

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Aug 17 2020

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Marvin H. Dukes, III, Special Circuit Court Judge

Unpublished Opinion No. 2020-UP-108 (S.C. Ct. App. Filed Apr. 15, 2020)

Rickey Phelps and Christy Phelps Petitioners,
v.
Shamsy Madani, ... Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

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NOV 30 2017

SC Court of Appeals

Case No. 2016CP0701475

Shamsy Madani, ... Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

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Order of June 1, 2016

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT	)	C/A NO: 2015CV0710301411
 RICKY PHELPS AND CHRISTY PHELPS,	)	
Plaintiffs,	)	
Vs.	)	Order on Post Trial Motions of Defendant
 SHAMSY MADANI,	)	
Defendant.	)	

BEAUFORT MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 JUN -6 AM 8:23

This Order resolves Defendant Shamsy Madani's Motion for Reconsideration and New Trial which was filed with the Beaufort County Magistrate Court on May 20, 2016. The Motions apply to the Court's Order on Post Trial Motions of the parties filed April 28, 2016, and the Court's Order on post trial motions of the parties signed on May 12, 2016. The Plaintiffs Phelps object to the Court's consideration of the motion as untimely filed; however, the Court has considered the motion in full.

1. Defendant Madani first moves that the Court award her attorney's fees on the basis that she was the prevailing party in her counterclaim against the Plaintiff. In this matter, both parties were given awards by the jury. Because of the statutory provision requiring the award of three months' rent or the amount awarded by the jury, whichever is greater, on the Plaintiff's claim of unlawful ouster, the Plaintiffs' monetary award exceeded the award made to the Defendant on her claim for unpaid rent. Therefore, the Court found that the Plaintiffs were the prevailing party in the matter and were entitled to an award of attorneys fees. The Defendant's claim for attorney's fees is therefore denied. It is unclear whether the Defendant wishes to cross examine the Plaintiff's attorney regarding his fees or present evidence in that regard. Should he wish to do so, a hearing to reconsider the **amount** of the attorneys fees awarded to the Plaintiffs will be scheduled upon request.
2. Defendant alleges that Plaintiffs' Rule 59 motion was not timely filed. I find that it was timely filed.
3. Defendant Madani further argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. The Plaintiffs sued the Defendant for a violation of S.C. Code Sections 27-40-660 (unlawful ouster) and 27-40-410 (failure to observe the statutory requirement for deductions from return of the security deposit at the end of a lease). The Defendant counterclaimed against the Defendant for failure to pay rent and for damages to her property. At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the

sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the Defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75/100 (\$401.75) and this was clearly the intention of the jury based upon its verdicts. The South Carolina Code, however, states, "If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410." In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

4. Defendant Madani argues that the Plaintiffs case is barred by res judicata and collateral estoppel because the parties were previously engaged in an eviction proceeding in which the Defendant sought an order of eviction against the Plaintiffs. She argues that any claims by the Plaintiffs should have been brought in that proceeding. These issues were not raised at trial and cannot be raised now. In any case, I find that the Plaintiffs actions were not mandatory counterclaims in the eviction proceeding.

The Defendant also argues that collateral estoppels precludes the Plaintiffs' claim for a violation of the security deposit statute in that the jury found that there was unpaid rent due to the Defendant and at the same time found that the Defendant violated the provisions of the security deposit statute. Because the language of the statute requires certain conduct on the part of the landlord before any deduction in the security deposit can be made, I find that the verdict is not inconsistent.

5. Defendant Madani requests that the Court reconsider her request for attorney's fees. While the Court did review and consider the affidavit for attorney's fees filed by the Defendant Madani, the finding that the Plaintiffs are the prevailing party in this matter precludes the award of attorney's fees to the Defendant.
6. All dates of judgment remain the dates that the orders were signed and filed.
7. The Defendant moves that the court order a New Trial *Nisi Additur* on the grounds that the judgment by the jury on the amount owed to the Defendant Madani was inadequate as a matter of law. The jury was instructed on the law and the defenses to nonpayment of rent. The amount of rent owed to the Defendant was a question for the jury to decide.

Defendant's motions are therefore denied.

IT IS SO ORDERED.

Beaufort, South Carolina
June 1, 2016


Nancy Sadler, Beaufort County Magistrate

Order of August 3, 2017
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01475

Shamsy Madani

Rickey Phelps and Christy Phelps

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☒ Reversed; ☒ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before me on March 20th, 2017, pursuant to Shamsy Madani's Appeal timely filed on June 30th, 2016. After argument of counsel and review, I find that a new trial is required as a result of "irreconcilable verdict".
Reversed and remanded.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3069

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Andrew James Toney

Christopher Stephen Truluck

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Shamsy Madani VS Rickey Phelps

Case Number: 2016CP0701475

Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-08-03 13:49:16 page 3 of 3

Appellants' Complaint

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
SECOND AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

2016 MAR - 3 AM 10:40

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

SCANNED
MAR - 3 2016

BY: gc

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.

11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.

12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.

13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.

14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

15. The above stated allegations are hereby incorporated as if stated herein.

16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

18. The monthly rent due pursuant to the terms of the Lease is \$950.00.

19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

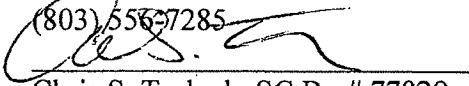
FAILURE TO RETURN SECURITY DEPOSIT PURSUANT TO S.C. CODE § 27-40-410

24. The above stated allegations are hereby incorporated as if stated herein.
25. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
26. Plaintiff's deposited with Defendant a security deposit in the amount of \$950.00 pursuant to the terms of the lease.
27. Plaintiff delivered possession of the property on or about November 21, 2015.
28. On or about January 19, 2015 Plaintiffs provided written notice to Defendant pursuant to § 27-40-410 requesting the return of Plaintiffs' security deposit to P.O. Box 962691, Riverdale, GA 30296.
29. Defendant has failed to return Plaintiff's security deposit or otherwise provide written itemization of deductions of any amounts by Defendant.
30. Pursuant to South Carolina Code section 27-40-410, Plaintiff is entitled to recover three times the security deposit in addition to reasonable attorney's fees.
31. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court and upon verdict of a Jury.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. A determination be made of the reasonable attorney's to be awarded and an Order be entered against Defendant for the amount due as ascertained under direction of this Court.
4. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Columbia, South Carolina
February 26, 2016

Respondent's Answer

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411

Rickey Phelps and Christy Phelps,)

ANSWER TO SECOND AMENDED

Plaintiffs,)

COMPLAINT AND COUNTERCLAIM

vs.)

Shamsy Madani,)

Defendant.)

2016 MAR 14 AM 8:50

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH

NOW COMES the defendant, Shamsy Madani (hereinafter "Madani"), specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Amended Complaint, and Counterclaim against plaintiffs, would respectfully show unto the Court that:

1. Any allegation not hereinafter specifically admitted is denied.
2. Paragraphs 1 through 4 of the Complaint are admitted.
3. As to paragraph 5 of the Complaint, Madani incorporates herein by reference paragraphs 1 and 2 above.
4. Paragraphs 6 through 8 of the Complaint are admitted.
5. Madani admits so much of paragraph 9 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.
6. Madani denies paragraphs 10 through 14 of the Complaint.
7. As to paragraph 15 of the Complaint, Madani incorporates herein by reference paragraphs 1 through 6 above.
8. Paragraphs 16 through 18 of the Complaint are admitted.

9. Madani admits so much of paragraph 19 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.

10. Madani denies paragraphs 20 through 23 of the Complaint.

11. As to paragraph 24 of the Complaint, Madani incorporates herein by reference paragraphs 1 through 10 above.

12. Paragraphs 25 through 28 of the Complaint are admitted.

13. Madani denies paragraphs 29, 30, and 31 of the Complaint.

FOR A FIRST DEFENSE

14. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

15. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR A THIRD DEFENSE

16. Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

FOR AN FOURTH DEFENSE

17. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

18. This matter involves Rickey Phelps and Christy Phelps (hereinafter "Phelps") breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

19. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ("Subject Property").

20. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.

21. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.

22. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.

23. Several furniture rental companies had rented furniture to Phelps.

24. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.

25. Madani refused to allow such furniture companies' access to the Subject Property.

26. Madani attempted to schedule several meetings with Phelps.

27. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.

28. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.

29. Madani questioned neighbors of the Subject Property about the Phelps.

30. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.

31. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.

32. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.

33. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.

34. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.

35. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.

36. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

37. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

38. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

39. Madani did lawfully evict Phelps for failure to pay rent and Phelps does now owe Madani unpaid rent.

40. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

41. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

42. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease – As to Phelps)

43. Each and every allegation set forth above is fully incorporated herein.

44. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.

45. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.

46. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

(SIGNATURE PAGE TO FOLLOW)

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

March 8, 2016
Hilton Head Island, South Carolina

Partial Transcript

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

MAGISTRATE'S COURT

Rickey Phelps and Christy)
Phelps,)

Plaintiffs,)

vs.)

Shamsy Madani,)

Defendant.)
-----)

COPY

PARTIAL TRIAL TRANSCRIPT

April 18, 2016



1 THE COURT: You are resting the plaintiffs' case,
2 right?

3 MR. TRULUCK: Yes, Your Honor, so I guess I'm
4 subject to motion for a directed verdict and I
5 -- I guess since he hasn't been able to call
6 his witness yet, he's not subject to it. So --

7 THE COURT: His counterclaim is not.

8 MR. TRULUCK: And we've already stipulated to all of
9 the facts I think we can, so I don't think I
10 properly have any motions at this time. I do
11 reserve my right for a directed verdict after
12 his case, of course, Your Honor.

13 THE COURT: Well, you've got to make your directed
14 verdict motion now.

15 MR. TRULUCK: Well, he hasn't put his witness up
16 yet, Your Honor. I don't know what she's going
17 to say.

18 THE COURT: Right, well, you -- you -- you can --
19 you are at the end of the plaintiffs' case, so
20 it's proper now to make a directed verdict
21 motion. You can do that or not. That's up to
22 you.

23 MR. TRULUCK: Yes, Your Honor, I'm the plaintiff.

24 THE COURT: You don't -- you don't have to -- you
25 don't have to hear the defense side of the case



1 to make your directed verdict motion.

