally, the Court in Simon clearly stated that the reason or basis the lease was terminated has no bearing on the end result – the landlord cannot recover future rents unless said right is reserved in the lease. Simon, 139 S.E. at 618. Thus, Tenant's effort to reconcile U.S. Rubber with Simon as to the basis for termination are misplaced.

2. The Trial Court's Evidentiary Rulings Were Correct.

Tenant seeks reversal of the Trial Court's decisions based on two evidentiary rulings. As discussed below, both decisions were correct and resulted in no prejudice to the Tenant, even if erroneous.

A. Cross Examination of Landlord as to Existence of Language in Existing Lease

Tenant asserts that the Trial Judge committed reversal error by not allowing her to cross examine the Landlord as to the existence of specific language in the subject lease. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 529 (2000)

It is important to note that the Tenant clearly was seeking only to ask the Landlord to locate in the subject lease specific language concerning remedies upon default. She was not asking any questions about the intention of the parties or the Landlord's interpretation of any provision. This is clear by the following exchange with the Court:

> "Court: You are asking him to read it [lease] to the extent that you want him to find certain passages and read them? I will certainly allow you to do that but as the interpretation of it –
>
> Ms. Prince: I am not asking him for interpretation. I am asking him just strictly, is there a provision here that says – has that contained language to the affect of Landlord is entitled to collect future rents in the event the lease is terminated." (parenthetical matter added) (R.p. 48, line 22 to p. 49, line 10)

The Trial Judge subsequently ruled she could ask the witness to point out such language (R.pp. 50, line 3 to p. 51, line 6). The Trial Judge never prohibited counsel from asking said questions. After this exchange, counsel simply did not ask any further questions on this issue (R.p. 51).

In addition, the lease was in evidence (R.pp. 81-84, Ex. 1), so the Tenant was free to cite any language in the lease (or lack thereof) during argument. There must be some prejudice to the

appealing party to warrant a reversal. Bocook Outdoor Media, Inc. v. Summy Outdoor Advertising, Inc., 294 S.C. 169, 363 S.E.2d 390 (Ct. App. 1987). In this case, there is obviously no prejudice.

B. Two Subsequent Leases Were Not Relevant

Tenant sought to cross examine the Landlord as to the language in two subsequent leases it entered into to mitigate its damages during the remaining term (R.p. 56, line 1 to p. 59, line 15). Specifically, the Tenant asked about changes the Landlord made in the later July, 2010 lease (R.pp. 96-115, Ex. 11) and the July, 2011 lease (R.pp. 118-139, Ex. 13) from the subject lease as to reserving the right to future rents upon termination. The Trial Court properly denied this line of questioning on the grounds of relevance, since the subsequent leases were made years after the subject lease and with totally different parties (R.p. 59, lines 1-13). This ruling was clearly correct.

Relevant evidence has been defined as ". . . evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. It is clear the Trial Court properly determined that the language in the subsequent leases, in which the Tenant was not a party and which were made years later, could not possibly shed any light on the use of the term "damages" in the subject lease, or the intent of the parties under the original lease. In addition, the two leases were already in evidence, thus the Trial Court's ruling had absolutely no impact on the ability of the Tenant to limit or restrict her arguments in this regard. If there is no prejudice, any error is deemed harmless. Bocook Outdoor Media, Inc.

3. Even if This Court Determines The Lease is Ambiguous, the Landlord is Still Entitled to Damages for Future Rents

As an additional sustaining ground under Rule 208(b)(2) SCACR, assuming *arguendo,* this Court finds the lease ambiguous as to the recovery of future rents after termination of the lease, the evidence clearly indicates such an intention by the parties themselves was present. It is well established that when a contract is found to be ambiguous, the interpretation and construction used by the parties themselves is entitled to great, if not controlling influence. Stackhouse v. Pure Oil Co., 176 S.C. 318, 180 S.E. 188, 196 (1935); Langston v. Niles, 265 S.C. 445, 219 S.E.2d 829 (1975). As noted by the Trial Court, it is absolutely clear that both Landlord and Tenant understood the Tenant was responsible for future rents after she voluntarily vacated the premises. (R.p. 9, Order, §§ 18-19)

On December 18, 2009, when the Tenant notified the Landlord she was vacating the property (R.p. 33, lines 5-23; p. 85, Ex. 2), she confirmed her understanding of her liability for future rents, by the following statement:

> "I hope that you and I will be able to work something out amicably, because I realize that the lease will not expire for another year * * * I will also keep my eyes and ears open for anyone who may want the space."

