

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 21 2019

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Conley.....Appellant,

v.

April Morganson.....Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Richard L. Whitt, S.C. Bar #: 62895
Jefferson D. Griffith, III, S.C. Bar #: 2299
Whitt Law Firm, LLC
Post Office Box 362
Irmo, South Carolina 29063
(803) 995-7719
Attorneys for Appellant.

TABLE OF CONTENTS

Table of Authorities.....3

Argument in Reply.....4

I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.....5

II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).....6

III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UN SUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.....7

IV. THE LOWER COURT ERRED WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE VERBATIM REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE TO BE DELIVERED IN HAND TO THE TENANT OR, MAILED BY REGISTERED OR CERTIFIED MAIL.....8

V. THE LOWER COURT WAS NOT CORRECT IN GRANTING RESPONDENT'S MOTION FOR INVOLUNTARY NON-SUIT.....9

Conclusion.....12

TABLE OF AUTHORITIES

CASES

First Union Nat'l Bank v. FCVS Communications, 469 S.E.2d 613,
617 (Ct. App. 1996).....5, 6, 7, 8

State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 648 (S.C. App., 2008).....9

STATUTES

S.C. Code Ann., Section 27-40-240(B), (1976, as amended).....9

S.C. Code Ann., Section 27-40-240(B)(3), (1976, as amended).....4, 6, 7, 8, 9, 10

S.C. Code Ann. Section 27-40-310, (1976, as amended).....10

S.C. Code Ann. Section 27-40-310(a) , (1976, as amended).....10

S.C. Code Ann. Section 27-40-330, (1976, as amended).....10

S.C. Code Ann. Section 27-40-330(a), (1976, as amended).....10

ARGUMENT IN REPLY

Introduction

This Court should not be misled by the Respondent/Landlord's tactic, throughout her Brief, of disguising the fact that the **Respondent/Landlord only sent electronic mail** to the Appellant/Tenant. The **Respondent/Landlord failed** to send the required Notice to the Appellant/Tenant by delivery in hand, or by mailing the Notice to the Appellant/Tenant, by Registered or Certified Mail. See, S.C. Code Ann., Section 27-40-240(B)(3)¹, (1976, as amended). It is uncontroverted that the **Respondent/Landlord failed** to hand-deliver the Notice and the **Respondent/Landlord failed** to mail the Notice to the Appellant/Tenant by Registered or Certified Mail. Despite Respondent/Landlord's failure to comply with South Carolina Law, Respondent/Landlord's Brief is replete with misleading references, as follows.

- On page "4" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**written digital communication**...."
- On page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**a written communication**...."
- Also, on page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**the actual written communication**...."
- On page "6" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "**The written communication**...."
- On page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**written notification**...."
- Also, on page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**the written communication**...."
- On page "8" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**a written communication**...."

Emphasis supplied in all of the above-referenced quotes.

¹ In pertinent part, Section 27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

IV. THE LOWER COURT ERRED WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE VERBATIM REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR “NOTICE” COULD BE SUPERSEDED BY THE LOWER COURT’S FINDING THAT, “E-MAIL” NOTICE COULD BE SUBSTITUTED FOR THE STATUTE’S CLEAR REQUIREMENT FOR NOTICE TO BE DELIVERED IN HAND TO THE TENANT OR, MAILED BY REGISTERED OR CERTIFIED MAIL.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent’s failure to respond as a confession that the Appellant’s position is correct. See First Union Nat’l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

V. **THE LOWER COURT WAS NOT CORRECT IN GRANTING RESPONDENT'S MOTION FOR INVOLUNTARY NON-SUIT.**

(Respondent/Landlord did not address Appellant/Tenant's issues on appeal, but provided the converse of the issue set forth above)

S.C. Code Ann., Section 27-40-240(B).

Respondent/Landlord attempts to justify her blatant failure to comply with South Carolina Law by pointing to S.C. Code Ann., Section 27-40-240(b)(*sic*). Respondent/Landlord's attempt to rely on S.C. Code Ann., Section 27-40-240(B)² fails because the Respondent/Landlord ignores provision (3) of that Code Section, which specifically pertains to "Tenants", and **which requires Notice to a Tenant be delivered in hand to the Tenant or mailed to the Tenant by Registered or Certified mail.** S.C. Code Section 27-40-240(B)(3), (1976, as amended). The specific provision of S.C. Code Section 27-40-240(B)(3), controls over the general provision. "When reviewing a statute, this Court must follow specific provisions over general language in the statute. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 648 (S.C. App., 2008).

