

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from CHARLESTON COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

CASE NO. 2014-CP-10-04340  
Appellate Case No.: 2018-001089

Gwendolyn Brown, individually, and as natural guardian of Qunintez Lee Sapp, Deville Kiez Simmons, Haroldlett Uneke Simmons, and Glenn Simmons , Plaintiffs,

Of Whom Gwendolyn Brown, Deville Kiez Simmons, Haroldlett Uneke Simmons  
are..... Appellants,

v.

Housing Authority of the City of Charleston, South Carolina, .....Respondent

RECORD ON APPEAL

**RECEIVED**

AUG 27 2019

SC Court of Appeals

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF CHARLESTON ) CIVIL ACTION NO: 2014-CP-10-04340

GWENDOLYN BROWN, individually, )  
 and as natural guardian of QUINTEZ )  
 LEE SAPP, DEVILLE KIEZ )  
 SIMMONS, HAROLDETT UNEKE )  
 SIMMONS, and GLENN SIMMONS, )

Plaintiffs, )

vs. )

HOUSING AUTHORITY OF THE )  
 CITY OF CHARLESTON, SOUTH )  
 CAROLINA, )

Defendant. )

**ORDER**

2018 MAY -7 AM 11:16  
 JULIE M. WOODRUFF  
 CLERK OF COURT

FILED

THIS MATTER COMES BEFORE ME on Defendant Housing Authority of the City of Charleston, South Carolina Motion for Summary Judgment filed December 19, 2016 on the grounds that the Plaintiffs failed to file this action within the applicable statute of limitations. Present at the time of the hearing on February 7, 2018 were J. Seth Whipper, counsel for Plaintiffs and William Cox of Howell, Gibson & Hughes, P.A., counsel for Defendants. For the reasons below, I hereby grant Defendants Motion for Summary Judgment in part and deny in part.

**BACKGROUND**

The Plaintiffs filed the Summons and Complaint on August 4, 2010 and the Amended Summons and Complaint was filed on August 17, 2010. This action was dismissed pursuant to SCRPC Rule 40(j) and then reinstated on November

15, 2013. The Plaintiffs then filed a Second Amended Complaint on August 14, 2017.

The Plaintiffs' Second Amended Complaint alleges that from 2003 to 2009, the Plaintiffs resided in a housing unit owned and operated by the Defendant.

Plaintiff Gwendolyn Brown alleges that she fell through the floor located in the foyer area of her home upon entering the front door on August 9, 2007. Plaintiff Gwendolyn Brown further alleges that this fall resulted in a loss of consciousness and a strained ankle.

All of the Plaintiffs allege that they have suffered various "irritations, discomfort, and restrictions" as a result of their exposure to mold that allegedly existed in the housing unit. The Plaintiffs allege in their Second Amended Complaint that they first became aware of the mold and the connected problems therewith upon the diagnosis of Plaintiff Quintez Sapp, in or about the month of February 2008. All of the Plaintiffs allege they developed symptoms they connect to the presence of mold.

The Plaintiffs have brought causes of action for breach of promise, violations of S.C. Code 27-40-10 et. seq., negligence, and gross negligence.

#### **STANDARD OF REVIEW**

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The plain language of

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and a on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 116 (1991), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Singleton v. Sherer*, 377 S.C. 185, 197-98 (Ct. App. 2008). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 214 (Ct. App. 2005). Materials used to refute a motion for summary judgment must be those which would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002).

### **ANALYSIS**

Plaintiff Gwendolyn Brown alleges that she fell through the floor in her foyer on August 9, 2007. (Second Amended Complaint p. 3). Pursuant to the South Carolina Tort Claims Act, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the

loss was or should have been discovered. S.C. Code Ann. § 15-78-110. According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citing *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989)). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Id.* (citing *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993)). Here, Gwendolyn Brown knew or should have known that her cause of action arose as a result of her fall on August 9, 2007. Therefore, pursuant to the South Carolina Tort Claims Act and applicable case law, I find the Plaintiff Gwendolyn Brown's claims relating to the fall are barred as she did not file the present action until August 4, 2010 which is outside the applicable two-year statute of limitations. For these reasons, I grant the Defendant summary judgment with respect to Plaintiff Gwendolyn Brown's fall claim.


The Plaintiffs state in their Second Amended Complaint that they first became aware of the alleged effects of the mold in or about February 2008. (Second Amended Complaint p.4). However, on October 4, 2007, attorney Anne L. Peterson-Hutto, wrote a letter on behalf of the Plaintiffs addressed to the Defendant stating that Plaintiffs were aware of the medical conditions they "suffered as a result of mold exposure since they moved in their residence." This letter shows the Plaintiffs had notice of their right to a cause of action and thus the Plaintiffs statute began to run on or before October 4, 2007. However, even

using the Plaintiffs' date of February 2008, Plaintiffs Gwendolyn Brown (DOB 9/28/63), Deville Simmons (DOB 5/9/88), and Haroldlett Simmons (DOB 7/3/89) failed to comply with the applicable two-year statute of limitations. Therefore, pursuant to the South Carolina Tort Claims Act and applicable case law stated above, I find the claims of Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons relating to the alleged mold are barred. Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons did not file the present action until August 4, 2010, which is outside the applicable two-year statute of limitations, and I therefore grant the Defendant summary judgment with regard to their claims.

Plaintiffs Quintez Sapp with a date of birth of May 3, 1995 and Glenn Simmons with a date of birth of October 24, 1991 were both minors when the alleged mold exposure occurred in February 2008. S.C. Code Ann. § 15-78-110 allows for their claims to be tolled until they reach the age of eighteen years old. Therefore, their claims are not barred by the statute of limitations.

Taking into consideration the pleadings and the arguments presented at the time of the hearing, I hereby grant the Defendant's motion for summary judgment as to Plaintiffs Gwendolyn Brown, Deville Simmons and Haroldlett Simmons claims and order their claims be dismissed. I deny the Defendant's motion for summary judgment as to the Plaintiffs Quintez Sapp and Glenn Simmons claims as their claims were timely filed given that they were minors when the cause of action arose. It is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendants Motion for Summary Judgment as to the claims of Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons is GRANTED and their claims are dismissed. The Defendant's Motion for Summary Judgment as to the claims of Quintez Sapp and Glenn Simmons is DENIED.  
IT IS SO ORDERED.

By:   
Larry B. Hyman, Jr.  
Judge, Fifteenth Judicial Circuit

Cerusey, South Carolina  
March 14, 2018.

1 STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) COURT OF COMMON PLEAS  
2 ) 2014-CP-10-04340  
3 )  
4 )  
5 Gwendolyn Brown, et. al. ) TRANSCRIPT OF RECORD  
vs. )  
6 Housing Authority of the City )  
of Charleston, SC )  
DEFENDANT ) February 7, 2018  
7 Charleston, SC

8  
9 B E F O R E:

10 THE HONORABLE LARRY B. HYMAN, JR.  
11

12  
13 A P P E A R A N C E S:

14  
15 J. SETH WHIPPER, ESQ.  
Attorney for the Plaintiff  
16

17  
18 WILLIAM H. COX, III, ESQ.  
Attorney for the Defendant  
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20  
21  
22  
23 KESHIA REED  
Official Court Reporter  
24

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I N D E X

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(WHEREUPON, no witnesses were called.)

1 THE COURT: All right. Brown vs. Housing  
2 Authority. Mr. Whipper. Mr. Cox. Mr. Achurch. All  
3 right. Tell me what this is about please?

4 MR. COX: Your Honor, may it please the Court.

5 THE COURT: How are you, Mr. Achurch, is that  
6 it?

7 MR. COX: I'm Mr. Cox.

8 THE COURT: Mr. Cox. And you from here in  
9 Charleston?

10 MR. COX: No, sir, I'm down in Beaufort, South  
11 Carolina.

12 THE COURT: Beaufort, okay. I thought they took  
13 out some bridges and all to keep you all from coming up  
14 here to Charleston.

15 MR. COX: I swim.

16 THE COURT: All right. And who are you with,  
17 Mr. Cox?

18 MR. COX: Howell Gibson and Hughes.

19 THE COURT: I don't believe we've met, but it's  
20 good to see you, okay. How about Mr. Achurch?

21 MR. COX: He's one of my bosses.

22 THE COURT: Okay. So he's just -- you're all  
23 together same defendant; is that right?

24 MR. COX: Yes, Your Honor.

25 THE COURT: And, of course, we got Mr. Whipper

1 over here. All right. Now, let's -- tell me -- it looks  
2 like it's your motion.

3 MR. COX: That's correct, Your Honor.

4 THE COURT: Tell me what you got, Mr. Cox?

5 MR. COX: Your Honor, this is our motion for  
6 summary judgment. I submitted a brief on how to get  
7 through it in detail, but essentially ---

8 THE COURT: Well, I did not get a brief from  
9 you. My law clerk is not here today, but she was rounding  
10 up everything she could.