2 MR. TRULUCK: Well, Your Honor, the only issues I
3 think I would make a directed verdict on is
4 that --

5 THE COURT: Actually, you're right. The defendant
6 would make a directed verdict motion right now.

7 MR. TRULUCK: Yes, Your Honor.

8 THE COURT: Do you want to make a directed verdict
9 motion?

10 MR. TONEY: Yes, Your Honor, at least as to one
11 cause of action.

12 THE COURT: Okay.

13 MR. TONEY: The first cause of action in the Second
14 Amended Complaint of the plaintiffs is the 27-
15 40-610 violation of the -- general violation of
16 the South Carolina Landlord Tenant Act. I
17 don't -- there's been no testimony as to any
18 violation of this Act. There's been mention
19 that there was no notice of Ms. Madani coming
20 into the apartment, but there was no testimony
21 that she ever came into the apartment or any
22 evidence presented that she ever came into the
23 apartment without giving notice. There has
24 been testimony that -- that they were locked
25 out and the testimony in our case to refute



1 that. However, there's -- there's no testimony
2 on the record that essential services weren't
3 provided to the plaintiffs, that the -- that
4 Mrs. Madani entered the apartment or violated
5 any other terms of the South Carolina
6 Residential Landlord Tenant Act and so for that
7 reason, I would ask the Court to dismiss the
8 allegations of violations of 27-40-610.

9 **MR. TRULUCK:** Your Honor, very easily, I have two
10 things to say about that. One, Section 610 is
11 a reversible section that can be -- it's called
12 either a counterclaim or a defense and, Your
13 Honor, until they put up their case, I can't
14 fully submit it as a defense and cross-examine
15 Ms. Madani about that. Secondly, Your Honor,
16 we did put up evidence that they've never been
17 notified by the five-day notice for any rent
18 due. That's -- there's two provisions in there
19 for that. One does -- the one that says we
20 don't have to give you notice for an eviction
21 hearing, but her contract goes on to say it a
22 second time a different way. It gives them a
23 contractual right on top of it. So that would
24 be a violation --

25 **THE COURT:** It's -- it's -- it's not mandatory,



1 though. It says it may -- she may provide that
2 notice.

3 **MR. TRULUCK:** Indeed, Your Honor, and I would submit
4 that the jury can decide that that ambiguity
5 should go to my client that she should have
6 told them. Additionally, Your Honor, this is
7 also a defense. It's either a defense or
8 counterclaim, so it'll still survive as a
9 defense as we go through the case as against
10 any claims for rent once she testifies to that.
11 So, Your Honor, that that's kind of putting me
12 before the horse with regard to the defense.
13 I haven't heard her case yet, so I can't rebut
14 it. I've done --

15 **THE COURT:** So I'm just not following you. So
16 you're saying that these six -- that a
17 violation of the general provisions of 610,
18 which I don't see this as a defensive --

19 **MR. TRULUCK:** Your Honor, it's also 640. 640 says
20 the landlord's non-compliance as defense to
21 action for possession of rent. In an action
22 for rent tend to rely on the rental agreement
23 or the provisions of this chapter to assert
24 defenses and to counterclaim -- counterclaim,
25 Your Honor, for any amount recoverable



1 thereunder. So I didn't file that until after
2 the -- the defendant had answered, so I had to
3 put it in my Complaint to preserve it. I also
4 put it in my Complaint as a defense -- or in my
5 reply as a defense to preserve it, Your Honor,
6 so the noncompliance remains as an off-set to
7 any claims for rent. Whether it's a claim, a
8 counterclaim, or a defense, it still sits there
9 as an off-set, so, Your Honor, I should still
10 be allowed to rely on it especially since there
11 has been a no notice -- testimony as no notice
12 provision that they had been locked out, that
13 they had been failed to return the security
14 deposit. Those are breaches of the contract
15 and those are breaches of the Residential
16 Landlord Tenant Act and so I do believe that I
17 survive a motion for a directed verdict, which
18 we see in the light most favorable to the
19 plaintiff, Your Honor.

20 **THE COURT:** Well, I'm going to leave it. Just -- I
21 may at the end of the case reverse myself, but
22 for now, I'm going to allow him to ask
23 questions along those lines as we go forward
24 and we can figure out what remains at the end
25 of the case, okay.



1 MR. TONEY: Yes, Your Honor.

2 MR. TRULUCK: Thank you, Your Honor.

3 THE COURT: All right.

4 * * * * *

5 MR. TONEY: Mrs. Madani closes here case.

6 THE COURT: Okay. All right. Any rebuttal?

7 MR. TRULUCK: Your Honor, no, we don't have anything
8 else to put up.

9 THE COURT: Okay. All right. Ladies and gentlemen,
10 you get to step out again. There -- I'm going
11 to take up some legal matters for a brief
12 second and then we'll -- we'll call you back in
13 and we'll -- you'll hear the attorneys' closing
14 arguments and I will charge you on the law --
15 on the law and then you'll be able to begin
16 your deliberation.

17 (The jury is excused from the courtroom.)

18 THE COURT: All right. I'll hear the motions.

19 MR. TRULUCK: Your Honor, I think -- I think the
20 only motions with regard to the counterclaims
21 would be just to have them restricted a little
22 bit. I will concede that I think there's
23 enough evidence to go to the jury as to whether
24 or not there was a breach and whether or not
25 they believe my clients are responsible for



1 damage to the property. I do, however, make
 2 note that any motion I have is to restrict any
 3 claim for damages after the eviction. Anything
 4 past November -- middle of November essentially
 5 I believe should be barred. There is no claim
 6 for quantum meruit. There's also no claim
 7 pursuant to the reasonable rent provisions for
 8 holdover tenants under that statute. So, Your
 9 Honor, it's just a complete lack of notice for
 10 my client to be responsible for anything after
 11 the time they moved out in the event the jury
 12 finds that they are responsible for rent. So
 13 I ask that the jury be instructed that if they
 14 -- if they ever found rent, that it would only
 15 be for the possible variations of September,
 16 October and halfway through November, which I
 17 think we all agree they didn't stay longer than
 18 mid November. Anything past that has not been
 19 sufficiently plead for my client to have been
 20 on notice for and so -- and, furthermore, Your
 21 Honor, the Complaint does specifically say
 22 several months prior to the expiration of the
 23 lease, the Phelps ceased paying required rent.
 24 And there's no -- there's no claim past that
 25 for actual damages as a result of any breach.



1 Also, Your Honor, and I don't think this
2 actually prejudices the defendant's case at
3 all, but the defenses that have been claimed,
4 unclean hands, estoppel, and res judicata, the
5 first two were equitable defenses. This is a
6 legal action, Your Honor. It's a statutory
7 action. Even the breach of contract, whether
8 it common law or otherwise, is going to be
9 legal. And so the first two claims don't apply
10 -- the defenses don't apply at all because
11 they're equitable, Your Honor. And the third
12 one, of res judicata, I'm not sure how that
13 defense would be applied. In any event, I
14 haven't heard any evidence that there is a
15 defense of res judicata that should be
16 submitted to the jury. Even further in support
17 of that, Mr. Toney hasn't submitted any
18 instruction to the jury for the defense of res
19 judicata, so I ask that all those defenses be
20 stricken. Any other defenses that may be out
21 there be stricken as not having been plead, and
22 it be limited to the time period that we agreed
23 that they were in the apartment, Your Honor.
24 **MR. TONEY:** Your Honor, in response to that, I think
25 initially I'd just say I move for a directed



1 verdict. The testimony is absolutely clear
 2 from the Phelps that they agree that they did
 3 not pay September, October, and November rent
 4 or those late charges. Then they turned around
 5 and they sued my client for allegedly locking
 6 them out of the apartment when they admit that
 7 they received the note -- to receive the key.
 8 Any damages that they could recover in this
 9 case are limited by three months of rent. They
 10 presented absolutely no damages other than the
 11 statutory damages that are allowed. And so any
 12 verdict in this case is -- any verdict they may
 13 get under statutory grounds are wiped out by
 14 their own admission of not paying rent under
 15 the contract. And that amount is actually
 16 greater than three months of rent because of
 17 the late charges that they admit that they
 18 haven't paid. On those grounds, I move for a
 19 directed verdict in favor of the defendant and
 20 ask for the case to be dismissed. Furthermore,
 21 there is -- the plaintiffs have presented
 22 absolutely no evidence that Mrs. Madani entered
 23 the apartment without notice to them. They
 24 presented zero evidence of any damage to them.
 25 There's been not one dollar of damage shown.



1 They haven't shown that they -- they haven't
2 stayed in a hotel or had to eat out or stay in
3 other places because of this. All their
4 damages are -- that they're relying upon are
5 statutory interpretations and that is it. For
6 those grounds, I move for a directed verdict in
7 favor of the defendant and ask for a judgment
8 to be rendered in her favor.

9 **THE COURT:** So why wouldn't I go ahead and direct a
10 verdict on the rent issue?

11 **MR. TRULUCK:** That we owe rent, Your Honor?

12 **THE COURT:** Uh-huh (affirmative response).

13 **MR. TRULUCK:** Two reasons, Your Honor, both the
14 common law repudiation; and two, the non-
15 compliance section of the Residential Landlord
16 Tenant Act, it says in the noncompliance
17 section, Your Honor, the defendant can use as
18 a defense or a counterclaim any non-compliance
19 by the landlord as against a failure for
20 payment of rent. If the jury finds that Mrs.
21 Madani's behavior was such that my clients
22 should be responsible for rent, they can choose
23 to make that determination.

24 **THE COURT:** For September?

25 **MR. TRULUCK:** For the entire period, Your Honor.



1 She began the behavior that I believe lead to
2 all of this confusion stemming back from the
3 very beginning when there was this confusion
4 about where the rent was supposed to be given.
5 There was no testimony that there was any
6 written instruction for her to -- for my
7 clients to give the rent to her personally.
8 That derailed the whole situation and the
9 defendant -- the jury can certainly find that
10 she's not entitled to rent at all because she
11 locked them out, because she directed rent in
12 an illegal way, and because she with --
13 withheld the security deposit, and, not to
14 mention, Your Honor, all of those while even if
15 they are zero amounts, they certainly can
16 triple if there's just a finding based on the
17 rent and/or security deposit, which would
18 certainly serve three months worth of rent. So
19 it really comes down to what the jury believes,
20 Your Honor. We have never made a dispute that
21 rent was not paid for those months. We just
22 dispute whether or not the law requires that my
23 client pay it because of Ms. Madani's behavior
24 and we believe that the Code provides for a
25 defense for that.



1 **THE COURT:** What was your other ground for a
2 directed verdict? You said on the rent and
3 then --

4 **MR. TONEY:** On the issue of her illegally entering
5 the apartment. That --

6 **THE COURT:** What do you say about that?

7 **MR. TRULUCK:** Your Honor, she didn't provide any
8 evidence that she gave any timely notice. She
9 said she couldn't do it. She said that she
10 provided notice, but the jury can choose not to
11 believe her.

12 **THE COURT:** Well, now, she's only required to post
13 the notice.

14 **MR. TRULUCK:** Yes, but we don't know what she
15 posted. We don't know whether it was in
16 compliance or not.

17 **THE COURT:** She said she posted a notice giving them
18 24 hours notice. She gets to testify to that.
19 She doesn't have to produce the document. I
20 mean, and -- and there -- what's your evidence
21 that there's an illegal entry?