In the Landlord's response on the same date (R.p. 33, line 24 to p. 34, line 11; p. 85, Ex.2), he clearly confirmed his intention to hold the Tenant liable for the entire remaining term, with the following language:

> "As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. I have not pressed you for the full rent since Miguel moved, but I am not willing to forgive the balance of the lease." (emphasis added)

In the February 26, 2010 ten day notice to pay or quit (R.p. 86, Ex. 3), the Landlord specifically advised the Tenant she was still obligated for all future rents (R.p. 34, line 21 to p. 35, line 11). Said letter reads in part as follows:

> "In the event you do not satisfy all the requirements of this ten (10) day notice by paying the amount set forth below and do either voluntary or by court leave the premises, you will still be obligated or responsible for payment of monies set forth below, together with all additional costs, legal fees, expenses and **rents that continue to accrue under the term of the lease** because of nonpayment.
>
> Furthermore, if you do not pay the rent within this ten (10) day period and do not quit the premises, legal action will be instituted for possession of the premises referenced above **plus rent**, attorneys fees and other costs." (emphasis added)

In the March 28, 2010 memo from Landlord's counsel to the Tenant, in Paragraph 2 it was again confirmed that the Landlord was seeking rent for the remaining term of the lease (R.p. 88, Ex. 4, § 2). The Tenant's response of the same day does not dispute she owes rent for the remaining term (R.p. 36, line 14 to p. 37, line 6; p.89; Ex. 5). She states as follows:

> "I am happy to assist in getting the place rented, however, I am simply unable to pay the back rent or else I would pay it."

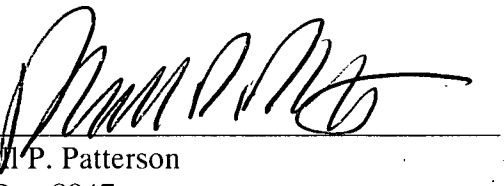
Thus, at no time did the Tenant ever state she was not responsible for future rents, only that she had no monies. If she did not believe she was responsible for said rents, there would be no reason for her to seek new tenants for the space, as she did after she vacated (R.p. 60, line 22 to p. 61, line 12), or to try and "work something out amicably" (R.p. 85, Ex. 2). The Landlord at no time ever indicated he was taking back control of the property with no expectation of payment of future rents.

The subsequent actions of both parties are entirely consistent with the construction of the lease that it was the intention of the parties for the Tenant to be responsible for rents after she vacated.

CONCLUSION

The Trial Court reached the correct result, whether this Court finds the appropriate standard for recovery is as stated in Simon or U.S. Rubber. The lease unambiguously states the Landlord can recover all damages after termination of lease, which clearly includes rent. The evidentiary issues raised by Tenant have no merit. The Trial Court's decision should be affirmed.

RUSSELL P. PATTERSON, P.A.



Russell P. Patterson
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorney for Respondent

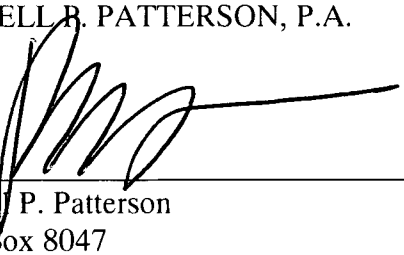
January 7, 2014

F:\Russell\Watson-Paul\Appeal\Initial Brief of Respondent 8-7-13.doc

Counsel for the Respondent, Bluffton Towne Center, LLC, hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

RECEIVED
JAN 09 2014
SC Court of Appeals

RUSSELL P. PATTERSON, P.A.



Russell P. Patterson
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorney for Respondents

January 8, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JAN 09 2014
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and
Beaufort County Special Court Judge

Case No. 2012-CP-07-1530
Court of Appeals Number:
2013 - 000305

Bluffton Towne Center, LLC,

Respondent,

v.

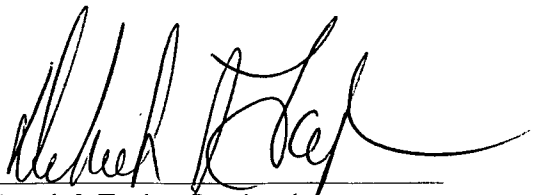
Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Anne Gilleland, LLC,

Appellant.

PROOF OF SERVICE

I certify that I have served three (3) copies of the Final Brief of Respondent, on the Appellant by depositing said copies of it in the United States Mail, postage prepaid, on January 8, 2014, addressed to its attorney of record as follows:

Beth Ann Prince
P.O. Box 2797
Bluffton, SC 29910



Deborah J. Taylor, Paralegal to
Russell P. Patterson
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
Attorneys for Respondent

January 8, 2014

F:\Russell\Watson-Paul\Appeal\Proof of Service 1-6-14.doc