11 MR. COX: May I approach, Your Honor?

12 THE COURT: I have a Human Affairs Commission  
13 but -- thank you.

14 MR. COX: We e-mailed it last week.

15 THE COURT: She's good about that. I'm looking  
16 here to see. Nope, go a head.

17 MR. COX: All right. Well, this case was  
18 brought back on August 4th 2010 against the Housing  
19 Authority for the City of Charleston. The plaintiffs --  
20 and we acquired this case in 2016 from another defense  
21 attorney, Your Honor. It was 40J in 2013 and then it was  
22 brought back subsequently and the plaintiffs filed a  
23 second amended complaint in 2017. Essentially, they're  
24 alleging that they lived in the City of Charleston Housing  
25 Authority unit from 2003 to 2009. And during that period,

1 Plaintiff Gwendolyn Brown she fell and in 2007 sustained  
2 injuries as a result of that fall. And then all five of  
3 the plaintiffs allege that in about February of 2008, they  
4 started noticing that they were suffering from alleged  
5 exposure to mold, that it was present in the unit. And  
6 the main basis for our motion for summary judgment, Your  
7 Honor, is based off of statute of limitations. The  
8 Housing Authority is a governmental entity that is  
9 afforded the Tort Claims Act. The Torte Claim Act is a  
10 two year statute of limitations.

11 Ms. Brown fell on August 9th 2007. Case law  
12 states that she had reason to know about her cause of  
13 action on or about August 9th 2007. The claim wasn't  
14 brought until August 4, 2010. We submit that she is  
15 barred from recovery under the two year statute of  
16 limitations with regard to the cause of action regarding  
17 the mold exposure. The plaintiffs admit in their second  
18 amended complaint that they were exposed to mold on or  
19 about February of 2008. Again, their cause of action  
20 weren't for brought until August 4, 2010. We submit that  
21 Plaintiff's Gwendolyn Brown and Plaintiff Deville Simmons  
22 and Plaintiff Haroldlett Simmons did not meet that statute  
23 of limitations and their claims are thus barred.

24 In addition, Your Honor, we submit that the  
25 evidence on the record does not support their cause of

1 action for the mold. The plaintiffs treating physician  
2 Dr. Gerber in her deposition testimony she testified that  
3 Ms. Brown while she believed that she suffered allergies  
4 related to mold that in fact she actually suffered  
5 allergies related to dust mites and cockroaches.

6 With regard to Plaintiff Deville Simmons, Dr.  
7 Gerber testified that she did not treat Mr. Simmons. And  
8 Mr. Simmons did not submit any other evidence that he  
9 sought treatment or had any other damage related to the  
10 mold exposure. With regard to Plaintiff Haroldlett  
11 Simmons, she did go see Dr. Gerber. However, she was not  
12 able to be tested and she no longer -- she did not follow  
13 up with Dr. Gerber. So Dr. Gerber testimony is that she  
14 did not treat Ms. Haroldlett Simmons. And Ms. Haroldlett  
15 Simmons also has not submitted any evidence of any  
16 injuries or any other treatment relating to the mold  
17 exposure.

18 With regards to Plaintiff Quintez Sapp and  
19 Plaintiff Glenn Simmons, they were treated by Dr. Gerber.  
20 However, neither of them suffered any allergies related to  
21 mold. So the only evidence from the treating physician on  
22 the record, Your Honor, is such that none of the  
23 plaintiffs had any mold allergies or they weren't treated  
24 for mold allergies. In addition to Dr. Gerber's  
25 testimony, when Ms. Brown originally complained about the

1 mold in her unit in 2008, the Housing Authority hired mold  
2 detector in Mount Pleasant. And they came out and  
3 conducted a study of the house to see if there was indeed  
4 an elevated level of mold in the unit. Mr. Higgs runs  
5 Mold Detector. We took his deposition. He testified that  
6 there was not an elevated level. There's also a report  
7 from Mr. Higgs that's attached to this brief, Your Honor,  
8 and that report details all his findings. There were  
9 certain levels of mold present at the house, but they  
10 weren't elevated. There was more mold outside the unit  
11 than there was inside. Mr. Higgs testified that that's  
12 just common practice here in the low country due to our  
13 humid environments that there's mold everywhere.  
14 Dr. Gerber also testified that there's mold everywhere.  
15 And so the fact that there was a little bit of mold in the  
16 house, we submit that it's not negligent on behalf of the  
17 Housing Authority. They came in. They cleaned it with a  
18 bleach solution. They repainted it. But again first and  
19 foremost, Your Honor, it's our position that this claim  
20 wasn't brought timely and is barred by the statute of  
21 limitations and as such summary judgment should be granted  
22 to the Housing Authority.

23 THE COURT: All right. Mr. Whipper.

24 MR. WHIPPER: May it please the Court, your  
25 Honor. I'm Seth Whipper for the plaintiffs. Your Honor,

1 I think I want to start here. May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. WHIPPER: One of the questions you always  
4 going to ask is is there mold present. I like to ask the  
5 Court to take a look at those pictures. And clearly what  
6 we see is that premises is overrun with mold. And, of  
7 course, discussions that Mr. Cox is making them these  
8 aren't the fact that Ms. Brown and her family were treated  
9 by another physician.

10 THE COURT: That be Dr. LeBruce.

11 MR. WHIPPER: And that be Dr. LeBruce. And I  
12 think, Your Honor, let's see I think at the very end of  
13 each one of these tabs we see that Dr. LeBruce treated  
14 this family for the effects of mold and other  
15 environmental allergies. And I want you to also note,  
16 Your Honor, that if you would look under tab two Dr.  
17 Gerber herself, who is one of the treating physicians, did  
18 author letters indicating that she was treating Ms. Brown  
19 and her family for the effects of mold. Now, part of her  
20 deposition includes the admission by her that there were  
21 shots given for mold and that Ms. Brown and children are  
22 often blood tested even though some of them are taking  
23 other kinds of medications.

24 THE COURT: All right. Mr. Whipper, I think  
25 that you have a established that there's a material issue

1 of fact. You have other doctors who have treated, but get  
2 me past the statute of limitations because that's what I'm  
3 looking at. I look at this ---

4 MR. WHIPPER: It's not such a big problem,  
5 Judge.

6 THE COURT: And it would say that Ms. Brown was  
7 tested in February and Mr. Simmons, Ms. Sapp was tested in  
8 February and March. When was the action filed?

9 MR. WHIPPER: The action was initially filed,  
10 Your Honor, in 2010. I think August 4th.

11 MR. COX: That's correct, Your Honor.

12 THE COURT: Okay. Now, get me past the statute  
13 of limitations, two year statute for the Tort Claims Act.

14 MR. WHIPPER: Well, part of this action is pled  
15 under the Landlord Tenant Act.

16 THE COURT: Under the what? Landlord Tenant  
17 Act, okay.

18 MR. WHIPPER: Yes, sir. And fundamentally that  
19 act it's not -- it's got a history, but it says in its  
20 plain language that if the landlord violates the lease  
21 agreement or violates certain statutes, then they would be  
22 liable or at least the tenant can bring an action for  
23 damages, actual damages.

24 THE COURT: And what's the statute under that?  
25 What's statute of limitations on that?

1 MR. WHIPPER: That would be three years.

2 THE COURT: Okay. All right. Now, counsel what  
3 do you say about that?

4 MR. COX: Your Honor, his claim under the  
5 Landlord Tenant Act is one of torte. They claim that she  
6 fell. She tripped over a hole and fell and suffered  
7 damages therefrom, that's a tort. They claim that they  
8 were exposed to mold and they suffered damages, that's a  
9 torte. So he has named a Landlord Tenant Act a violation,  
10 but we would submit that the South Carolina Torte Claims  
11 Act governs because we're a governmental entity and we're  
12 afforded those protections and exceptions therein and as  
13 such is a two year statute of limitation.

14 THE COURT: Okay. How is it not still  
15 controlled, Mr. Whipper, by the Torte Claims Act?

16 MR. WHIPPER: Your Honor, let me give you some  
17 language and I'm going to get right to that, but there's a  
18 little foundation. Under 27-40-610, there's several  
19 options that a tenant can take, and it says here in option  
20 B except as provided in this chapter. The tenant may  
21 recover actual damages and obtain injunctive relief in the  
22 magistrate's court or circuit court for any non-compliance  
23 by the landlord with the rental agreement or another  
24 section 27-40-440, okay, except as provided in this  
25 chapter number one. And number two again it sounds sort

1 of tortish. You heard the language it says a violation of  
2 the lease, that's contract. And then even if you're  
3 non-compliance with 27-40-440, you're still dealing with a  
4 statute that's a general statute. I'm sorry, Your Honor,  
5 you're dealing with a statute that's dealing with landlord  
6 tenants relationships, okay. I'll get you there. So when  
7 you look at 27-40 et cert Residential Landlord Tenant Act  
8 it has certain things that are excluded from the coverage  
9 of the act. None of which include public (inaudible).  
10 And even if you look at the Torte Claims Act it reserves  
11 nothing for relationship of landlord tenant, okay. Now,  
12 here is why I'm standing here. This is where we are. We  
13 have two statutes that obviously control this particular  
14 action, but the one that really controls it is the  
15 residential Landlord Tenant Act why because it is a  
16 specific statute. And under our law, South Carolina two  
17 things in the case of -- Judge, you might remember this  
18 case Whitner vs. State where we're dealing with the  
19 mothers who had cocaine in their system.

