

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2019-000102

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SC Court of Appeals

Appeal from the Circuit Court of Florence, South Carolina

The Honorable Thomas A. Russo

Case No. 2018-cp-2102301

Jim Stroud.....Respondent

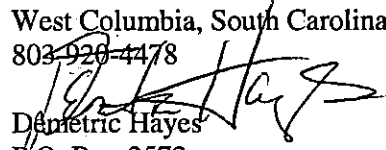
V.

Carla Marshall and Demetric Hayes.....Appellant

[INITIAL] BRIEF OF APPELLANT



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State Regulations

Section 27-40-440, 27-40-610 of the South Carolina Landlord Tenant Act

Statement of Issues on Appeal

- The lower court failed to acknowledge text messages, letters and photos that would validate appellants claim.
- The lower court ignored the fact that it was a conflict of interest for the Finklea Law Firm to represent the respondent.
- The lower court allowed attorney Patrick Ford of the Finklea Law Firm who has represented Ms. Marshall from 2003 to 2017 to turn her from a named defendant to a witness for his unethical benefit.
- The lower court failed to recognize violations by the landlord and admitted the lack of knowledge of South Carolina Landlord/ Tenant Act.
- The lower court denied us the right to make objection to statements that attorney Patrick Ford made that we did not agree with or was not true. But, allowed attorney Ford to make objections to our statements.

Statement of Case

This case is base on a sewage backup that occurred at the property we started renting from a Mr. Jim Stroud in March 2018. We had flooding of sewage on 9 June 2018 and on 29 July 2018. The landlord

never attempted to fix the flooding or give any type of solution and we had no running water. We did not abandon the property because we still had all of our personal property inside. After about 2 weeks we get a summons to appear dated 7 August 2018 which was left on the garage door. On 22 August 2018, we appeared at the Florence Magistrate court in Florence, SC for a hearing for eviction. Judge Pete Becker ruled against us never addressing or acknowledging the fact the property was flooded with sewage, no running water and uninhabitable.

We appealed Judge Becker's decision on 25 August 2018. A hearing was held on 20 December 2018 with Judge Thomas A, Russo at the Florence County Judicial Center. Judge Thomas ruled against us. Again, never addressing the real reason why we were before him, not allowing text messaging, photos and letters. On 17 January 2019 we filed a notice of appeal with the South Carolina Court of Appeals.

Statement of Review

The lower court failed to acknowledge text messages, letters and photos that would validate appellants claim.

The lower court refused to allow text messages between the property manager (Tracie), the maintenance man and ourselves. We attempted to show the messages we had printed but they was not allowed. Judge Becker asked us if we had our cell phones to show him but we replied that we did not. We explained to him that just outside of his courtroom door and in the waiting room were a sign that stated no cell phones allowed in the courtroom. The respondent stated that a letter we presented was not a written notice when in fact it was. It was not a 14 day moving notice. It was a notice for him to address the matters at hand. We never had any intentions on moving. As far as the photos, both Judge Becker and Judge Russo refused to view them.

- The lower court ignored the fact that it was a conflict of interest for the Finklea Law Firm to represent the respondent.

Attorney Ford specifically has represented Ms. Marshall in relations to a business deal that he advised her on and sat up phone consultations on her behalf and seal the deal. In the magistrate's answer and conclusion he stated that the court was never informed that Attorney Patrick Ford had ever represented Ms. Marshall. The reason why the court was not informed by the appellant was because the appellant did not know that the respondent's attorney was from the Finklea Law firm. He failed to file a Notice of Appearance. Also, when attorney Ford represented Ms. Marshall it was over the phone each and every time. Ms. Marshall has never met Mr. Ford in person.

Therefore, that is the reason why the court was not informed. We did not find out about this unethical practice until after the hearing. But, Attorney Patrick Ford knew exactly who Ms. Marshall was. That is the reasoning for his unethical and unlawful move to turn Ms. Marshall who is a named Defendant in the lower court into a witness for no reason. The writ named

Demetric Hayes and Carla Marshall and all others. Attorney Ford was well aware that his representation was a clear conflict of interest. He failed to inform the magistrate of this and felt that he could do what he wanted to do and get by with it.

- The lower court allowed attorney Patrick Ford of the Finklea Law Firm who has represented Ms. Marshall from 2003 to 2017 to turn her from a named defendant to a witness for his unethical benefit.

The lower court allowed attorney Ford to change Ms. Marshall from a named defendant, to a witness for his benefit. He was well aware that he had represented Ms. Marshall in 2016-2017 and Ms. Marshall had been a client of the Finklea Law Firm since 2003. He knew it was unethical for him to represent his client with Ms. Marshall being a named defendant. We explained this to Judge Russo but he said attorney Ford was within his right to do so. We strongly disagree.

- The lower court failed to recognize violations by the landlord and admitted the lack of knowledge of South Carolina Landlord/ Tenant Act.

Judge Russo stated that he was not very knowledgeable of the South Carolina Landlord Tenant Act because he presides primarily over cases of the Circuit Court. Therefore, when I brought up Section 27-40-440 and 27-40-610 he moved on and said he thought that I had recourse through bringing an action in another court.

- The lower court denied us the right to make objection to statements that attorney Patrick Ford made that we did not agree with or was not true. But, allowed attorney Ford to make objections to our statements.

Judge Becker from the magistrate court denied us the right to object to statements that were made by attorney Ford. He silenced us therefore, things that Ford said could be on the record and not challenged. It is our right to have the option to object to anything said that we do not agree with or is not true.