It is uncontroverted that the Respondent/Landlord did not provide Notice to the Tenant by hand-delivery or to the Tenant by Registered or Certified Mail. Furthermore, the Respondent/Landlord's use of email, for a Notice to the Appellant/Tenant, means that the Respondent/Landlord did not comply with S.C. Code Ann., Section 27-40-240(B)(3), because email cannot be sent by Registered or Certified mail, as required by the Statute.

² In pertinent part, Section 27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

Respondent/Landlord's Reliance on §27-40-310.

Respondent/Landlord provides a citation to S.C. Code Ann. Section 24-40-310, (apparently mis-referencing S.C. Code Section 27-40-310), stating that that Section permits a Landlord and Tenant to negotiate and create their own terms and conditions in a Lease. Respondent/Landlord further argues the language of the parties' lease agreement controls (page "7" of Respondent/Landlord's Brief).

Once again Respondent/Landlord highlights a part of a Code Section while ignoring S.C. Code Ann., Section 27-40-310(a) and Section 27-40-330. S.C. Code Ann. Section 27-40-310(a) reads as follows, "A landlord and a tenant may include in a rental agreement terms and conditions **not prohibited** by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties." (Emphasis supplied). S.C. Code Ann., Section 27-40-330(a)(1) reads as follows, "A rental agreement **may not provide** that the tenant: (1) agrees to waive or forego rights or remedies under this chapter" (Emphasis supplied).

Respondent/Landlord Describes Act Requirements as, an "Absurdity".

Respondent/Landlord describes the clear requirement of S.C. Code Ann., Section 27-40-240(B)(3), requiring Notice to a Tenant be made by hand-delivery or mailed to the Tenant by Registered or Certified mail, as an "absurdity", (page "8" of Respondent/Landlord's Brief).

Respondent/Landlord Falsely States that an Accounting was Provided.

On page "7" of Respondent/Landlord's Brief, she claims Notice and an Accounting was provided to Appellant/Tenant. The citation to the Record provided by the Respondent/Landlord, (Transcript of Record, Page 36 Line 1), **does not support** Respondent/Landlord's false claim.

Because a Directed Verdict was given by the Court at the conclusion of the Appellant/Tenant's case, the Appellant/Tenant's testimony on this subject is the only testimony given and it shows that Respondent/Landlord falsely claimed that an Accounting was provided.

“Q. Did you [Appellant/Tenant] ever receive a rent -- a written accounting from the landlord showing you how the prepaid rent or –security deposit and the prepaid rent was used?

A. No I did not.

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

A. No, I have not.” (Transcript pg. 13, LL. 6-11, R. ____).

Respondent Falsely States Appellant Admits Receiving Written Communication.

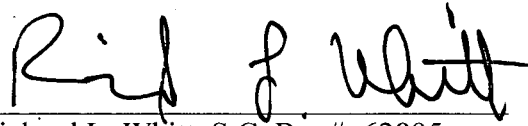
On page “8” of Respondent/Landlord's Brief, she states, “There is absolutely no doubt that Appellant received a written communication....” and furthermore the Respondent/Landlord falsely states that the Appellant/Tenant acknowledged receiving a written communication.

First of all, the Record citation provided by the Respondent/Landlord on page “8” of Respondent/Landlord's Brief, (Transcript of Record, Page 37 Line 25), **does not support** an allegation that the Appellant/Tenant received a written communication. Secondly, the citation provided by the Respondent/Landlord leads to testimony whereby Appellant/Tenant admits to receiving, “...**an email**....” (Emphasis supplied), (Transcript pg. 37, Line 25, R. ____).

CONCLUSION

Based on the foregoing, this Court should reverse the Trial Court's Directed Verdict and remand this case to the Trial Court for Trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard L. Whitt". The signature is written in a cursive style with a horizontal line underneath it.

Richard L. Whitt, S.C. Bar #: 62895

Jefferson D. Griffith, III, S.C. Bar #: 2299

Whitt Law Firm, LLC

Post Office Box 362

Irmo, South Carolina 29063

(803) 995-7719

Attorneys for Appellant.

November 21, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

RECEIVED

NOV 21 2019

Civil Action No. 2016-CP-40-04139

SC Court of Appeals

Appellate Case No. 2019-001533

Morgan Conley.....Appellant,

v.

April Morganson.....Respondent.

AFFIDAVIT OF SERVICE

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, hereby certify that I have caused Appellant's Initial Reply Brief and this Affidavit of Service, to be served via, U.S. Mail as addressed below, on November 21, 2019.

S. Jahue Moore, Jr., Esquire
Moore, Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171

Carrie A. Schurg
Carrie A. Schurg

November 21, 2019