20 THE COURT: Right, it's an Horry County case.

21 MR. WHIPPER: May I approach, Your Honor?

22 Whitner makes it clear in interpreting a statute this  
23 court's primary function is to ascertain intent of the  
24 Legislature. Of course, where a statute is complete, plain  
25 and unambiguous legislative intent must be determined from

1 the language of the statute itself. We should consider,  
2 however, not merely the language of a particular clause  
3 being construed of the word and its meaning in conjunction  
4 with a purpose of the whole statute and the policy of the  
5 law. So the Landlord Tenant Act is all about landlords  
6 and tenants. And even though we have this -- and I can  
7 tell you, Judge, this sort of developed almost at the same  
8 time if you look at history. So it's not like the General  
9 Assembly didn't know what they were doing. So now here we  
10 are and this statute's real clear says what it says. It  
11 doesn't allow for the application of this act 27-46-10,  
12 27-40-610 et. cert. includes -- does not exclude public --  
13 does not exclude it, so it's included.

14 So then the Landlord Residential Tenant Act is  
15 about the landlord tenant relationship. It's very  
16 specific. It's very limited. Even under the code section  
17 that I have mentioned, which is 27-40-610. I can't sue a  
18 landlord for anything other than that. I have to sue him  
19 according to what may have happened in the relationship of  
20 the tenant and the landlord specifically, very specific.

21 Now, when you look at the landlord tenant --  
22 when you look at the Torte Claims Act, any kind of action  
23 I can think of almost except for maybe outrage a few  
24 others, I can sue for anything under that particular code  
25 section. But when it comes to the landlord tenant

1 relationship, I got to use this. This controls it. So  
2 now here's the bridge ---

3 THE COURT: Tell you what I'm going to do, I'm  
4 going to let you two brief that issue for me. I will give  
5 you 30 days to submit it. Let's look at the other motions  
6 we have, okay. The motion to compel what is that about?

7 MR. WHIPPER: Now, Judge, I needed -- in order  
8 to prepare the case because you understand too, Your  
9 Honor, I have more than one cause of action I'm basing  
10 this thing off. So I ask for information regarding the  
11 history of a particular unit and I got stonewalled,  
12 nothing at all, Your Honor ---

13 THE COURT: You talking about the existence of  
14 mold?

15 MR. WHIPPER: Well, Your Honor, I needed to know  
16 what was the repairs issues since she left, who was the  
17 person who lived there after they left. I want to know  
18 what was the market value because if I'm dealing with a  
19 contract issue, I need to be in a position to deal with  
20 diminution of value and some other matters like that. And  
21 so we needed to have under guidelines they have a market  
22 value designation for a unit and to give them years that's  
23 been offered and so we needed to know that and ultimately  
24 to determine what is the price of this product that I'm  
25 not getting. I got nothing on that at all, Your Honor.

1 So then in order to do that on my own then, I needed to  
2 get somebody in there to look at the unit, appraise it,  
3 walk it through, square feet it off and look at the  
4 dimensions and let's see what we got. I got no response.

5 THE COURT: How about that counsel? Did you do  
6 a privilege log? Have you alleged that anything was  
7 confidential or privileged?

8 MR. COX: Your Honor, with regard to his  
9 request, he knows how much the value of the apartment was.  
10 His tenant, his plaintiff she paid her monthly rent. In  
11 regards to asking for the names and addresses of former  
12 tenants, we're not allowed to provide that information for  
13 privacy reasons. I have with me here Ms. Melissa Maddox  
14 Evans from the Housing Authority. She can probably give  
15 more detail in why she can't provide that.

16 THE COURT: Well, tell me why you cannot comply  
17 with this court's discovery rules? I mean, tell me why?

18 MR. COX: We can comply, Your Honor, if you deem  
19 that we need to provide it.

20 THE COURT: Well, there you go give him the  
21 answers, okay.

22 MR. COX: All right.

23 THE COURT: All right. So I want you to respond  
24 to his discovery. Now, we have a motion for sanctions by  
25 the defendants.

1 MR. COX: Correct, Your Honor. Part of the  
2 agreement for plaintiff to file a second amended complaint  
3 in 2017 was that he would make Ms. Brown available for a  
4 deposition. As I previously mentioned, we acquired this  
5 case from another law firm. We were not present at her  
6 first deposition. Mr. Whipper agreed to make her  
7 available. We noticed it. We set it. We traveled all  
8 the way to Reidsville, North Carolina. Mr. Whipper and I  
9 were both there and Ms. Brown would not come because she  
10 just didn't want to be deposed that day. And so I filed  
11 for sanctions asking that the Court order the plaintiff  
12 to re-compensate ---

13 THE COURT: Okay. Why didn't she show up, Mr.  
14 Whipper?

15 MR. WHIPPER: Your Honor, Ms. Brown's suffer  
16 with a form of agoraphobia. And how it was explain to me  
17 she had a panic attack and right now that has been my  
18 problem with her. That's also why we haven't been able to  
19 reschedule because of that fact.

20 THE COURT: Well, why do you requesting  
21 sanctions?

22 MR. WHIPPER: I want to say something else on  
23 that.

24 THE COURT: Okay. All right.

25 MR. WHIPPER: The other thing is this, Your

1 Honor, she was deposed before. The agreement is that the  
2 deposition has to be about the latest cause of action that  
3 was added. It's not to go all over into everything and so  
4 that's part of it as well. This is about the negligence  
5 claim that we have added based on the actions that  
6 occurred in August of 2008. So that's where we are, but  
7 right now we've had two things we've had her emotional  
8 state as well as she has had some back surgery and that's  
9 why she's not here now. She lives now up near the  
10 Virginia North Carolina boarder. She has been restricted  
11 from how she travels. And so I brought some doctor's  
12 information on that.

13 MR. COX: We've offered to take her deposition  
14 over the phone numerous times.

15 THE COURT: Well, I tell you what, Mr. Whipper,  
16 if you will make her available for Skype deposition or  
17 whatever you want to call it within the next 30 days, I  
18 will defer any sanctions, okay.

19 MR. WHIPPER: Yes, sir, Your Honor.

20 THE COURT: All right. Now, the defendant's  
21 motion to dismiss for failure to prosecute.

22 MR. COX: We agree to withdraw that and have our  
23 motion for summary judgment heard today, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. WHIPPER: And so, Your Honor, I need to get

1 that brief to you in how many?

2 THE COURT: Thirty days.

3 MR. COX: Thirty days.

4 END OF REQUESTED TRANSCRIPT

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 GWENDOLYN BROWN, individually, )  
 and as natural guardian of )  
 QUINTEZ LEE SAPP, )  
 DEVILLE KIEZ SIMMONS )  
 HAROLDLETT UNEKE SIMMONS, and )  
 GLENN SIMMONS, )  
 )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HOUSING AUTHORITY OF THE CITY OF, )  
 CHARLESTON, SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10- 6314

SUMMONS  
 (Breach of Promise)  
 (Violation S.C. 27-40-10 et. seq.)  
 (Negligence)

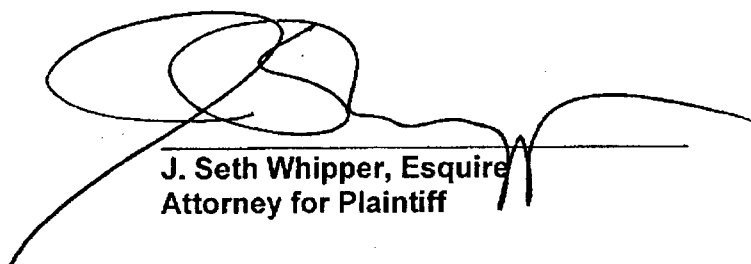
FILED  
 2010 AUG -4 PM 3:12  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff or Plaintiff's Attorney, J. Seth Whipper, 4592 Durant Avenue, North Charleston, South Carolina, 29405, within thirty (30) days after the service hereof, exclusive of the day of such service.

**YOU ARE HEREBY GIVEN NOTICE FURTHER** that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of service, judgment by default will be entered against you for the relief demanded in the Complaint.

DATED at North Charleston, South Carolina, this 4<sup>th</sup> day of August, 2010.

  
 J. Seth Whipper, Esquire  
 Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 GWENDOLYN BROWN, individually, )  
 and as natural guardian of )  
 QUINTEZ LEE SAPP, )  
 DEVILLE KIEZ SIMMONS, )  
 HAROLDLETT UNEKE SIMMONS, and )  
 GLENN SIMMONS, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HOUSING AUTHORITY OF THE CITY OF, )  
 CHARLESTON, SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10- 6314

COMPLAINT  
 (Breach of Promise)  
 (Violation S.C. 27-40-10 et. seq.)  
 (Negligence)

FILED  
 2010 AUG -4 PM 3:12  
 JULIE J ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

COMES NOW, Plaintiffs, GWENDOLYN BROWN et. al., complaining and alleging as follows:

**FIRST CAUSE**  
**(Breach of Promise)**

1. Plaintiff Gwendolyn Brown is a resident of the State of South Carolina and a homemaker for herself and Plaintiffs Quintez Sapp, Glenn Simmons, Deville Kiez Simmons, Haroldlett Uneke Simmons, who reside with her; and from 2003 until 2009 they lived at 275-H Huger Street, Charleston, South Carolina in a Charleston Housing Authority dwelling unit.
2. Defendant, Housing Authority of the City of Charleston, South Carolina (hereinafter, "Housing") is a governmental entity governed by seven commissioners selected by the Mayor and City Council that provides affordable housing to citizens receiving low or moderate income, and, upon belief and information, provides a substantial amount of housing in the City of Charleston, South Carolina.
3. Housing promised and warranted to provide reasonably safe residential facilities to Plaintiffs and guests, and other invitees of their facilities; more specifically, Housing induced and encouraged Plaintiffs to rely on Housing's promises to do whatever was reasonably necessary to put and keep their premises in a fit and

habitable condition.