22 **MR. TRULUCK:** That there is no -- that she did not
23 bring any evidence to substantiate her claim.
24 It's missing, Your Honor. Obviously, we have
25 discovery problems. You stated that yourself.



1 THE COURT: Yeah.

2 MR. TRULUCK: I can't fix that. But I can tell a
3 jury I don't believe that she posted that
4 notice and they can believe it --

5 THE COURT: You can't tell a jury that.

6 MR. TRULUCK: That I don't believe that?

7 THE COURT: You can't -- no, you cannot say I don't
8 believe that. You can challenge their belief
9 about it, but you can't say what you --

10 MR. TRULUCK: Well -- I'm sorry, Your Honor, I can
11 tell them that's my -- I don't believe the
12 evidence establishes that she did it because
13 it's not here. She could have easily have
14 brought it to convince the jury that she had
15 posted the notice. In any event, Your Honor,
16 that still only goes to a non-compliance issue.
17 And I don't believe that would -- I believe
18 they can choose not to believe that she posted
19 the notice period, Your Honor. She has --
20 there were some inconsistencies in her
21 testimony, I would say much more than a few,
22 rather important inconsistencies. So they can
23 choose to believe that she didn't post the
24 notice.

25 THE COURT: Okay. And what do you say about an



1 unclean hands defense and estoppel and res
2 judicata?

3 **MR. TONEY:** I didn't prepare any instructions to the
4 jury on those matters. I'm fine --

5 **THE COURT:** So we're going to drop those?

6 **MR. TONEY:** Yeah.

7 **THE COURT:** Okay. All right. I'm not going to
8 direct a verdict on anything. I'm going to let
9 the jury decide it. That doesn't mean that I
10 might not correct something if I feel that
11 there's a blatant error later. In terms of
12 restricting the request for rent payments,
13 don't -- do you agree that the writ of
14 ejectment terminates the lease?

15 **MR. TONEY:** No, Your Honor, I believe that the
16 lease agreement runs through March 30th of 2016
17 --

18 **THE COURT:** Even if they got evicted?

19 **MR. TONEY:** Yes, Your Honor, I believe that she's
20 allowed to collect rent and she has to
21 reasonably try to rent out the unit, which she
22 did starting -- or she testified to December
23 17th, 2015, so she's allowed at least a half a
24 month of December and the pleadings more than
25 fully --



1 THE COURT: So is there some law on that somewhere?

2 MR. TONEY: Yeah.

3 MR. TRULUCK: Your Honor, the Code says that
4 eviction terminates the lease and I will try to
5 find the provision for you, but it says that in
6 there. And what it becomes, Your Honor, it
7 becomes incumbent on the party to seek damages
8 as a result of breach of contract beyond that
9 period. But my client --

10 THE COURT: Well, that's what we're here for.

11 MR. TRULUCK: Yes, Your Honor, but they didn't --
12 they didn't put us on notice. They only said
13 several months. Now, they're talking about
14 four months.

15 MR. TONEY: That's the most basic understanding of
16 South Carolina pleadings you're allowed to
17 generally plead your allegation, which is what
18 we did. We're -- you know, we're claiming an
19 additional half month. She tried as hard as
20 she could to rent this apartment out and she
21 did, and it's for another half a month, and
22 that is what she's claiming today in her
23 testimony.

24 MR. TRULUCK: And, Your Honor, I realize there's one
25 other thing I have to preserve or I'm going to



1 be doing something very stupid. And I, of
2 course, I understand if you deny it. In fact,
3 I think that almost might be fair, but I need
4 to say it. Your Honor, inasmuch as you might
5 have considered a directed verdict for the
6 issue with regard to rent, I just need to put
7 on the record I think that it would have been
8 an equally strong argument to say that the
9 failure to return the security deposit under
10 the same law wouldn't apply, as well, Your
11 Honor. There was no itemized list and that
12 that is a failure, too. So I just want that in
13 fairness put out there, Your Honor.

14 **THE COURT:** Okay. Sorry. Okay. I'm going to deny
15 the motion for a directed verdict on the rent;
16 I'm going to deny the motion for a directed
17 verdict on the illegal entry issue; I'm going
18 to deny the motion for a directed verdict on
19 the failure to return the security deposit; I'm
20 going to allow Mr. -- the -- I'm going to allow
21 the defendant to argue that she's entitled to
22 rent for half a month in December. The
23 pleadings even generally plead a half a month
24 is not any substantial change, so I'm not going
25 to -- or a month actually, I guess if it's



1 November 17th. Okay.

2 MR. TRULUCK: Thank you, Your Honor.

3 * * * * *

4 THE COURT: All right. This is a matter of the case
 5 of Rickey Phelps and Christy Phelps,
 6 plaintiffs, versus Shamsy Madani, defendant.
 7 Case number 2015CV0710301411, where Rickey
 8 Phelps and Christy Phelps assert Shamsy Madani
 9 failed to return the plaintiffs' security
 10 deposit in compliance with South Carolina Code
 11 § 27-7-410. We the jury unanimously find for
 12 the plaintiffs in the amount of \$950. Where
 13 Christy Phelps asserts Shamsy Madani unlawfully
 14 excluded her from the premises, we the jury
 15 find unanimously for plaintiff where she has
 16 proven her claim by a preponderance of the
 17 evidence and further find actual damages in the
 18 amount of zero. Where Rickey Phelps,
 19 plaintiff, asserts Shamsy Madani, defendant,
 20 unlawfully excluded him from the premises, we
 21 the jury unanimously find for the plaintiff
 22 where he has proven his claim by a
 23 preponderance of the evidence and further find
 24 actual damages in the amount of zero. Where
 25 Shamsy Madani asserts Rickey Phelps and Christy



1 Phelps caused damage to the subject rental
 2 property, we the jury unanimously find for the
 3 defendant where she has proven her claim by a
 4 preponderance of the evidence and further find
 5 actual damages in the amount of \$301.85. We
 6 the jury unanimously -- where Shamsy Madani
 7 asserts Rickey Phelps and Christy Phelps failed
 8 to pay rent, we the jury unanimously find for
 9 the defendant where she has proven her claim by
 10 a preponderance of the evidence and further
 11 find actual damages in the amount of \$1,050.
 12 All right, ladies and gentlemen, I appreciate
 13 your jury service so much. It's been a long
 14 day. I'm going to tell Stephanie she ought to
 15 write y'all down for 18 months of exclusion
 16 from jury service instead of 12 months. Y'all
 17 are going to get a check. Again, it doesn't
 18 compensate you in any way for what you've done
 19 here today, but we appreciate your hard work.
 20 I noticed y'all were really working hard to
 21 listen to the evidence and we appreciate your
 22 work. So y'all are free to go.

23 (The jury is excused.)

24 THE COURT: All right. Any motions?

25 MR. TRULUCK: Beg the Court's indulgence very



1 briefly.

2 **THE COURT:** Sure. I'm going to figure this out.

3 **MR. TRULUCK:** Your Honor, I have got to be honest
4 with you and say that I've never been in this
5 situation before. I'm prepared to submit my
6 arguments with regard to the calculation, of
7 course, inasmuch as I believe that the
8 (inaudible) should be three times \$950 for the
9 plaintiff, the (inaudible) three times \$950 for
10 the plaintiff on the security deposit; three
11 times \$950 (inaudible) of all the cases, Your
12 Honor, as far as motions. Otherwise, my
13 clients are pleased with the verdicts and so
14 they'll wish to assert them.

15 **THE COURT:** Okay.

16 **MR. TONEY:** Your Honor, I ask the Court to determine
17 the amount of damages that the Court -- it was
18 clear from the jury's verdict they were
19 attempting to give a verdict to the Phelps of
20 \$950, which is then off-set by the verdict of
21 \$1,050 for Mrs. Madani, plus \$301.85 for Mrs.
22 Madani, which would be a net of whatever that
23 amount is.

24 **THE COURT:** \$401.85.

25 **MR. TONEY:** \$401.85 to Mrs. Madani. I would request



1 that the Court, if it wishes to do so, have the
 2 two verdicts cancel out to a total of zero. I
 3 don't believe that there's any evidence or the
 4 way the jury found its verdict in favor of the
 5 Phelps in that matter, that they awarded them
 6 not \$1. There was no evidence presented as to
 7 any damages and the -- if any, the evidence
 8 was, as we stated all along, was completely
 9 clear that the Phelps admitted all along that
 10 they didn't pay three months rent. Mrs. Madani
 11 testified they didn't pay three months rent.
 12 They didn't pay for the -- for the \$100 late
 13 fees and all those matters. There should be a
 14 judgment notwithstanding the verdict if the
 15 Court is inclined to give -- to give the three
 16 months rent or at least that three months rent
 17 should only be for one party. It's to try to
 18 award them each three months rent, plus the
 19 \$950 is entirely inconsistent with what the
 20 jury was attempting to do here. And it's clear
 21 that the jury made a decision. They were
 22 trying to decide to sort of even this out and
 23 they thought they were giving Ms. Madani the
 24 400 and whatever dollars that is and if it's
 25 opposite, then Mrs. Madani is paying \$5,000 or



1 \$5,400, whatever that amount is, which is
2 completely contrary to all the evidence that
3 was presented today by the Phelps and by Mrs.
4 Madani. There is no question and never has
5 been a question and from this morning when the
6 Phelps testified that they knew that they
7 didn't pay September, October, and November,
8 and then there was additional testimony that
9 they didn't pay December; they didn't pay the
10 late fees. You know, how they can now recoup
11 money in this action, recoup some \$5,000 if
12 that's what Mr. Truluck is trying to say that
13 they're owed is completely contrary to all
14 equity, to what occurred in this case, and to
15 the evidence that was presented today and it's
16 clear that the jury was -- is confused as to
17 what they were -- what they were issuing and
18 what their verdict was.

19 **THE COURT:** Well, I'm not sure it says what you say
20 it says. It says the tenant may recover
21 possession or terminate the rental agreement
22 and in either case recover an amount equal to
23 three months periodic rent or twice the actual
24 damages sustained by him, whichever is greater,
25 and reasonable attorneys' fees. And it says



1 may. Do you think that's mandatory?

2 **MR. TRULUCK:** I do believe, Your Honor, it says
3 whichever is greater. I don't understand how
4 else that could be interpreted. In any event,
5 Your Honor, that -- the termination -- I guess
6 we're only addressing -- I'll only address that
7 one right now, Your Honor, but it gives you the
8 option, but we didn't go over the actual
9 damages, Your Honor. We relied on the penalty.
10 And, Your Honor, we discussed that about the
11 possibility of a zero verdict, and that a zero
12 verdict would still entitle them to the penalty
13 part of the provision and that's --

14 **THE COURT:** No, you said that. I don't -- I didn't
15 necessarily agree with you.