Argument

The problem started with a sewage backup that occurred at the property we started renting from a Mr. Jim Stroud in March 2018. We lived in the property which was new construction for 3 months, when on Saturday 9 June, 2018 sewage backed up into the shower, toilet and bathtub. We do not have the landlord's contact information therefore we called and texted the property manager Tracie and the landlord's brother Walter whom is the maintenance man. Neither one of them responded. We then called the City of Florence water department, which dispatches to the police department. They informed us that they would be sending someone out. The city of Florence came out and discovered there was a blockage. They removed the blockage and the sewage that came into the property went back down the drains. The city employee (Jim) that came out and cleared the blockage informed the landlord's brother (Walter) that

it was a matter of time before another disaster happens because sewage should not be backing up into the home. He said something is not right.

On Sunday July 29, 2018 the same thing happened again. We were awakened around 2:30 am to the worst smell ever. I fell into the sewage when I got out of the bed, not knowing the floor was covered in sewage. There was sewage in the shower, toilet and bathtub again. There was raw sewage on the bathroom, bedroom and living room floor. Even though we were told by the property manager (Tracie) and the maintenance man (Walter) not to call them on the weekend even if it is a water problem, we did so anyways to cover ourselves. Walter did not respond until sometime between 8 or 9 am. Later that morning, another brother of the landlord/owner showed up and took the cap off the line on the city side and sewage immediately began to gush out of the line. We informed him that sewage was in the house and it had beginning to spill on to the floor and throughout the house. I'm sure he informed the landlord/owner of how bad the situation was and how important it was to get someone there to get control of the situation. Instead, all we got was smart ignorant messages from the landlord's brother Walter.

We attempted to maintain the sewage and stop it from spreading by putting towels down on the floor. We ran out of towels and had no choice but to use our sheets, blankets and even our clothes to contain the sewage to no avail. The flooding was too great and the smell was horrific. The city showed up sometime around 10 to 11 am after we contacted them early that morning. They informed us that the pumping station was struck by lightning but sewage should have not have been backing up into the home. We informed the landlord and the city employees that we had to turn the water off at the meter to stop the sewage from coming up through the toilets and bathtub. They admitted that it was their fault and cleared the blockage again for the second time less than 60 days.

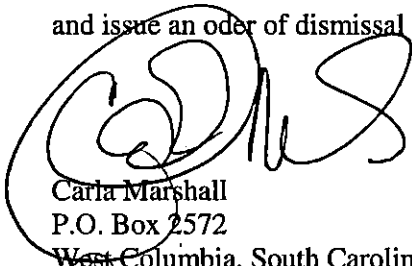
The smell was too much to bare. We contacted several restoration companies to come in and clean up the sewage but, each one stated that because we were the tenants, they would require the owner or landlord to authorize or grant permission for them to enter the premises. We were willing to pay for it but neither the property manager, maintenance man nor owner would give permission. We were advised by each of the restoration companies to leave the premises immediately due to the toxic gases and bacteria we were being exposed to. Therefore, after no answer from the landlord as to what his plan of action to remedy the situation. We went to a hotel because we did not know what to do. The property was uninhabitable and posed major health risks. Also, there was no running water. We did not abandon nor desert the property. We just simply went to a hotel. The letter that was sent to Mr. Stroud did not need to be a 14 day moving notice because we had no intentions on moving.

After being forced to live in a hotel for 2 weeks and hearing no plan of action from the landlord, landlord's property manager nor maintenance man that it's not our fault it's the city fault. We receive a summons for eviction that was left on the garage door.


Conclusion

This Honorable Court should overturn the lower court's decision in favor of the respondent. This case fails on a number of grounds. The first is the Ms. Marshall should have never been turn from a defendant to a witness when she was originally named as a defendant. The respondent's attorney never

filed a notice of appearance. Attorney Ford should have gave notice to the court that he represented Ms. Marshall in 2016 and the Finklea Law Firm had represented Ms. Marshall since 2003 to 2018. That is the only reason why he wanted to make Ms. Marshall a witness because it is a conflict of interest. Both lower courts ignored the Landlord Tenant Act Section 27-40-440 and 27-40-610 which addresses the responsibilities of the landlord to keep the property in a health, safe and inhabitable condition. Mr. Stroud failed miserably to do so. We had a emergency situation that needed to be addressed immediately. No one should be expected to live in those conditions in which we were subjected to. To make matters worse is for him to evict us. He did not have the decency and the respect of his own property to grant permission to the restoration company to come in and clean the property. That is all we were asking. He never contacted us not even once. Therefore, We pray this Honorable Court will reverse the decision on the lower court and issue an oder of dismissal with prejudice.



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The Honorable Thomas A. Russo

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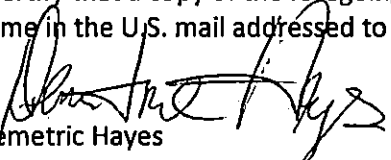
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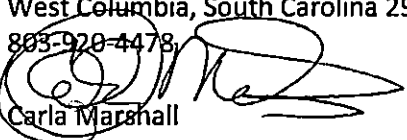
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Carla Marshall and Demetric Hayes.....Appellant

Certificate of Service

I certify that a copy of the foregoing Initial Brief has been served upon the Respondent by placing the same in the U.S. mail addressed to the following as shown this 12 November 2019.


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