4. On August 9, 2007, Plaintiff Gwendolyn Brown fell through the floor located in the foyer area of her home upon entering her front door; Plaintiff Brown, while under no influence of alcohol or medication, was exercising her right as a reasonable resident under the circumstances: Plaintiff Brown at all times fulfilled her obligations to maintain her dwelling unit.

5. The impact of Plaintiff's body falling through the floor resulted in loss of consciousness and a strained ankle with additional soreness and stiffness to other areas of the body.

6. Plaintiff Brown has suffered pecuniarily, physically, and emotionally from this incident, and relied to her detriment upon the promises of Defendant.

7. This incident occurred after numerous complaints were made over a period of two (2) years to those persons responsible for the maintenance, repair, furnishing, and supervision of the homes provided through Housing. The above-mentioned did not make the necessary and reasonable efforts to assist, repair, and protect Plaintiff relative to the harm that befell her.

8. Defendant's breaches of promise are the direct and proximate cause of the Plaintiff's damages and losses; Plaintiff desires to be compensated for her damages, and, upon information and belief, she is entitled to receive such compensation.

9. Moreover, in or about February, 2008; Ms. Brown was informed that her youngest child, Quintez Sapp was suffering from skin and membrane irritations resulting from exposure to mold and an immediate environment that hosts mold.

10. In the subsequent days and months, Ms. Brown and all of her children began to recognize and experience various irritations, discomfort, and restrictions as a result of their exposure to the mold and the immediate host environment.

11. Plaintiff had notified the Defendant of the presence of an unusual substance but Defendant did not keep the promise to do whatever was reasonably necessary to keep the subject unit in a habitable condition.

12. Plaintiffs relied to their detriment on the promises and inducements of the Defendant to put and keep its premises in a fit and habitable condition.

13. Defendant's breaches of promise are the direct and proximate cause of the Plaintiffs' damages and losses and a natural, and anticipated consequence of the breaches; Plaintiffs desire to be compensated for their damages and losses, and, upon information and belief, they are entitled to receive such compensation.

### **SECOND CAUSE**

**(Violation S.C. 27-40-10 ct. seq.)**

14. Plaintiffs reallege each and every allegation of their First Cause as if fully alleged herein and incorporated the same by reference.

15. S.C. Code sec. 27-40-4-40 requires a landlord to maintain the leased premises in an apartment unit such as the subject premises.

16. Plaintiffs at all times maintained their unit in the manner intended.

17. Defendant's violations are the direct and proximate cause of Plaintiffs' damages and losses and a natural and anticipated consequence; Plaintiff desires to be compensated for their damages, and, upon information and belief, Plaintiffs are entitled to receive such compensation.

### **THIRD CAUSE**

**(Negligence)**

18. Plaintiffs, except Gwendolyn Brown, reallege each and every allegation of their First and Second Causes as if fully alleged herein and incorporates them by reference.

19. Housing has a duty to provide reasonably safe residential facilities to its residents, guests, and other invitees. Housing has a duty to warn, inform, inspect, and protect its residents and guests of its facilities off/from dangerous and/or hazardous conditions present and existing on and about the residential facilities and areas under Housing's control.

20. Defendant failed to exercise that degree of care required under its duties including but not limited to the following:

a) failing to properly respond to the maintenance request of Plaintiff

Brown;

- b) failing to properly inspect the living quarters of Plaintiffs' home;
- c) failing to adequately remove and detect the presence of the mold located in Plaintiffs' home;
- d) failing to properly monitor and supervise personnel responsible for the maintenance, layout, and furnishing of the subject area;
- e) failing to properly train and select the personnel responsible for managing the subject area;
- f) any other failures that a reasonable property owner or tenant would avoid to provide a safe and secure facility for residents, guest, or other invitee.

21. Defendant's failures, acts, and omissions are the direct and proximate cause of Plaintiffs' injuries, harm, and losses; Plaintiffs desire to be compensated for their damages, and, upon information and belief, they are entitled to receive such compensation.

**WHEREFORE**, Plaintiffs pray that this Court grant the following relief:

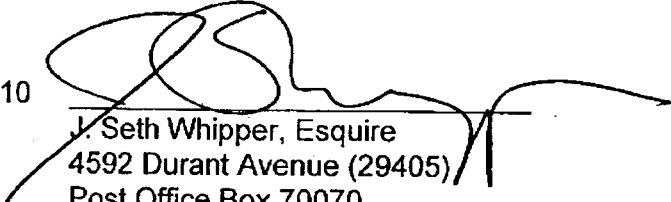
- 1) Compensation for all actual damages incurred by the Plaintiffs, including pain and suffering, loss of quiet enjoyment;
- 2) Defendant properly outfit, maintain, and supervise the subject residential area;
- 3) Defendant provides such other relief as is just and proper.

WHIPPER LAW FIRM

Attorney for Plaintiff

August 4

, 2010

  
J. Seth Whipper, Esquire  
4592 Durant Avenue (29405)  
Post Office Box 70070  
North Charleston, South Carolina 29415  
843/ 740-7777  
843/ 740-9108 FAX  
jsw@whipperlaw.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

GWENDOLYN BROWN, individually,  
and as natural guardian of  
QUINTEZ LEE SAPP,  
DEVILLE KIEZ SIMMONS  
HAROLDLETT UNEKE SIMMONS, and  
GLENN SIMMONS,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE CITY OF,  
CHARLESTON, SOUTH CAROLINA  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-6314

FILED  
2010 AUG 17 2 10 PM  
JULIE A. HARRIS, CLERK  
COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT


AMENDED SUMMONS  
(Breach of Promise)  
(Violation S.C. 27-40-10 et. seq.)  
(Negligence)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff or Plaintiff's Attorney, J. Seth Whipper, 4592 Durant Avenue, North Charleston, South Carolina, 29405, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of service, judgment by default will be entered against you for the relief demanded in the Complaint.

DATED at North Charleston, South Carolina, this 17<sup>th</sup> day of August, 2010.



J. Seth Whipper, Esquire  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
GWENDOLYN BROWN, individually, )  
and as natural guardian of )  
QUINTEZ LEE SAPP, )  
DEVILLE KIEZ SIMMONS, )  
HAROLDLETT UNEKE SIMMONS, and )  
GLENN SIMMONS, )  
  
Plaintiffs, )  
  
vs. )  
HOUSING AUTHORITY OF THE CITY OF, )  
CHARLESTON, SOUTH CAROLINA )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-6314

AMENDED COMPLAINT  
(Breach of Promise)  
(Violation S.C. 27-40-10 et. seq.)  
(Negligence)

FILED  
JUL 17 2010  
CLERK OF COURT  
NINTH JUDICIAL CIRCUIT  
CHARLESTON, SOUTH CAROLINA

COMES NOW, Plaintiffs, GWENDOLYN BROWN et. al., complaining and alleging as follows:

**FIRST CAUSE**  
**(Breach of Promise)**

1. Plaintiff Gwendolyn Brown is a resident of the State of South Carolina and a homemaker for herself and Plaintiffs Quintez Sapp, Glenn Simmons, Deville Kiez Simmons, Haroldlett Uneke Simmons, who reside with her; and from 2003 until 2009 they lived at 275-H Huger Street, Charleston, South Carolina in a Charleston Housing Authority dwelling unit.
2. Defendant, Housing Authority of the City of Charleston, South Carolina (hereinafter, "Housing") is a governmental entity governed by seven commissioners selected by the Mayor and City Council that provides affordable housing to citizens receiving low or moderate income, and, upon belief and information, provides a substantial amount of housing in the City of Charleston, South Carolina.
3. Housing promised and warranted to provide reasonably safe residential facilities to Plaintiffs and guests, and other invitees of their facilities; more specifically, Housing induced and encouraged Plaintiffs to rely on Housing's promises to do whatever was reasonably necessary to put and keep their premises in a fit and

habitable condition.

4. On August 9, 2007, Plaintiff Gwendolyn Brown fell through the floor located in the foyer area of her home upon entering her front door; Plaintiff Brown, while under no influence of alcohol or medication, was exercising her right as a reasonable resident under the circumstances: Plaintiff Brown at all times fulfilled her obligations to maintain her dwelling unit.

5. The impact of Plaintiff's body falling through the floor resulted in loss of consciousness and a strained ankle with additional soreness and stiffness to other areas of the body.

6. Plaintiff Brown has suffered pecuniarily, physically, and emotionally from this incident, and relied to her detriment upon the promises of Defendant.

7. This incident occurred after numerous complaints were made over a period of two (2) years to those persons responsible for the maintenance, repair, furnishing, and supervision of the homes provided through Housing. The above-mentioned did not make the necessary and reasonable efforts to assist, repair, and protect Plaintiff relative to the harm that befell her.

8. Defendant's breaches of promise are the direct and proximate cause of the Plaintiff's damages and losses; Plaintiff desires to be compensated for her damages, and, upon information and belief, she is entitled to receive such compensation.

9. Moreover, in or about February, 2008; Ms. Brown was informed that her youngest child, Quintez Sapp was suffering from skin and membrane irritations resulting from exposure to mold and an immediate environment that hosts mold.

10. In the subsequent days and months, Ms. Brown and all of her children began to recognize and experience various irritations, discomfort, and restrictions as a result of their exposure to the mold and the immediate host environment.