16 **MR. TRULUCK:** Well, there's no requirement here,
17 Your Honor, that there be a \$1 sum at all. It
18 just flips between --

19 **THE COURT:** No, I agree with you. There's no
20 requirement, but I'm -- but it sounds like a --
21 it's leaving it kind of in the hands of the --
22 kind of like trebling the damages on the -- on
23 the --

24 **MR. TRULUCK:** Well, it does say whichever's greater,
25 Your Honor.



1 THE COURT: -- return of the deposit. I see that it
2 says that.

3 MR. TRULUCK: I think that's rather convincing that
4 it's either three times or two times.

5 THE COURT: Do y'all know whether there's any law on
6 it?

7 MR. TONEY: Well, Your Honor, it's -- I mean, you
8 know, we deal with statutory construction all
9 the time and the word may, and, or, or shall
10 all have very specific meanings. And as the
11 Court has pointed out, the word may is stuck in
12 a conspicuous place here that the tenant may
13 recover possession or terminate the rental
14 agreement, and in either case recover an amount
15 equal to three months periodic rent or twice
16 the actual damages. All those clauses come
17 after the may provision and that the -- the
18 jury in this case rendered a verdict in favor
19 of the Phelps for zero dollars for each of
20 their causes of action. It is -- it's --
21 without talking to the jury and having them
22 explain to what they are -- were doing, it is
23 clear from what they filled out on that form
24 that they found that they were locked out, but
25 they didn't suffer any damages, so they



1 shouldn't receive any damages. Why should
2 somebody that was -- that wasn't at the
3 apartment and had notice that the locks had
4 been changed receive three months of rent if
5 they didn't actually suffer any damages, they
6 didn't present any damages to the Court today.

7 **MR. TRULUCK:** Your Honor, the legislature creates
8 that opportunity. It's obviously intended that
9 that be the possibility. Your Honor, opposing
10 counsel says may recover possession or
11 terminate the rental agreement and, in either
12 case, whether they recover possession or
13 terminate the rental agreement, they can
14 recover an amount equal to three months rent or
15 twice the actual damages sustained by him,
16 whichever is greater. And it doesn't prescribe
17 that to anyone other than we've given that
18 question to, Your Honor, which was the jury.
19 They found for us and, Your Honor, the greater
20 of those two is three months the rent, which we
21 had already stipulated to, Your Honor. I don't
22 think there's any question that it should be
23 three months, the greater of two.

24 **MR. TONEY:** There's nothing in this -- in this -- in
25 this statute that says -- that shall or must



1 award that amount of damages. It --

2 **THE COURT:** Well, here's what I'm going to do. I'm
3 tired and so I want to think -- I want to do
4 the right thing obviously and so I want to
5 think about it and I'm going to (a) invite you
6 both to -- in the next week or so e-mail me at
7 ndsadler@gmail.com and copy the other one --
8 copy each other with any communication, and if
9 there's any law on it, and I'm going to look
10 too just to see if there's -- I'm not aware of
11 any, but -- and we'll figure it out when I have
12 a little bit clearer mind.

13 **MR. TRULUCK:** Your Honor, are there any other
14 questions --

15 **THE COURT:** I get dull at the end of the day.

16 **MR. TRULUCK:** -- with regard to rest? Is there's
17 any contention about the security deposit
18 division? That doesn't -- I don't --

19 **THE COURT:** Now, I do think that that's in my
20 discretion, don't you think, the treble
21 damages? There's a case on that. Is there
22 not a case? I mean, I'm pretty sure there is.

23 **MR. TRULUCK:** I won't say there's not, Your Honor.

24 **THE COURT:** Okay.

25 **MR. TRULUCK:** I'll never say unless I am sure.



1 THE COURT: Okay.

2 MR. TRULUCK: I'm not aware of any case commenting
3 on this provision.

4 THE COURT: On the security deposit?

5 MR. TRULUCK: Yes, I'm not -- well, actually, no,
6 let me take that back, Your Honor. A lot of
7 the provisions don't have any case law in the
8 Residential Landlord Tenant Act.

9 THE COURT: Yeah.

10 MR. TRULUCK: I'm not sure --

11 THE COURT: But I mean, on this, I'm pretty sure
12 there's a case that talks about the treble
13 damage aspect, so I'll look at that. And y'all
14 look at that. And, again, let's just say we're
15 going to take about seven days for y'all to
16 communicate with me, what your arguments are.
17 Although I know from the plaintiffs'
18 standpoint, you want treble damages on your
19 security deposit and three times the rent on
20 your master claim.

21 MR. TRULUCK: Yeah, and inasmuch as the -- that it
22 says that we're entitled to \$950 on that, yes,
23 Your Honor.

24 THE COURT: Okay. And you can argue anything you
25 want to, too. Y'all are preserving your



1 arguments.

2 MR. TONEY: Okay. So for now the verdict is \$950
3 for the Phelps --

4 THE COURT: Well, for now, it's y'all have motions
5 pending.

6 MR. TONEY: It's in abeyance?

7 THE COURT: Yeah.

8 MR. TONEY: Okay.

9 MR. TRULUCK: So just as --

10 MR. TONEY: But I'll tell you the difference in the
11 two verdicts is \$401.85, but the actual dollar
12 damage is written on these verdict forms, so.

13 MR. TONEY: So the verdict forms list the difference
14 on them?

15 THE COURT: No, I did it.

16 MR. TONEY: Okay.

17 THE COURT: Which -- which I'm not that trustworthy,
18 so let me do it with a calculator. Yeah,
19 \$401.85 is the difference in the amounts.
20 Okay. So Stephanie, I'm gong to leave that
21 with you.

22 MR. TONEY: Thank you for your patience today.

23 THE COURT: Okay. Well, thank y'all. You both
24 tried good cases.

25 (End of requested portion of trial.)



CERTIFICATE

This is to certify the transcript of the hearing consists of twenty eight (28) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this September 8, 2016.



Carenn N. Moore

Carenn N. Moore
Notary Public for South Carolina
My Commission Expires: 3/24/2019

Verdicts

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Rickey Phelps and Christy Phelps (Plaintiffs) assert Shamsy Madani (Defendant) failed to return to the Plaintiffs the security deposit in compliance with SC Code 27-7-410;

☒ We the Jury unanimously find for;

☒ Plaintiffs where they have proven their claim by a preponderance of the evidence and further find the amount withheld in the amount of
\$ 950.00

_____ Defendant where the Plaintiffs have failed to prove their claim by a preponderance of the evidence.

JURORS:

Amie L. Campbell
Barbara J. Smith
Michael J. Hill
William H. Hargis

Foreman

4-18-2016
DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Christy Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded her from the premises.

☒ We the Jury unanimously find for;

☒ Plaintiff where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$0.

_____ Defendant where the Plaintiff has failed to prove her claim by a preponderance of the evidence.

JURORS;

Corrie R Campbell
Shirley J. Webb
Bonnie J. Lenoir
William H. Hargis

William H. Hargis
Foreman

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Rickey Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded him from the premises.

☒ We the Jury unanimously find for;

☒ Plaintiff where he has proven his claim by a preponderance of the evidence and further find actual damages in the amount of \$0.

_____ Defendant where the Plaintiff has failed to prove his claim by a preponderance of the evidence.

JURORS:

Connie L. Campbell
[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Foreman

DATE

4/18/2016

MAGISTRATE

2015CV0710301411
CASE NUMBER

IN THE SUMMARY COURT

JURY VERDICT

VS.

Shamsy Madani,
Defendant

☒ We the Jury unanimously find for;

✓ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$301.85

_____ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.

Fóreman

JURORS:

JURORS:
 Corrie L. Campbell
~~Bliss~~
 M. M. L. L. L.
~~Baroque~~
 William Hodgins

4/18/2016

DATE _____

MAGISTRATE

2015CV0710301411
CASE NUMBER

IN THE SUMMARY COURT

JURY VERDICT

VS.

Shamsy Madani,
Defendant

☒ We the Jury unanimously find for;

✓ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$1,050

_____ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.

Foreman

JURORS:

Comdr. L. Cardell
John L. Cardell
Wm. M. L. Cardell
Lynne L. Cardell
William Cardell

DATE _____

MAGISTRATE

STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Magistrate's Court

Nancy D. Sadler, Beaufort Magistrate's Court Judge

Case No. 2016-CP-07-1475

2016 OCT 26 PM 2:35
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Ricky Phelps and Christy Phelps, ... Respondents-Appellants,

v.

Shamsy Madani, ... Appellant-Respondent.

MEMORANUDM IN OPPOSITION TO APPEALLANT-RESPONDENT'S APPEAL AND IN
SUPPORT OF RESPONDENTS-APPELLANTS' CROSS APPEAL

FACTS

On April 18, 2016 the above listed action came before the magistrate court on. Respondents-Appellants ("Respondents") claims for Appellant-Respondent's ("Appellant") violations of S.C. Code § 27-40-660 and violation of S.C. Code § 27-4-410 as well as Appellant's common law breach of contract counterclaim for rent and damages. Prior to trial, both parties stipulated by representation to the court and pleading that the rent at issue in the subject matter was \$950.00 and that a security deposit provided by Respondents to Appellant was \$950.00. At the close of all the evidence, Appellant moved for directed verdicts awarding unpaid rent for the months of September, October and November as well as dismissal of Respondents claims or defenses made upon allegations Appellant unlawfully gained access to Respondents residence. Both motions were denied. Respondents moved that Appellant's defenses of unclean hands, estoppel and res judicata be dismissed as inapplicable equitable defenses in Respondents action at law and the court, as stated in its return, accepted Appellant's withdrawal of those defenses. Transcript of Record, Phelps v. Madani, No. 2015CV0710301411 (Bluff. Mag. Apr.

18, 2016).

At the conclusion of trial the Jury returned a verdict in favor of Rickey Phelps, Respondent-Appellant, as against Appellant for violation of S.C. Code § 27-40-660 with zero (0) actual damages, in favor of Christy Phelps, Respondent-Appellant, as against Appellant for violation of S.C. Code § 27-40-660 with zero (0) actual damages and in favor of Respondents as against Appellant for violation of S.C. Code § 27-4-410 with a finding of the amount of security withheld of \$950.00. The Jury also returned a verdict in favor of Appellant against Respondents in the amount of \$301.85 for damage to the subject rental property and \$1,050.00 in actual damages for failure to pay rent. The court dismissed the Jury without further inquiry or request from Appellant. The court ordered, by way of execution on April 27, 2016, for the consolidation of Rickey Phelps and Christy Phelps Jury Verdict's for Defendant's violation of South Carolina Code Section 27-40-660, unlawful ouster, amending the potential award from \$5,700.00 to \$2,850.00. By order of the court on May 12, 2016, the award of attorney's to both parties was reversed and an attorney fee award was ordered for the Respondents only as the recognized prevailing party. The court contemporaneously denied Respondents motion for reconsideration in opposition to the court's consolidation of Rickey and Christy Phelps individual award for Appellant's violation of S.C. Code § 27-40-660. By order of the Court on June 1, 2016, Appellants Motion for Reconsideration and New Trial made upon seven (7) separate arguments was denied. This appeal and cross appeal timely followed.