11. Plaintiff had notified the Defendant of the presence of an unusual substance but Defendant did not keep the promise to do whatever was reasonably necessary to keep the subject unit in a habitable condition.

12. Plaintiffs relied to their detriment on the promises and inducements of the Defendant to put and keep its premises in a fit and habitable condition.

13. Defendant's breaches of promise are the direct and proximate cause of the Plaintiffs' damages and losses and a natural, and anticipated consequence of the breaches; Plaintiffs desire to be compensated for their damages and losses, and, upon information and belief, they are entitled to receive such compensation.

**SECOND CAUSE**  
**(Violation S.C. 27-40-10 ct. seq.)**

14. Plaintiffs reallege each and every allegation of their First Cause as if fully alleged herein and incorporated the same by reference.

15. S.C. Code sec. 27-40-4-40 requires a landlord to maintain the leased premises in an apartment unit such as the subject premises.

16. Plaintiffs at all times maintained their unit in the manner intended.

17. Defendant's violations are the direct and proximate cause of Plaintiffs' damages and losses and a natural and anticipated consequence; Plaintiff desires to be compensated for their damages, and, upon information and belief, Plaintiffs are entitled to receive such compensation.

**THIRD CAUSE**  
**(Negligence)**

18. Plaintiffs re-allege each and every allegation of their First and Second Causes as if fully alleged herein and incorporates them by reference.

19. Housing has a duty to provide reasonably safe residential facilities to its residents, guests, and other invitees. Housing has a duty to warn, inform, inspect, and protect its residents and guests of its facilities off/from dangerous and/or hazardous conditions present and existing on and about the residential facilities and areas under Housing's control.

20. Defendant failed to exercise that degree of care required under its duties including but not limited to the following:

- a) failing to properly respond to the maintenance request of Plaintiff Brown;

- b) failing to properly inspect the living quarters of Plaintiffs' home;
- c) failing to adequately remove and detect the presence of the mold located in Plaintiffs' home;
- d) failing to properly monitor and supervise personnel responsible for the maintenance, layout, and furnishing of the subject area;
- e) failing to properly train and select the personnel responsible for managing the subject area;
- f) any other failures that a reasonable property owner or tenant would avoid to provide a safe and secure facility for residents, guest, or other invitee.

21. Defendant's failures, acts, and omissions are the direct and proximate cause of Plaintiffs' injuries, harm, and losses; Plaintiffs desire to be compensated for their damages, and, upon information and belief, they are entitled to receive such compensation.

**WHEREFORE**, Plaintiffs pray that this Court grant the following relief:

- 1) Compensation for all actual damages incurred by the Plaintiffs, including pain and suffering, loss of quiet enjoyment;
- 2) Defendant properly outfit, maintain, and supervise the subject residential area;
- 3) Defendant provides such other relief as is just and proper.

WHIPPER LAW FIRM

Attorney for Plaintiff

August 17, 2010

  
J. Seth Whipper, Esquire  
4592 Durant Avenue (29405)  
Post Office Box 70070  
North Charleston, South Carolina 29415  
843/ 740-7777  
843/ 740-9108 FAX  
jsw@whipperlaw.com

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

GWENDOLYN BROWN, individually, )  
and as natural guardian of )  
QUINTEZ LEE SAPP, )  
DEVILLE KIEZ SIMMONS )  
HAROLDLETT UNEKE SIMMONS, and )  
GLENN SIMMONS, )

Plaintiffs, )

vs. )

HOUSING AUTHORITY OF THE CITY OF, )  
CHARLESTON, SOUTH CAROLINA )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-4340

SECOND AMENDED SUMMONS  
(Breach of Promise)  
(Violation S.C. 27-40-10 et. seq.)  
(Negligence)

FILED  
2017 AUG 16 PM 1:10  
JULIE J. ARMSTRONG  
CLERK OF COURT

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff or Plaintiff's Attorney, J. Seth Whipper, 4592 Durant Avenue, North Charleston, South Carolina, 29405, within thirty (30) days after the service hereof, exclusive of the day of such service.

**YOU ARE HEREBY GIVEN NOTICE FURTHER** that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of service, judgment by default will be entered against you for the relief demanded in the Complaint.

**DATED** at North Charleston, South Carolina, this 14<sup>th</sup> day of August, 2017.

  
J. Seth Whipper, Esquire  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 GWENDOLYN BROWN, individually, )  
 and as natural guardian of )  
 QUINTEZ LEE SAPP, )  
 DEVILLE KIEZ SIMMONS, )  
 HAROLDLETT UNEKE SIMMONS, and )  
 GLENN SIMMONS, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HOUSING AUTHORITY OF THE CITY OF, )  
 CHARLESTON, SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-10-4340

SECOND AMENDED COMPLAINT  
 (Breach of Promise)  
 (Violation S.C. 27-40-10 et. seq.)  
 (Negligence)

FILED  
 2017 AUG 16 PM 1:10  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

COMES NOW, Plaintiffs, GWENDOLYN BROWN et. al., complaining and alleging as follows:

**FIRST CAUSE**  
**(Breach of Promise)**

1. Plaintiff Gwendolyn Brown is a resident of the State of South Carolina and a homemaker for herself and Plaintiffs Quintez Sapp, Glenn Simmons, Deville Kiez Simmons, Haroldlett Uneke Simmons, who reside with her; and from 2003 until 2009 they lived at 275-H Huger Street, Charleston, South Carolina in a Charleston Housing Authority dwelling unit.

2. Defendant, Housing Authority of the City of Charleston, South Carolina (hereinafter, "Housing") is a governmental entity governed by seven commissioners selected by the Mayor and City Council that provides affordable housing to citizens receiving low or moderate income, and, upon belief and information, provides a substantial amount of housing in the City of Charleston, South Carolina.

3. Housing promised and warranted to provide reasonably safe residential facilities to Plaintiffs and guests, and other invitees of their facilities; more specifically, Housing induced and encouraged Plaintiffs to rely on Housing's promises to do whatever was reasonably necessary to put and keep their premises in a fit and

habitable condition.

4. On August 9, 2007, Plaintiff Gwendolyn Brown fell through the floor located in the foyer area of her home upon entering her front door; Plaintiff Brown, while under no influence of alcohol or medication, was exercising her right as a reasonable resident under the circumstances: Plaintiff Brown at all times fulfilled her obligations to maintain her dwelling unit.

5. The impact of Plaintiff's body falling through the floor resulted in loss of consciousness and a strained ankle with additional soreness and stiffness to other areas of the body.

6. Plaintiff Brown has suffered pecuniarily, physically, and emotionally from this incident, and relied to her detriment upon the promises of Defendant.

7. This incident occurred after numerous complaints were made over a period of two (2) years to those persons responsible for the maintenance, repair, furnishing, and supervision of the homes provided through Housing. The above-mentioned did not make the necessary and reasonable efforts to assist, repair, and protect Plaintiff relative to the harm that befell her.

8. Defendant's breaches of promise are the direct and proximate cause of the Plaintiff's damages and losses; Plaintiff desires to be compensated for her damages, and, upon information and belief, she is entitled to receive such compensation.

9. Moreover, in or about February, 2008; Ms. Brown was informed that her youngest child, Quintez Sapp was suffering from skin and membrane irritations resulting from exposure to mold and an immediate environment that hosts mold.

10. In the subsequent days and months, Ms. Brown and all of her children began to recognize and experience various irritations, discomfort, and restrictions as a result of their exposure to the mold and the immediate host environment.

11. Plaintiff had notified the Defendant of the presence of an unusual substance but Defendant did not keep the promise to do whatever was reasonably necessary to keep the subject unit in a habitable condition.

12. Plaintiffs relied to their detriment on the promises and inducements of the Defendant to put and keep its premises in a fit and habitable condition.

13. Defendant's breaches of promise are the direct and proximate cause of

the Plaintiffs' damages and losses and a natural, and anticipated consequence of the breaches; Plaintiffs desire to be compensated for their damages and losses, and, upon information and belief, they are entitled to receive such compensation.

### **SECOND CAUSE**

**(Violation S.C. 27-40-10 ct. seq.)**

14. Plaintiffs reallege each and every allegation of their First Cause as if fully alleged herein and incorporated the same by reference.

15. S.C. Code sec. 27-40-4-40 requires a landlord to maintain the leased premises in an apartment unit such as the subject premises (and sec. 27-40-610 (b) provides a remedy for any noncompliance by the Landlord with the rental agreement or 27-40-440.)

16. Plaintiffs at all times maintained their unit in the manner intended.

17. Defendant's violations are the direct and proximate cause of Plaintiffs' damages and losses and a natural and anticipated consequence; Plaintiff desires to be compensated for their damages, and, upon information and belief, Plaintiffs are entitled to receive such compensation.

### **THIRD CAUSE**

**(Negligence)**

18. Plaintiffs re-allege each and every allegation of their First and Second Causes as if fully alleged herein and incorporates them by reference.

19. Housing has a duty to provide reasonably safe residential facilities to its residents, guests, and other invitees. Housing has a duty to warn, inform, inspect, and protect its residents and guests of its facilities off/from dangerous and/or hazardous conditions present and existing on and about the residential facilities and areas under Housing's control.

20. Defendant failed to exercise that degree of care required under its duties including but not limited to the following:

- a) failing to properly respond to the maintenance request of Plaintiff Brown;

- b) failing to properly inspect the living quarters of Plaintiffs' home;
- c) failing to adequately remove and detect the presence of the mold located in Plaintiffs' home;
- d) failing to properly monitor and supervise personnel responsible for the maintenance, layout, and furnishing of the subject area;
- e) failing to properly train and select the personnel responsible for managing the subject area;
- f) any other failures that a reasonable property owner or tenant would avoid to provide a safe and secure facility for residents, guest, or other invitee.

21. Defendant's failures, acts, and omissions are the direct and proximate cause of Plaintiffs' injuries, harm, and losses; Plaintiffs desire to be compensated for their damages, and, upon information and belief, they are entitled to receive such compensation.

**FOURTH CAUSE**  
**(Negligence)**

1. Plaintiffs' reallege each and every allegation of their First, Second, and Third Causes as if fully alleged herein and incorporates them by reference.
2. On or about August 28, 2008, the Defendant failed grossly in removing and treating the mold at 275 Huger Street, Apt H. causing the Plaintiffs substantial discomfort and injury.
3. Defendant merely washed the dry wall and painted the area using a paint solution that included a mixture of bleach.
4. Defendant failures, acts, and omission are the direct and proximate cause of Plaintiff's injuries, harm and losses; and violates statutory and common law; Plaintiff's desire to be compensated for their damages and, upon information and belief, they are entitled to receive such compensation.

**WHEREFORE**, Plaintiffs pray that this Court grant the following relief:

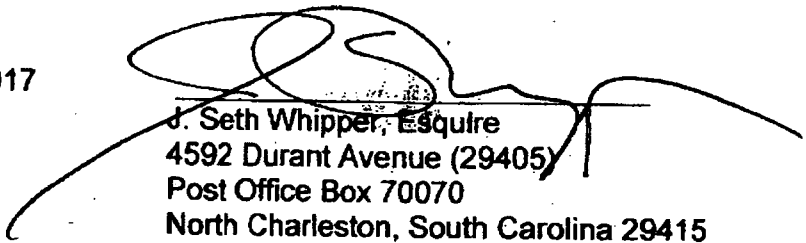
- 1) Compensatory damages for all actual damages incurred by the Plaintiffs, including pain and suffering, loss of quiet enjoyment;
- 2) Punitive damages;
- 3) Such other relief as the Court deems just and proper.

(Signature on next page)

WHIPPER LAW FIRM

Attorney for Plaintiff

August 14, 2017



J. Seth Whipper, Esquire  
4592 Durant Avenue (29405)  
Post Office Box 70070  
North Charleston, South Carolina 29415  
843/740-7777  
843/740-9108 FAX

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
)  
) CIVIL ACTION NO: 2014-CP-10-04340

GWENDOLYN BROWN, individually,  
and as natural guardian of QUINTEZ  
LEE SAPP, DEVILLE KIEZ  
SIMMONS, HAROLDETT UNEKE  
SIMMONS, and GLENN SIMMONS,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE  
CITY OF CHARLESTON, SOUTH  
CAROLINA,

Defendant.

**DEFENDANT HOUSING AUTHORITY**  
**MOTION FOR SUMMARY JUDGMENT**

FILED  
2016 DEC 19 PM 1:42  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

TO: J. SETH WHIPPER, ATTORNEY FOR THE PLAINTIFFS:

**YOU WILL PLEASE TAKE NOTICE THAT** the Defendant, Housing Authority of the City of Charleston, South Carolina, by and through its undersigned counsel, Howell, Gibson and Hughes, P.A., will appear before the Presiding Judge, at the Charleston County Courthouse, Charleston, South Carolina, on the tenth day after service hereof, or at such other place and time as may be determined by the Court, and then and there move for an Order of this Court granting Summary Judgment upon the following claims raised by the Plaintiff(s): breach of promise, violation S.C. 27-40-10 et. seq., and negligence.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, is premised upon the grounds that there is no genuine issue as to any material fact, and the Movant is entitled to judgment as matter of law.

The Plaintiffs have asserted causes of action upon theories of breach of promise, violation of S.C. 27-40-10 et. seq., and negligence. The Plaintiffs, however, within their pleadings, affidavits, and discovery exchanged, have failed to prove they suffered any damages and their claims are subject to summary judgment.

The within Motion will be based further upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, any memorandum of law submitted in support, and applicable common law and statutory law.

HOWELL, GIBSON & HUGHES, P.A.

By: 

William H. Cox, III  
Post Office Box 40  
Beaufort, SC 29901-0040  
(843) 522-2400  
Attorney for Defendant Housing  
Authority of the City of Charleston,  
South Carolina

Beaufort, South Carolina

December 16, 2016

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON )	THE NINTH JUDICIAL CIRCUIT
GWENDOLYN BROWN, )	CASE NO.: 2016-CP-10-04340
INDIVIDUALLY, and )	
as natural guardian of QUINTEZ LEE )	
SAPP, DEVILLE KIEZ SIMMONS, )	
HAROLDLETT UNEKE SIMMONS, and )	
GLENN SIMMONS, )	
Plaintiffs, )	PLAINTIFFS' MEMORANDUM
versus )	IN OPPOSITION TO
Housing Authority of the City )	DEFENDANTS MOTION
Of Charleston, South Carolina )	FOR SUMMARY JUDGMENT
Defendants.)	

**PERTINENT FACTS**

Plaintiff, Gwendolyn Brown, is the mother of four (4) children who are the other parties to this action. Ms. Brown rented an apartment from the Housing Authority and her children were named occupants of the dwelling unit. Ms. Brown was injured when she fell through a defective floor in her unit. She had notified Defendants of the deteriorated floor. Ms. Brown and her children suffered from environmental allergen conditions as a result of mold contamination in their unit. Ms. Brown did notify the Defendants of her mold issues and Defendants had opportunities to remediate the unit.

**DISCUSSION**

The South Carolina Residential Landlord and Tenant Act (hereinafter RLTA) establishes the standards for the proper relationship of the landlord and tenant, and provides the basis for evaluating the behavior of the parties. The relevant sections giving rise to this action are S.C. Code 27-40-440 (Landlord to maintain premises) and S. C. Code 27-40-610 (b) (Noncompliance by landlord general). Section 27-40-440 lists the scope of the landlords responsibilities per the state code. Section 27-40-610 (b) allows the tenant to recover actual damages and obtain injunctive relief... for any noncompliance by the landlord with the rental agreement or 27-40-440. Section 27-40-610(b) does allow recovery of reasonable attorney's fees if the landlord's noncompliance is wilful. S.C. Code 27-40-120 of the RLTA excludes nine (9) kinds of

resident/property owner relations and public housing is not excluded from RLTA coverage. Where the language of a statute is plain and unambiguous, its terms should be given their clear meaning. Miller v. Doe, 312 S.C. 444 (1994). The general rule of statutory construction is that a specific statute prevails over a more general one. Atlas Food Systems and Services, Inc. v. Crane National Vendors Division of Unidynamics Corporation, 319 S.C. 556 (1995) (holding that "Actions arising under Article 2 of the U.C.C. are governed by sec. 36-2-725's statute of limitations.") "General and special statutes should be read together and harmonized, if possible. But to the extent of any conflict between the two, the special statute must prevail. Criterion Insurance Company v. Hoffmann, 258 S.C. 282 (1972) citing, Culbreth v. Prudence Life Ins. Co. 241 S.C. 46 (1962). Plaintiffs should prevail on the basis of the legal standards discussed above.

The TCA is a general tort statute and controls a broad scope of relationships. The TCA does not address the landlord-tenant relationship in any way. (See, sec. 15-78-60). In fact, the TCA's prohibition on conduct "which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude" would leave many tenants without remedies for any number of causes. The RLTA controls one relationship and provides an even more narrow, specific foundation for bringing an action against a landlord or a tenant. The RLTA clearly states in sec. 27-40-610 (b) that a tenant may recover actual damages... for any noncompliance by the landlord with rental agreement or sec. 27-40-440. Moreover, actual damages, are recoverable for the landlord's malicious use of the rental agreement ( 27-40-330(b)); landlord's failure to deliver possession ( 27-40-620 (b)); bad faith counterclaim by tenant ( 27-40-640(a)); unlawful ouster or exclusion by landlord ( 27-40-660); wilful holdover violation by tenant ( 27-40-770 (c)); landlord or tenant's abuse of access ( 27-40-780 (a) and (b). The RLTA creates rights and obligations in landlord-tenant relationships and this construct is based on compliance or noncompliance with the obligations assigned to the parties. The seven (7) sections of the RLTA mentioned earlier are statutory creations and are found only in the RTLA. The proper statute of limitation for these rights and obligations is found at S.C. Code sec. 15-3-530 (1), (2), and (5), providing that the action is filed within three (3) years of the subject occurrence. Our RLTA is South Carolina's version of the Uniform Residential Landlord and Tenant Act drafted by the National Conference of Commissioners on Uniform State Laws ( hereinafter, NCCUSL) and approved by the NCCUSL with amendments in 1974, and approved by the American Bar Association at

its Midyear Meeting in February, 1974. Reference to the drafters' comments illustrate how the Act was developed and what it means (See Ex.1). In section 1.101, the comment declares that the "Act concerns landlord-tenant relationships under rental agreements for residential purposes; in section 1.202 the comment states that "This Act is intended to apply to government or public agencies acting as landlords." The foregoing considerations are noteworthy as they are consistent with the RLTA not excluding public housing.