SUBJECT MATTER JURISDICTION WAS PROPER PURSUANT TO S.C.

CODE § 27-40-130(a)

Appellant argues that this court is devoid of subject matter jurisdiction where the amount of award alleged in Respondents Amended Complaint could have exceeded the statutory limit set forth in S.C. Code § 22-3-10 such that the matter should have been transferred to the Circuit Court. Respondent respectfully disagrees.

First, none of Respondents individual claims, as pleaded or in any eventuality amounted to more than \$2,850.00 each. Similarly, Appellants counterclaim for contractual breach, as plead or upon evidence submitted at trial, could not amount to more than \$7,500.00. Second, Appellant previously, and successfully, argued before the magistrate court that "[t]here was one rental lease in this case . . . the Tenant(s) . . . have one cause of action against their landlord . . . [and] [t]here cannot be double recovery." Def. Mot. New. Trial. Pg. 11 (Apr. 25, 2016). The

magistrate court ordered that Respondents were only entitled to one recovery in the amount of \$2,850.00 despite two jury verdicts finding for each respondent against Appellant for unlawful ouster. By Appellant's own position, the Respondents can only recover in the amount of \$2,850 for Appellant's unlawful ouster and \$2,850 for Appellant's failure to return the security deposit amounting to a maximum award of \$5,700.00. Third, Appellant's reliance on *Mosseri v. Austin* is misguided where the Court found transfer to the circuit court was appropriate where an individual claim was pleaded above \$7,500.00 and the motion to transfer was made at action concerning a commercial landlord tenant action as distinguished from residential leases. Additionally, Appellant never moved to have the actions transferred to the Circuit Court upon grounds that the allegations contained in the pleadings potentially could exceed the statutory limits contained in S.C. Code § 22-3-10.

Finally, Appellants incorrectly rely on S.C. Code § 22-3-10 as the jurisdictional statute. The controlling statute, S.C. Code § 27-40-130, provides:

[t]he circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by this chapter [, the Residential Landlord Tenant Act,] or with respect to any claim arising from a transaction subject to this chapter.

S.C. Code § 27-40-130. S.C. Code § 27-40-130 provides no statutory monetary limit or requirement that the claims involve the possession of property.

Where the court had concurrent subject matter jurisdiction over matters concerning the Residential Landlord Tenant Act Appellants argument must fail, jurisdiction was proper and Appellants appeal should be denied.

**APPELLANT'S APPEAL SHOULD BE DENIED WHERE THE JURY'S VERDICT
WAS NOT IRRECONCILABLE AND APPELLANT ACQUIESCED**

Appellant next argues the lower courts order of judgment should be reversed where the jury's verdict in favor of Respondents as to Appellant's violation of S.C. Code § 27-40-660 for unlawful ouster was irreconcilable as a matter of law. Appellant characterizes the verdict forms as being confused where zero damages were awarded.

First, it is not irreconcilable to conceive that the jury did not find actual damages where none were presented and that, in the alternative, S.C. Code § 27-40-660 provides for statutory damages by way of trebling rent and awarding attorney's fees for a simple violation of S.C. Code

§ 27-40-660. Similarly, Appellant made no objection to the verdict form submitted to the jury and did not request an amendment that should the jury find zero damages they should find for Appellant.

Finally, Appellant allowed the court to release the jury without any attempt to discover the jury's intentions. The Court in *Camden v. Hilton* provided:

The rule that parties seeking to reform a verdict must first voice their objection before the jury is discharged has been followed in South Carolina since at least 1920 ("The defendant's counsel made no attempt to find out what the jury intended and their objections come too late. It was [counsel's] business to clarify and ask for a correction and reformation of the verdict before the jury were [sic] discharged.") [T]his court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence.

Camden v. Hilton, 360 S.C. 164, 171-72, S.E.2d 88 (2004). As in *Camden*, Appellant failed to bring her concerns of confusion or irreconcilability to the attention of the court and submit inquiry to the jury before dismissal. Appellant's plea to this Court for review of the jury's verdict in favor of the Respondent should not be allowed where Appellant has acquiesced to the finding. Similarly, Appellants request for relief should be denied where the jury's verdicts were reconcilable as found by the lower court.

**APPELLANT'S APPEAL SHOULD BE DENIED UPON LACK OF
PRESERVATION OF ISSUE REGARDING S.C. CODE § 27-4-410 AND WAIVER OF
AFFIRMATIVE DEFENSES OF RES JUDICATA AND COLLATERAL ESTOPPEL**

Appellant next argues that the case below should be reversed where the court refused to grant judgment for Appellant where she argued S.C. Code § 27-4-410's notice and itemization of security deposit to tenant was satisfied by a prior ejectment proceeding or the filing of her counterclaim. Appellant similarly seeks reversal on the grounds of res judicata and collateral estoppel.

At the close of the evidence, before submission of the issues to the jury, Appellant first moved for a directed verdict finding that Appellant was entitled to an award of three month's rent where Respondents testified they had not paid rent for September, October and November. Appellant second moved for a directed verdict finding that Respondent had not presented

sufficient evidence to present the claim or defense of the landlord's unlawful access into the residential property. Both Appellant's motions were denied. Appellant made no other motions but specifically Appellant did not move for a directed verdict finding that Appellant's prior ejectment proceeding and/or counterclaim satisfied the notice and itemization requirement provided for in S.C. Code § 27-4-410. Additionally, the court recognized Appellant's pleaded affirmative defenses of res judicata and collateral estoppel as withdrawn and so were not submitted to the jury by way of instruction.

As provided by the Court in *Smith v. Ridgeway*, "If 'no motion was made for a directed verdict at the conclusion of the trial, no motion for relief as a matter of law is available after the jury verdict.'" *Smith v. Ridgeway*, 302 S.C. 303, 305-6, 395 S.E.2d 742, 743-44 (Ct. App. 1990).

"The rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of all the evidence is a strict one. The rules which govern our appellate jurisdiction and determine which issues are preserved for appeal are equally strict." *Hendrix v. Eastern Distribution*, 316 S.C.34, 446 S.E.2d 440, 442 (Ct. App. 1994).

Where Appellant failed to move for directed verdicts finding that Appellant's prior ejectment proceeding and/or counterclaim satisfied the notice and itemization requirement provided for in S.C. Code § 27-4-410 the issue is not properly preserved for appeal and should be denied. Similarly, where Appellant waived certain defenses she cannot now assert them on appeal.

**APPELLANT'S REQUEST FOR REVERSAL OF THE LOWER COURTS FINDING OF
THE AWARD OF TREBLE DAMAGES SHOULD BE DENIED**

**Application of Treble Damages in the Amount of Three Months' Periodic Rent for
Violation of S.C. Code § 27-40-660**

"If a landlord unlawfully removes or excludes the tenant from the premises . . . the tenant may recovery . . . an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees." S.C. Code § 27-40-660. On April 18, 2016, the Jury, hearing the case above listed, returned a verdict in favor of Rickey Phelps as against Defendant for violation of S.C. Code § 27-40-660 with zero (0) actual damages and in favor of Christy Phelps as against Defendant for violation of S.C. Code § 27-40-660 with zero (0) actual damages. The parties, having pleaded and stipulated previously,

agreed the rent at issue in this case to be conclusively \$950.00.

The Court of Appeals stated as follows in *Prevatte v. Asbury Arms* as to the statutory construction of the phrase “the tenant may recover” as provided in the Residential Landlord Tenant Act:

The word 'may' does not refer to the judge, but to the tenant. It gives the tenant a right he does not have at common law: the tenant may elect to seek recovery under the statute rather than the common law. To the extent that the word 'may' connotes discretion, it is a discretion vested in the tenant to elect his remedies, not in the court to deny a remedy clearly provided for by the statute. The Judge erred when he stated: 'Under 27-40-410(b) it says the court may award' [Emphasis added.] That is not what the statute says

The appellate courts of this state have never construed this language as giving the trial judge discretion to award or deny

The statute is unambiguous and absolute. The use of the 'the tenant may recover' rather than 'the tenant shall recover' does not give the court any discretion. Rather it is a statement of the steps the tenant, as a matter of right, may take if the landlord does not comply with the statute."

Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642, 643-644 (Ct. App. 1990) (finding the prescriptions in the damages provision mandatory and not discretionary); *Parker v. Brown*, Op. No. 2008-UP-324 (Ct. App. 2008) (finding a treble award of the previously returned security deposit appropriate where the itemization was untimely sent); *Schumacher v. Hoover*, Un. Pub. Op. No. 2013-UP-432 (Ct. App. 2013) (affirming Judge Casey Manning's application of treble damages pursuant to *Prevatte v. Asbury Arms*).

Plaintiffs filed suit pursuant to S.C. Code § 27-40-660 and specifically elected the remedy of statutory damages in the amount of \$2,850.00 and continue to seek this remedy from the Court upon the return of the verdicts in Plaintiffs' favor. In relying on the Courts statutory construction in *Prevatte*, Plaintiffs respectfully submit that the appropriate award for each of Defendant's violation S.C. Code § 27-40-660 is "three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees" where the Court in *Prevatte* has concluded the word "may," as preceding the available remedy, is not discretionary as to the Court. S.C. Code § 27-40-660. In the present case, the Jury determined that Plaintiffs' suffered zero (0) actual damages, however, the rent has been conclusively established at \$950.00. Where three months' periodic rent equals \$2,850.00, greater than zero (0) actual damages,

Plaintiffs respectfully submit this Court should grant judgment in their favor for both of Defendant's violation of S.C. Code § 27-40-660 in amount of \$2,850.00 for each violation.

In the event Defendant submits to this Court the finding provided in *Rice v. Multimedia, Inc.* otherwise contradicts the finding in *Prevatte*, Plaintiff brings to the Court's attention that the finding in *Rice* is inapplicable to this case for three reasons. First, the statute at issue in *Rice* provides for the additional language in the subject penalty provision of "as the court may allow," however, omitted in § 27-40-660. *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E.2d 381, 383 (1994). Specifically regarding the "court" as a finder of damages in that provision is markedly and significantly different from the current provision which delegates no such authority to this Court. Second, the Court in *Rice* only allows the Defendant to avoid the trebling of damages where he asserts a valid affirmative defense of good faith. *Id.* The Defendant failed to assert the defense of good faith and, in any event, no defenses asserted by Defendant survived Plaintiff's motion for directed verdict to strike the pleaded defenses at the close of evidence. Finally, *Rice* is undeniably inapplicable where the Court found *Prevatte v. Asbury Arms* inapplicable to wage disputes but allowed it to remain as controlling in Residential Landlord Tenant disputes in stating:

Rice cites *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990), in which the Court of Appeals construed similar language in the Landlord and Tenant Act as mandatory, not discretionary. Since the Landlord and Tenant Act is of quite different subject matter than the Wage Payment Act, *Prevatte* is not controlling here. See *Spartanburg County v. Arthur*, 180 S.C. 81, 185 S.E. 486 (1936) (Court should interpret statute based on similar language in other statute dealing with same or similar subject matter.)

Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381, 384 (1994). The Supreme Court of South Carolina has recognized *Prevatte* and has not chosen to otherwise alter or invalidate the opinion such that it remains good law. Further, any imposition of the availability of a good faith defense by this Court would be without authorization and beyond the pleadings, available statutory and case law. Plaintiff now respectfully requests this court to affirm the trebling of the monthly rent of \$950.00 for Defendant's violation of S.C. Code § 27-40-660 and affirm Judgment in the amount of \$2,850 for Rickey Phelps and \$2,850.00 for Christy Phelps.

Application of Treble Damages in the Amount of Three Times the Amount Wrongfully Withheld for Violation of S.C. Code § 27-40-410

S.C. Code § 27-40-410 provides:

(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy . . .

(b) If the landlord fails to return to the tenant any prepaid rent or security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover . . . money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees.

(d) this section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or otherwise.

S.C. Code § 27-40-410.

As provided above, where the Court in *Prevatte* has concluded the word "may" preceding the available remedy is not discretionary as to the Court, Plaintiffs respectfully submit the appropriate award for Defendant's violation of S.C. Code § 27-40-410 is \$2,850.00, as "an amount equal to three times the amount wrongfully withheld," where the Jury returned a verdict in favor of Plaintiffs and determined the amount withheld to be \$950.00. *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642, 643-644 (Ct. App. 1990) (finding the prescriptions in the damages provision mandatory and not discretionary); *Parker v. Brown*, Op. No. 2008-UP-324 (Ct. App. 2008) (finding a treble award of the previously returned security deposit appropriate where the itemization was untimely sent); *Schumacher v. Hoover*, Un. Pub. Op. No. 2013-UP-432 (Ct. App. 2013) (affirming Circuit Court Judge Casey Manning's application of treble damages pursuant to *Prevatte v. Asbury Arms*).

Upon these arguments, Respondents respectfully submits trebling of the statutory damages was properly applied to Plaintiffs' Jury verdicts and Appellant's appeal should be denied.

**RESPONDENT'S CROSS APPEAL SHOULD BE GRANTED UPON EXPRESS
CONSENT OF APPELLANT**

The Jury returned verdicts in favor of Rickey Phelps as against Defendant for violation of S.C. Code § 27-40-660 and in favor of Christy Phelps as against Defendant for violation of

S.C. Code § 27-40-660 and for Respondents for violation of S.C. Code § 27-40-440. As provided above, Appellant previously, and successfully, argued before the magistrate court that “[t]here was one rental lease in this case . . . the Tenant(s) . . . have one cause of action against their landlord . . . [and] [t]here cannot be double recovery.” Def. Mot. New. Trial. Pg. 11 (Apr. 25, 2016). The jury verdicts returned, as a submitted without objection by the Appellant, found for both Plaintiffs individually, however, the magistrate court treated the verdicts as one finding as a matter of law that there could only be a single recover for unlawful ouster. The Appellant has now submitted to this court that Respondent’s complaint prayed for relief for violations of S.C. Code § 27-40-660 for both Respondents in addition to Respondents single claim of violation of S.C. Code § 27-40-440 which would total a claim for three violations in the amount of \$8,550.00 instead of two violations in the amount of \$5,700.00.

Respondents again argue that the consolidation of the jury’s verdicts in favor of Respondents reducing their claim from \$5,700.00 to \$2,850.00 was improper. The Court in *Camden v. Hilton* provided:

A trial court may amend a verdict in matters of form, but not of substance. A change of substance is a change affecting the jury’s underlying decision, but a change in form is one which merely corrects a technical error made by the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. After the amendment, the verdict must be not what the judge thinks it ought to have been but what the jury intended it to be.

Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88 (Ct. App. 2004) (finding the trial courts reformation of a defense’s verdict to find in favor of an identical plaintiff’s verdict was outside the court’s authority). To now find that the Jury improperly determined that both Plaintiffs suffered violation by Defendant is tantamount to invalidate one of its Verdicts. Additionally, Defendant has waived any opportunity to reform the verdict where the Jury has been discharged. “That parties seeking to reform a verdict must voice their objection before the jury is discharged has been followed in South Carolina since at least 1920. *Id.* at 171.

Similarly, any motion for judgment notwithstanding the verdict (“JNOV”) “is available to one suffering an adverse ruling of the jury only when the same issues were submitted to the judge at the directed verdict stage.” *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 395

S.E.2d 742, 743-44 (Ct. App. 1990). "A motion for directed verdict is a prerequisite to a motion for judgment notwithstanding the verdict and a motion for a new trial on the grounds that the evidence does not sufficiently support a cause of action." *Parr v. Gaines*, 309 S.C. 477, 424 S.E.2d 515, 519 n.1 (Ct. App. 1992). If "no motion was made for a directed verdict at the conclusion of the trial, no motion for relief as a matter of law is available after the jury verdict." *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C 303, 305-06, 395 S.E.2d 742, 743-44 (Ct. App. 1990).

Similarly, finding that Defendant's violation is born by Plaintiffs jointly denies the requirement of standing. Under this finding, if Rickey Phelps is unlawful ousted but not Christy Phelps, Christy Phelps can bring suit in Rickey Phelps' name which is in contradiction with notions of standing. "Standing is 'a personal stake in the subject matter of a lawsuit.'" *Newman v. Richland Co. Historic Preservation Comm.*, 325 S.C. 79, 480 S.E.2d 72, 74 (1997). "To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e., one must be a real part in interest. A real party in interest is one with a real, material or substantial interest." *Glaze v. Grooms*, 324 S.C. 249, 478 S.E. 2d 841, 845 (1996).

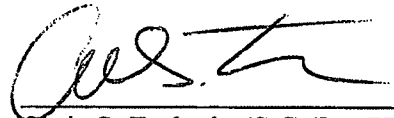
Finally, Respondents respectfully submit that Appellants now expressly consent to Respondents appeal and reversal of the magistrate court order consolidating the jury's finding where Appellant has now made submission to this Court in agreement that both Respondents could have recovered individually. Upon these arguments, Respondent is entitled to reversal of the magistrate's court order invalidating one claim against Respondents upon Appellants current submission, Appellant's failure to move for directed verdict, Appellant's failure to object to the two jury forms and where consolidation would affect the substance of the jury's findings.

CONCLUSION

Respondents respectfully request that this Court of Appeals deny Appellants appeal to void the lower court's judgment where there was subject matter jurisdiction pursuant to S.C. Code § 27-40-130, affirm the lower court's finding that the jury's verdicts were either reconcilable or Appellant waived her opportunity to contest reconcilability, deny hearing

Appellant's appeal for relief pursuant to defenses of res judicata and estoppel where these defenses were abandoned to submission of the issues to the jury, deny hearing Appellant's appeal for failure to preserve the issue of notice by way of prior hearing or counterclaim for her violation of S.C. Code § 27-4-410, affirm the lower court's findings that trebling of damages was appropriate under South Carolina statutory and common law and reverse the lower courts order consolidating Respondents verdicts for Appellants violation of S.C. Code § 27-40-660 where Appellant failed to move for directed verdict, approved the individual forms and failed to inquire as to the intention of the jury in granting these verdicts before the jury's release.

October 24, 2016



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STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Magistrate's Court

Nancy Sadler, Beaufort Magistrate's Court Judge

Case No. 2015CV0710301411

Ricky Phelps and Christy Phelps, ... Respondents-Appellants,

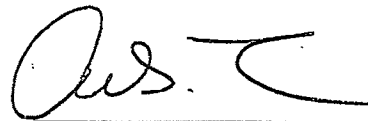
v.

Shamsy Madani, ... Appellant-Respondent.

CERTIFICATE/PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of Respondents-Appellants, as above listed, Memorandum in Opposition to Appellant-Respondents Appeal and in Support of Respondent-Appellants Cross Appeal in the above-referenced case has been served upon Andrew J. Toney by delivering same this date to him by U.S. Mail to Post Office Box 5969, Hilton Head Island, SC 29938.

October 24, 2016



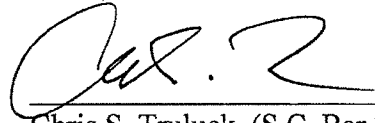
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2016 OCT 26 PM 2:30
JERRI ANN ROSENTHAL
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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.

November 28, 2017



Chris S. Truluck, (S.C. Bar 77829)
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Attorney for Appellant

RECEIVED

NOV 30 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Civil Action No. 2016-CP-07-1475
Appellate Case No. 2017-0001761

SHAMSY MADANI.....Respondent,

v.

RICKEY PHELPS AND CHRISTY PHELPS.....Appellants.

RECEIVED
MAR 29 2018
SC Court of Appeals

SUPPLEMENTAL RECORD ON APPEAL

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SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

2015CV0710301177
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Shamir Madani
100 Center Circle
Bluffton, SC 29909
843-365-3656

cell - 843-365-3656

11-24-15
0930
Eject

PLAINTIFF(S)

Rickey Phelps And Others
100 Kensington Blvd #219
Bluffton, SC 29910

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the 12th day of November, 2015, you are hereby Ordered to proceed to the premises located at 100 Kensington Blvd #219 Bluffton, SC 29910.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have twenty four (24) hours to voluntarily vacate the premises. If the premises appear unoccupied and no one responds to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

November 13, 2015


Bluffton Magistrate

Cpl. Tamm being duly sworn state that:

- ☐ I personally served a copy of this Writ on _____, an occupant of the rental unit.
- ☒ On 11-23 20 15 at 0917 the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise. On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: _____ 20____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Rickey Phelps and Christy Phelps (Plaintiffs) assert Shamsy Madani (Defendant) failed to return to the Plaintiffs the security deposit in compliance with SC Code 27-7-410;

☒ We the Jury unanimously find for;

☒ Plaintiffs where they have proven their claim by a preponderance of the evidence and further find the amount withheld in the amount of \$ 950.00.

Defendant where the Plaintiffs have failed to prove their claim by a preponderance of the evidence.

JURORS:

Amie L. Campbell
William T. Miller
William T. Miller
William T. Miller

Foreman

DATE

4-18-2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

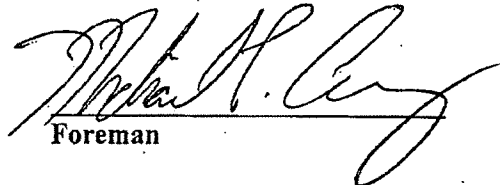
Shamsy Madani,)
Defendant)

Where Rickey Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded him from the premises.