In Culbreth v. Prudence Life Insurance Co., 241 S.C. 46 (1962), the S. C. Supreme Court compared a general law relating to insurance to a law that dealt "specially with health and accident insurance policies". The court held that the general law did not control the time period for contesting the validity of the policy: "if there be any conflict between the two statutes, the special statute must prevail". Id. The S.C. Supreme Court in Atlas Food Systems and Services, Inc. v. Crane National Vendors Division of Unidynamics Corporation, 319 S.C. 556 (1995), made it clear that the law peculiar to the subject area controls the statute of limitations. The RTLA's statute of limitations is found in S.C. Code sec 15-3-530 (1), (2), and (5).

In the case of Benton v. Roger C. Peace Hospital, 313 S.C. 520 (1994), there is no special, specific subject matter question at issue. A "governmental health care facility" is a nonprofit organization and operates much like a charitable organization. The question before the court did not address any substantive statutory questions regarding a distinctive topic nor dealt with statutes that control the law governing a cause of action in a specific area of legal relationships. The Benton case does not address the issues raised by the RLTA.

As further expression of the RTLA's control of the residential rental law, in sec. 27-40-40, (Construction against implicit repeal), the law says, "This chapter being a general chapter intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided." Code sec.27-40-40 puts the RTLA beyond the holding of Robinson v. Metts, 86 F. Supp.2d 557, affirmed 188 F.3d 503, certiorari denied 120 S.C.166, 528 U.S.1157, 145 L. Ed.2d.1076 (1997) because that ruling found the subject statute subsequently repealed by implication. Moreover, statutes of specific nature are not to be considered as repealed in whole or in part by later general statute unless there is direct referenced to former statute or intent of legislature to do so is explicitly implied

therein. Sharpe v. South Carolina Dept. of Mental Health, 281 S.C. 242 (1984); and if two statutes are in conflict, latest statute passed should prevail so as to repeal earlier statute to extent of repugnancy. Hair v. State, 305 S.C. 77 (1991).

The opinion in Watson v. Sellers, 299 S.C. 426 (S.C. App. 1989) declares that the RTLA creates a comprehensive and express basis for tenants to protect, recover and engage the landlord through a cause of action in their favor. Watson, 299 S.C. at 374. It is clear from Watson that the RTLA controls the residential landlord-tenant relationship and the claims that arise under it.

In harmonizing the statutes, the court must consider that the TCA per certain conditions provides for a three (3) year statute of limitations, and actions under 42 U.S.C. 1983 et seq carry a three (3) year statute, further, all causes of actions under contract, warranty, consumer protection, and the U.C.C. carry a three (3) year statute when the government and political subdivisions are parties. The TCA does not manage residential landlord-tenant relations, and would change all of the burdens of the landlord-tenant act, and limit the causes available to the parties, if the RLTA was subsumed thereby.

#### **CONCLUSION**

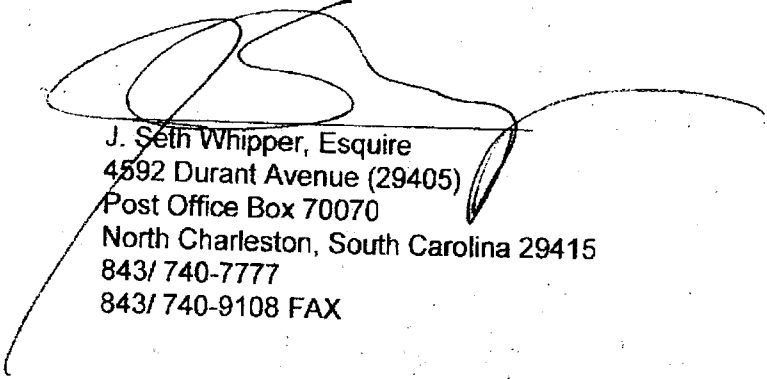
Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483 (D.S.C. 1975).

Tenants in public housing should not be subjected to a lesser standard of care than those in private housing. The TCA was written to cover the general welfare activities of government, i.e. law enforcement, public health, schools, roads, etc. The RLTA focuses solely on the residential landlord-tenant relationship. Under the RLTA, these Plaintiffs are entitled to the three (3) year statute of limitations, and according to the date the action was filed, August 4, 2010, their claims are before the court timely.

\*Signature on Next Page\*

Respectfully Submitted,

March 9, 2018



J. Seth Whipper, Esquire  
4592 Durant Avenue (29405)  
Post Office Box 70070  
North Charleston, South Carolina 29415  
843/ 740-7777  
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# Exhibit 1

**UNIFORM RESIDENTIAL  
LANDLORD AND TENANT ACT**

drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-FIRST YEAR  
AT SAN FRANCISCO, CALIFORNIA  
AUGUST 4-11, 1972**

**WITH AMENDMENTS APPROVED, AUGUST 1974**

*WITH COMMENTS*

Approved by the American Bar Association at its  
Midyear Meeting in Houston, Texas, February, 1974

## UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Residential Landlord and Tenant Act was as follows:

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Copies of Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
676 North St. Clair Street, Suite 1700  
Chicago, IL 60611  
312-915-0195

# UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

## ARTICLE I

### GENERAL PROVISIONS AND DEFINITIONS

§ 1.101. [Short Title] This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

#### Comment

This Act concerns landlord-tenant relationships under rental agreements for residential purposes (Section 1.201). The Act does not apply to rental agreements made for commercial, industrial, agricultural or any purpose other than residential.

#### § 1.102. [Purposes; Rules of Construction]

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this Act among those states which enact it.

#### Comment

Existing landlord-tenant law in the United States, save as modified by statute or judicial interpretation, is a product of English common law developed within an agricultural society at a time when doctrines of promissory contract were unrecognized. Thus, the landlord-tenant relationship was viewed as conveyance of a lease-hold estate and the covenants of the parties

generally independent. These doctrines are inappropriate to modern urban conditions and inexpressive of the vital interests of the parties and the public which the law must protect.

This Act recognizes the modern tendency to treat performance of certain obligations of the parties as interdependent.

Liberal construction of this Act and its application for promotion of its underlying purposes and policies will permit development by the courts in light of unforeseen and new circumstances and practices. However, proper construction of the Act requires that its interpretation and application be limited to its reason.

**§ 1.103. [Supplementary Principles of Law Applicable]** Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

#### **Comment**

This section, adapted from Section 1-103 of the Uniform Commercial Code, indicates the continued applicability to landlord-tenant relations of all supplemental bodies of law except in so far as they are explicitly displaced by this Act. The listing given in this section is merely illustrative; no listing could be exhaustive.

**§ 1.104. [Construction Against Implicit Repeal]** This Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

#### **Comment**

This section indicates the policy that no Act which bears evidence of carefully considered permanent regulative intention should lightly be regarded as impliedly repealed by subsequent legislation. This Act, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

**§ 1.105. [Administration of Remedies; Enforcement]**

(a) The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

#### Comment

Subsection (a) is intended to negate unduly narrow or technical interpretation of remedial provisions and to make clear that damages must be minimized. The use of the words "aggrieved party" is intended to indicate that in appropriate circumstances rights and remedies may extend to third persons under this Act or supplementary principles of law (compare Article IV, Parts I and II).

Under subsection (b) any right or obligation described in this Act is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether tort action, specific performance or equitable relief is available is determined not by this section but by specific provisions and supplementary principles (see Section 1.103).

**§ 1.106. [Settlement of Disputed Claim or Right]** A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

#### Comment

This section applies to settlements of claims asserted by either landlord or tenant.

Subsequent sections of this Act (a) forbid the tenant from prior waiver of rights (Section 1.403), and (b) subject the bargain of the parties to the test of conscionability (Section 1.303).

## PART II

### SCOPE AND JURISDICTION

**§ 1.201. [Territorial Application]** This Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

**§ 1.202. [Exclusions from Application of Act]** Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

- (1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
- (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;
- (3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
- (4) transient occupancy in a hotel, or motel [or lodgings [subject to cite state transient lodgings or room occupancy excise tax act]];
- (5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;
- (6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
- (7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

#### **Comment**

This Act regulates landlord-tenant relations in residential properties. It is not intended to apply where residence is incidental to another primary purpose such as residence in a prison, a hospital or nursing home, a dormitory owned and operated by a college or school, or residence by a landlord's employee such as a custodian, janitor, guard or caretaker rendering service in or about the demised premises. This Act is intended to apply to government or public agencies acting as landlords (Section 1.301 (8)).

This Act does not apply to occupancy by a purchaser under a contract of sale. This Act applies to occupancy by the holder of an option to purchase, as distinguished from a contract of sale.

This Act applies to roomers and boarders but is not intended to apply to transient occupancy. In many jurisdictions transient hotel operations are subject to special taxes and

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF CHARLESTON ) CIVIL ACTION NO: 2014-CP-10-04340

GWENDOLYN BROWN, individually, )  
 and as natural guardian of QUINTEZ )  
 LEE SAPP, DEVILLE KIEZ )  
 SIMMONS, HAROLDETT UNEKE )  
 SIMMONS, and GLENN SIMMONS, )

Plaintiffs, )

vs. )

HOUSING AUTHORITY OF THE )  
 CITY OF CHARLESTON, SOUTH )  
 CAROLINA, )

Defendant. )

**DEFENDANT'S MEMORANDUM RE**  
**SOUTH CAROLINA TORT CLAIMS**  
**ACT AND SOUTH CAROLINA**  
**RESIDENTIAL LANDLORD TENANT**  
**ACT**

FILED  
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 JULIE J. ARMSTRONG  
 CLERK OF COURT

This matter comes before the Court on motion of the Defendant for summary judgment of Plaintiffs' claims. This memorandum is in support of Defendant's position that the South Carolina Tort Claims Act provides a two-year statute of limitations which bars Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons claims for negligence and gross negligence. For the reasons outlined below, the Defendant requests this Court grant summary judgment in its favor.

**ARGUMENT**

The South Carolina Residential Landlord Tenant Act (hereinafter, "RLTA") is set forth in Sections 27-40-10 through 27-40-940, Code of Laws of South Carolina (1976, as amended). The preamble to the RLTA provides, *inter alia*, that the act is "to provide for landlord obligations, liability and remedies." See 1986 S.C. Acts 336. Section 27-40-20 provides, in pertinent part, that the purpose of the act is "to simplify,

clarify, *modernize, and revise* the law governing rental of dwelling units and the rights and obligations of the landlords and tenants." Section 27-40-50 provides that, "(a) The remedies provided by this chapter must be so administered that an aggrieved party may recover appropriate damages," and further that, "(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect." The principal statute which creates a cause of action is Section 27-40-440 wherein it is provided in pertinent part that, "A landlord shall ... make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition; ..." And finally, Section 27-40-610(b) provides in pertinent part that, "the tenant may recover actual damages ... for any noncompliance by the landlord with ... Section 27-40-440." This statute also provides, "If the landlord's noncompliance is wilful, the tenant may recover reasonable attorney fees." Section 27-40-610(c).

"[W]e hold that the RLTA by express words creates a cause of action *in tort* in favor of a tenant of residential property against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989) (emphasis added).

The Tort Claims Act governs *all tort claims* against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998) (emphasis added). "The remedy provided by [the Tort Claims Act] is the exclusive civil

remedy available **for any tort** committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C.Code Ann. § 15-78-20(b) (Supp.2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive remedy **for any tort** committed by an employee of a governmental entity." S.C.Code Ann. § 15-78-70(a) (Supp.2002) (emphasis added). According to the Act, "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy **for any tort** committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C.Code Ann. § 15-78-200 (Supp.2002) (emphasis added).

When interpreting the Tort Claims Act with other statutes, the Tort Claims Act controls. Under South Carolina law, state prison corrections officer alleging that sheriff's deputies planted contraband on his vehicle, leading to criminal charges, could not bring action against sheriff under statute making sheriff responsible for misconduct of his deputies; such statute was repealed by South Carolina Tort Claims Act (SCTA). See *Robinson v. Metts*, 86 F.Supp.2d 557, affirmed 188 F.3d 503, certiorari denied 120 S.Ct. 1166, 528 U.S. 1157, 145 L.Ed.2d 1076 (1997). A negligence action against a rehabilitation hospital that was both a government health care facility and a charitable organization was governed by the Tort Claims Act (§§ 15-78-10 et seq.), rather than the liability statute for charitable organizations (§ 33-55-200), since the Tort Claims Act clearly states that it provides the exclusive remedy for governmental torts such as those at issue. See *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537, rehearing denied (1994).

The Act defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C.Code Ann. § 15-78-30(d) (Supp.2002). The State "means the State of South Carolina" and includes its authorities. S.C.Code Ann. § 15-78-30(e) (Supp.2002). Here, it is undisputed that the Defendant Housing Authority for the City of Charleston, South Carolina is a "governmental entity" within the meaning of the Act.

The Plaintiffs bring causes of action for violation of the RLTA, negligence and gross negligence. These causes of action sound in tort and therefore, the Tort Claims Act governs and is the exclusive remedy.

#### **A. Statute of Limitations**

##### **1. Loss related to the Fall**

Plaintiff Gwendolyn Brown alleges that she fell through the floor in her foyer on August 9, 2007. (Second Amended Complaint p. 3). Pursuant to the South Carolina Tort Claims Act, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110. According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citing *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989)). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Id.* (citing *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993)). Here, Gwendolyn Brown knew or should have known that her cause of action arose as a result of her fall on August 9, 2007. Therefore, pursuant to the South Carolina Tort

Claims Act and applicable case law, Plaintiff Gwendolyn Brown's claims relating to the fall are barred as she did not file the present action until August 4, 2010 which is outside the applicable two-year statute of limitations. For these reasons, the court must grant the Defendant summary judgment with respect to the claim relating to fall.

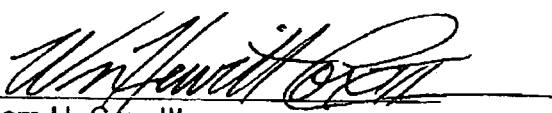
## **2. Loss related to Mold**

The Plaintiffs state in their Second Amended Complaint that they first became aware of the alleged effects of the mold in or about February 2008. (Second Amended Complaint p.4). However, on October 4, 2007, attorney Anne L. Peterson-Hutto, wrote a letter on behalf of the Plaintiffs addressed to the Defendant stating that Plaintiffs were aware of the medical conditions they "suffered as a result of mold exposure since they moved in their residence." This letter shows the Plaintiffs had notice of their right to a cause of action and thus the Plaintiffs statute began to run on or before October 4, 2007. However, even using the Plaintiffs' date of February 2008, Plaintiffs Gwendolyn Brown (DOB 9/28/63), Deville Simmons (DOB 5/9/88), and Haroldlett Simmons (DOB 7/3/89) failed to comply with the applicable two-year statute of limitations. Therefore, pursuant to the South Carolina Tort Claims Act and applicable case law stated above, Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons claims relating to the mold are barred. Because they did not file the present action until August 4, 2010, which is outside the applicable two-year statute of limitations, this court must grant Defendant summary judgment with regard to the mold claims for Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons.

## **CONCLUSION**

Based on the foregoing and for the reasons cited in Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment, it is respectfully submitted that this Court should grant Defendant's motion for summary judgment.

HOWELL, GIBSON & HUGHES, P.A.

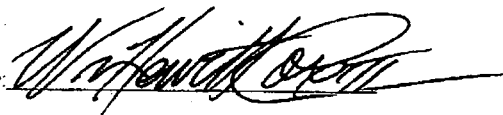
By:   
William H. Cox, III  
Post Office Box 40  
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(843) 522-2400  
Attorney for Defendant Housing  
Authority of the City of Charleston,  
South Carolina  
Bar No: 101991

Beaufort, South Carolina

February 27, 2018

CERTIFICATE OF SERVICE

I certify that I served the foregoing Defendant's Memorandum upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 27 day of February, 2018

By: 



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ATTORNEY AT LAW

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LICENSED IN SOUTH CAROLINA  
AND NEW YORK  
October 4, 2007

anne@peterson-hutto.com  
www.peterson-hutto.com

The City of Charleston Housing Authority  
P.O. Box 22707  
Charleston, SC 29413-2707

RE: My Clients: Gwendolyn Brown, Deville Simmons, Haroldlett Simmons, Glenn  
Simmons and Quintez Sapp  
Our File No: 07-1026

Dear Sir or Madam:

This office represents Ms. Gwendolyn Brown, Mr. Deville Simmons, Ms. Haroldlett Simmons, and Ms. Gwen Brown's minor children, Glenn Simmons and Quintez Sapp, with regard to medical conditions from which they have suffered as a result of mold exposure since they moved in their residence. I have been advised that the City of Charleston Housing Authority is responsible for the maintenance and repair of the residence; therefore, liability falls for this incident rests with the Housing Authority.

I have been advised that the Charleston Housing Authority has been aware of the severe mold problems that exist in my client's unit. I have further been advised that in an attempt to pacify my clients, the Housing Authority has cleaned up and painted over many areas of mold through the house on numerous occasions; however, this work does not substitute for proper mold abatement. Due to the Housing Authority's negligence, my clients have sustained injury as a result thereof.

Accordingly, please be kind enough to contact me upon receipt of this letter and advise me of your insurance liability carrier policy number and contact information so that I may file the appropriate claims.

I look forward to working on this matter with you. Please do not hesitate to contact me with any questions or concerns at your convenience. With warmest regards, I am,

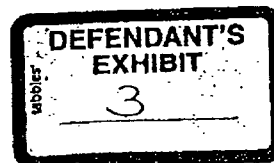
Sincerely,

A handwritten signature in black ink, appearing to read "Anne L. Peterson-Hutto".

Anne L. Peterson-Hutto  
Attorney at Law

ALPH/amf

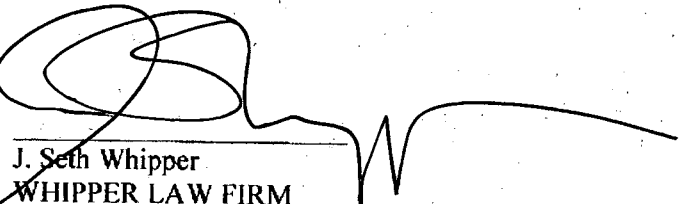
cc: Gwen Brown



**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 26, 2019



J. Seth Whipper  
WHIPPER LAW FIRM  
P.O. Box 70070  
N. Charleston, SC 29415  
843-740-7777  
Attorney for Appellants

**RECEIVED**

AUG 27 2019

SC Court of Appeals