☒ We the Jury unanimously find for;

☒ Plaintiff where he has proven his claim by a preponderance of the evidence and further find actual damages in the amount of \$0

☐ Defendant where the Plaintiff has failed to prove his claim by a preponderance of the evidence.


Foreman

JURORS:

Cornie L. Campbell
Barbara Jones
William H. Hodge

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

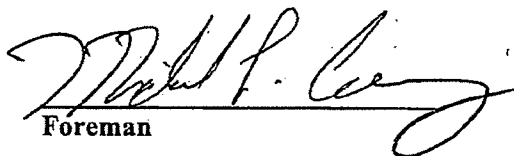
Shamsy Madani,)
Defendant)

Where Shamsy Madani (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) caused damage to the subject rental property;

☒ We the Jury unanimously find for;

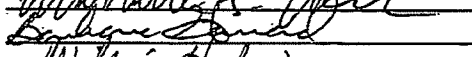
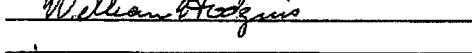
☒ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$301.85

☐ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:



4/18/2016

DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

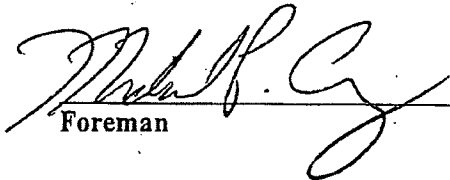
Shamsy Madani,)
Defendant)

Where Shamsy Madami (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) failed to pay rent;

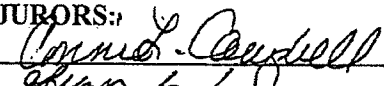
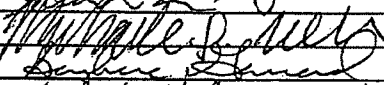
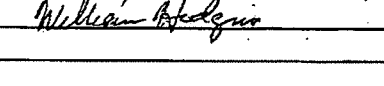
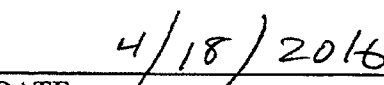
☒ We the Jury unanimously find for;

☒ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$1,050

Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT	)	C/A NO: 2015CV0710301411
 RICKY PHELPS AND CHRISTY PHELPS,	)	
Plaintiffs,	)	
Vs.	)	Order on Post Trial Motions of Defendant
SHAMSY MADANI,	)	
Defendant.	)	

BEAUFORT COUNTY MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 JUN -6 AM 8:23

This Order resolves Defendant Shamsy Madani's Motion for Reconsideration and New Trial which was filed with the Beaufort County Magistrate Court on May 20, 2016. The Motions apply to the Court's Order on Post Trial Motions of the parties filed April 28, 2016, and the Court's Order on post trial motions of the parties signed on May 12, 2016. The Plaintiffs Phelps object to the Court's consideration of the motion as untimely filed; however, the Court has considered the motion in full.

1. Defendant Madani first moves that the Court award her attorney's fees on the basis that she was the prevailing party in her counterclaim against the Plaintiff. In this matter, both parties were given awards by the jury. Because of the statutory provision requiring the award of three months' rent or the amount awarded by the jury, whichever is greater, on the Plaintiff's claim of unlawful ouster, the Plaintiffs' monetary award exceeded the award made to the Defendant on her claim for unpaid rent. Therefore, the Court found that the Plaintiffs were the prevailing party in the matter and were entitled to an award of attorneys fees. The Defendant's claim for attorney's fees is therefore denied. It is unclear whether the Defendant wishes to cross examine the Plaintiff's attorney regarding his fees or present evidence in that regard. Should he wish to do so, a hearing to reconsider the *amount* of the attorneys fees awarded to the Plaintiffs will be scheduled upon request.
2. Defendant alleges that Plaintiffs' Rule 59 motion was not timely filed. I find that it was timely filed.
3. Defendant Madani further argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. The Plaintiffs sued the Defendant for a violation of S.C. Code Sections 27-40-660 (unlawful ouster) and 27-40-410 (failure to observe the statutory requirement for deductions from return of the security deposit at the end of a lease). The Defendant counterclaimed against the Defendant for failure to pay rent and for damages to her property. At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the

sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the Defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75/100 (\$401.75) and this was clearly the intention of the jury based upon its verdicts. The South Carolina Code, however, states, "If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410." In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

4. Defendant Madani argues that the Plaintiffs case is barred by res judicata and collateral estoppel because the parties were previously engaged in an eviction proceeding in which the Defendant sought an order of eviction against the Plaintiffs. She argues that any claims by the Plaintiffs should have been brought in that proceeding. These issues were not raised at trial and cannot be raised now. In any case, I find that the Plaintiffs actions were not mandatory counterclaims in the eviction proceeding.

The Defendant also argues that collateral estoppels precludes the Plaintiffs' claim for a violation of the security deposit statute in that the jury found that there was unpaid rent due to the Defendant and at the same time found that the Defendant violated the provisions of the security deposit statute. Because the language of the statute requires certain conduct on the part of the landlord before any deduction in the security deposit can be made, I find that the verdict is not inconsistent.

5. Defendant Madani requests that the Court reconsider her request for attorney's fees. While the Court did review and consider the affidavit for attorney's fees filed by the Defendant Madani, the finding that the Plaintiffs are the prevailing party in this matter precludes the award of attorney's fees to the Defendant.
6. All dates of judgment remain the dates that the orders were signed and filed.
7. The Defendant moves that the court order a New Trial *Nisi Additur* on the grounds that the judgment by the jury on the amount owed to the Defendant Madani was inadequate as a matter of law. The jury was instructed on the law and the defenses to nonpayment of rent. The amount of rent owed to the Defendant was a question for the jury to decide.

Defendant's motions are therefore denied.

IT IS SO ORDERED.

Beaufort, South Carolina
June 1, 2016


Nancy Sadler, Beaufort County Magistrate

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV-

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.
10. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with

conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

11. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

12. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
171 Church Street, Suite 330
Charleston, SC 29401
(843) 425-9359

Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Charleston, South Carolina
November ____, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

ANSWER TO COMPLAINT AND
COUNTERCLAIMBEAUFORT MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 JAN 12 AM 8:56

NOW COMES the defendant, Shamsy Madani (hereinafter "Madani"), specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Complaint, and Counterclaim against plaintiffs, would respectfully show unto the Court that:

1. Any allegation not hereinafter specifically admitted is denied.
2. Paragraphs 1 through 4 of the Complaint are admitted.
3. As to paragraph 5 of the Complaint, Madani incorporates herein by reference paragraphs 1 and 2 above.
4. Paragraphs 6 through 8 of the Complaint are admitted.
5. Madani admits so much of paragraph 9 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.
6. Madani denies paragraphs 10 through 12 of the Complaint.

FOR A FIRST DEFENSE

7. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR AN THIRD DEFENSE

9. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

10. This matter involves Rickey Phelps and Christy Phelps (hereinafter "Phelps") breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

11. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ("Subject Property").
12. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.
13. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.
14. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.
15. Several furniture rental companies had rented furniture to Phelps.
16. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.

17. Madani refused to allow such furniture companies' access to the Subject Property.
18. Madani attempted to schedule several meetings with Phelps.
19. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.
20. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.
21. Madani questioned neighbors of the Subject Property about the Phelps.
22. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.
23. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.
24. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.
25. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.
26. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.
27. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.
28. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

29. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

30. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

31. Madani did lawfully evict Phelps for failure to pay rent.

32. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

33. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

34. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease – As to Phelps)

35. Each and every allegation set forth above is fully incorporated herein.

36. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.

37. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.

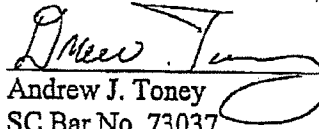
38. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents,

reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

January 6, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

CERTIFICATE OF SERVICE)

vs.)

Shamsy Madani,)

Defendant.)

The undersigned certifies that a copy of Defendant's Answer to Complaint and Counterclaim in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Chris S. Truluck, Esquire
171 Church Street, #330
Charleston, SC 29401

Peggy Medaglia
Peggy Medaglia

January 7, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.

11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.

12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.

13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.

14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

15. The above stated allegations are hereby incorporated as if stated herein.

16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

18. The monthly rent due pursuant to the terms of the Lease is \$950.00.

19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

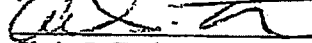
22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Columbia, South Carolina
January 22, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

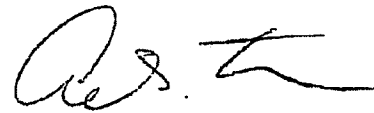
CERTIFICATE OF SERVICE

C/A NO: 2015CV0710301411

The undersigned states that on January 22, 2016, he caused a true and correct copy of Defendant's Amended Complaint to be served upon the party identified below by United States mail, proper postage affixed and addressed as follows:

Andrew J. Toney
Post Office Box 5696
Hilton Head Island, SC 29938
Attorney for Defendant

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Attorney for Defendant

Columbia, South Carolina
Dated: January 22, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIMBEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 FEB 29 PM 1:17

NOW COMES the defendant, Shamsy Madani (hereinafter "Madani"), specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Amended Complaint, and Counterclaim against plaintiffs, would respectfully show unto the Court that:

1. Any allegation not hereinafter specifically admitted is denied.
2. Paragraphs 1 through 4 of the Complaint are admitted.
3. As to paragraph 5 of the Complaint, Madani incorporates herein by reference paragraphs 1 and 2 above.
4. Paragraphs 6 through 8 of the Complaint are admitted.
5. Madani admits so much of paragraph 9 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.
6. Madani denies paragraphs 10 through 14 of the Complaint.
7. As to paragraph 15 of the Complaint, Madani incorporates herein by reference paragraphs 1 through 6 above.
8. Paragraphs 16 through 18 of the Complaint are admitted.

9. Madani admits so much of paragraph 19 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.

10. Madani denies paragraphs 20 through 23 of the Complaint.

FOR A FIRST DEFENSE

11. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

12. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR A THIRD DEFENSE

13. Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

FOR AN FOURTH DEFENSE

14. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

15. This matter involves Rickey Phelps and Christy Phelps (hereinafter 'Phelps') breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

16. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ('Subject Property').

17. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.

18. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.
19. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.
20. Several furniture rental companies had rented furniture to Phelps.
21. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.
22. Madani refused to allow such furniture companies' access to the Subject Property.
23. Madani attempted to schedule several meetings with Phelps.
24. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.
25. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.
26. Madani questioned neighbors of the Subject Property about the Phelps.
27. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.
28. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.
29. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.

30. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.

31. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.

32. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.

33. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

34. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

35. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

36. Madani did lawfully evict Phelps for failure to pay rent and Phelps does now owe Madani unpaid rent.

37. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

38. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

39. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

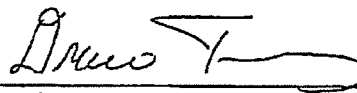
FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease—As to Phelps)

40. Each and every allegation set forth above is fully incorporated herein.
41. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.
42. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.
43. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

Respectfully Submitted,

MULLEN WYLIE, LLC



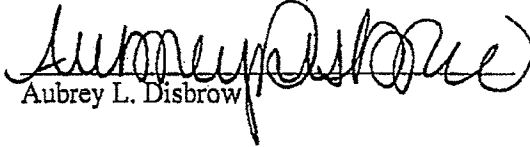
Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

February 25, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BEAUFORT	)	C.A. No. 2015-CV-0710301411
	)	
Rickey Phelps and Christy Phelps,	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shamsy Madani,	)	
	)	
Defendant.	)	
	)	

The undersigned certifies that a copy of Defendant's Answer to Amended Complaint and Counterclaim in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs
Chris S. Truluck, Esquire
1720 Main Street, Suite 104
Columbia, SC 29201


Aubrey L. Disbrow

February 25, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

SECOND AMENDED SUMMONS

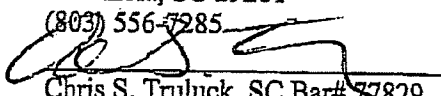
(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1720 Main Street, Suite 104, Columbia, SC 29201, within thirty (30) days after service hereof and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Truluck Law Firm, LLC
 1720 Main Street, Suite 104
 Columbia, SC 29201
 (803) 556-7285


 Chris S. Truluck, SC Bar# 77829
 Attorney for Plaintiff(s)

Charleston, South Carolina
 February 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
SECOND AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.
 11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.
 12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.
 13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.
 14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.
- UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660**
15. The above stated allegations are hereby incorporated as if stated herein.
 16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
 17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
 18. The monthly rent due pursuant to the terms of the Lease is \$950.00.
 19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.
 20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.
 21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.
 22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.
 23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

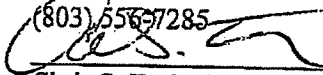
FAILURE TO RETURN SECURITY DEPOSIT PURSUANT TO S.C. CODE § 27-40-410

24. The above stated allegations are hereby incorporated as if stated herein.
25. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
26. Plaintiff's deposited with Defendant a security deposit in the amount of \$950.00 pursuant to the terms of the lease.
27. Plaintiff delivered possession of the property on or about November 21, 2015.
28. On or about January 19, 2015 Plaintiffs provided written notice to Defendant pursuant to § 27-40-410 requesting the return of Plaintiffs' security deposit to P.O. Box 962691, Riverdale, GA 30296.
29. Defendant has failed to return Plaintiff's security deposit or otherwise provide written itemization of deductions of any amounts by Defendant.
30. Pursuant to South Carolina Code section 27-40-410, Plaintiff is entitled to recover three times the security deposit in addition to reasonable attorney's fees.
31. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court and upon verdict of a Jury.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. A determination be made of the reasonable attorney's to be awarded and an Order be entered against Defendant for the amount due as ascertained under direction of this Court.
4. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
 1720 Main Street, Suite 104
 Columbia, SC 29201
 (803) 556-7285


 Chris S. Truluck, SC Bar# 77829
 Attorney for Plaintiff

Columbia, South Carolina
 February 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

SHAMSY MADANI'S NOTICE OF MOTION
 MOTION, AND MEMORANDUM IN SUPPORT
 OF MOTION FOR NISI ADDITUR, NEW TRIAL
 ABSOLUTE, JUDGMENT NOTWITHSTANDING
 THE VERDICT, ATTORNEYS FEES AND
 COSTS AND IN OPPOSITION TO PLAINTIFFS'
 DEMAND FOR JUDGMENT

2016 APR 22 PM 2:14
 BEAUFORT COUNTY SOUTH CAROLINA
 MAGISTRATE COURT

TO: THE HONORABLE NANCY D. SADLER

BACKGROUND

The jury trial of this case occurred on Monday, April 18, 2016. The facts and procedural history that are relevant are as follows:

1. Beginning on March 20, 2015, plaintiffs rented an apartment from Shamsy Madani (hereinafter "Madani") for \$950/month, plaintiffs paid a \$950 security deposit, and the lease agreement expired on March 1, 2016;
2. Plaintiffs failed to pay rent for the months of September, October, and November 2015;
3. On October 2, 2015, Ms. Madani changed the locks of plaintiffs' apartment door and placed notice upon plaintiffs' door of the changed lock and informed the plaintiffs to contact her for the new key;
4. Plaintiffs called Ms. Madani when they saw the notice, approximately one week after notice was posted, regarding the key and testified that they were locked out of the apartment for either one week or two weeks, but did not testify as to where they stayed or as to any damages incurred;

5. By Order of the Bluffton Magistrate, plaintiffs were evicted from the apartment on November 13, 2015, and plaintiffs claim they left the apartment on or around November 21, 2015;
6. On December 1, 2015, plaintiffs filed a lawsuit against Madani, alleging unlawful ouster as their only cause of action;
7. On January 11, 2016, Madani answered plaintiffs' complaint and counterclaimed for breach of lease for plaintiffs' failure to pay several months rent and damaging the apartment;
8. Ms. Madani placed plaintiffs on notice that she claimed damage in excess of plaintiffs' \$950 security deposit;
9. On January 16, 2016, plaintiffs sent a letter to Madani requesting return of the security deposit, which Madani did not respond to due to her counterclaim encompassing damages in excess of the \$950 security deposit;
10. On January 22, 2016, plaintiffs filed their amended complaint, adding as a cause of action allegations of Ms. Madani's general violation of the South Carolina Residential Landlord Tenant Act;
11. Ms. Madani answered the amended complaint and counterclaimed, once again, for plaintiffs' breach of lease for failure to pay rent and the damage caused to the apartment;
12. On February 26, 2016, plaintiffs, without leave of court, once again amended their complaint to add a cause of action alleging Ms. Madani failed to comply with S.C. Code §27-40-410 for failing to respond to plaintiffs request for return of their security

deposit, despite Ms. Madani having done so in her counterclaim contained in her answer to the original and amended complaints;

13. At trial, plaintiffs presented only themselves as witnesses and did not offer one piece of evidence as to any damages sustained by them as a result of Ms. Madani's alleged actions;

14. Ms. Madani testified and introduced as damages \$3,725.00 in unpaid rent and late rent charges, and \$815.38 in actual damages caused by plaintiffs use of the apartment, for a total damage claim of \$4,540.38;

15. The jury returned a verdict in favor of Madani in the amount of \$301.85 for damages caused by plaintiffs to Madani's apartment, and returned a verdict in favor of Madani for \$1,050.00 for plaintiffs' failure to pay rent, for a total verdict in favor of Madani of \$1,351.85;

16. The jury returned a verdict in favor of plaintiffs in the amount of \$950 for Ms. Madani's failure to return the security deposit, and returned a verdict in favor of plaintiffs for \$0.0 for Ms. Madani's violation of S.C. Code §27-40-660;

17. Madani's judgment exceeds that of plaintiffs by \$401.85;

18. The jury found that plaintiffs breached the lease, such lease allows for the award of attorney fees and costs to the prevailing party in the event a party files a claim to enforce the lease;

19. By the award of the jury, Madani is the prevailing party and should be awarded attorney fees and costs at the discretion of the Court.

Plaintiffs filed this lawsuit attempting to recover monies for technical violations of the South Carolina Residential Landlord and Tenant Act and failed to present one piece of evidence

as to any actual damages incurred by them. In fact, plaintiffs did not even claim any actual damages in their case. Ms. Madani counterclaimed for actual damages incurred as a result of the actions of plaintiffs, and the jury ultimately found in favor of Ms. Madani. Furthermore, because the jury found that plaintiffs had breached their lease and awarded damages to Ms. Madani for the same, by the terms of the lease, Ms. Madani is due and owing attorney fees and costs.

1. NEW TRIAL NISI ADDITUR MUST BE GRANTED AS TO MS. MADANI'S CLAIM FOR BREACH OF LEASE FOR FAILURE TO PAY RENT

If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial *nisi additur*. Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985). In order to grant a moving party additur, the Court must determine that the jury award was inadequate based upon the evidence. See Bailey v. Peacock, 318 S.C. 13 (1995).

The jury in this case found that plaintiffs breached their lease for failing to pay rent. It is undisputed that the plaintiffs lived in the apartment until November 21, 2016. It is undisputed, and the plaintiffs freely admitted, that they did not pay rent for the months of September, October and November 2015. The jury in this case found that the plaintiffs breached their lease by failing to pay rent. The plaintiffs failed to pay rent for the months of September, October, and November, and failed to pay the late fees associated with each month's rent. The jury's award for breaching the lease by failing to pay rent is inadequate for the number of months that the plaintiffs failed to pay rent and rent late charges.

For these reasons, the judgment in favor of Ms. Madani for plaintiffs' failure to pay rent must be increased from \$1,050.00 to \$3,150.00, or in the alternative a new trial must be ordered pursuant to new trial *nisi additur*.

2. JUDGMENT NOTWITHSTANDING THE VERDICT MUST BE GRANTED IN FAVOR TO MS. MADANI AS TO PLAINTIFFS' CLAIM FOR VIOLATION OF THE SECURITY DEPOSIT STATUE

a. PLAINTIFFS WERE ON NOTICE AND THE SECURITY DEPOSIT CODE SECTION WAS NOT VIOLATED

SC Code §27-40-410 states in pertinent part:

"(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address."

The South Carolina Residential Landlord and Tenant Act (hereinafter "Act" or "The Act") defines "notice" in SC Code §27-40-240. SC Code §27-4-240 states in pertinent part:

"(A) A person has notice of a fact if:

- (1) the person has actual knowledge of it;
- (2) the person has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

- (1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(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 at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt."

Plaintiffs commenced the instant action by and through their attorney. Plaintiffs filed this action on December 1, 2015. Ms. Madani answered the plaintiffs' complaint and immediately asserted a counterclaim for plaintiffs' failure to pay several months rent and causing damage to the apartment, all in violation of the lease agreement. Plaintiffs did not notify Ms. Madani of their new address until two months after moving out of the apartment, after which time their lawsuit had been commenced and Ms. Madani had countersued them for failing to pay several months rent and causing damage to the apartment.

Pursuant to The Act's definition of "Notice," Ms. Madani gave notice or notification to plaintiffs when she answered plaintiffs' complaint and counterclaimed for plaintiffs' failing to pay rent for several months and damaging the apartment. Madani actually gave notice to the plaintiffs, through their attorney, that the plaintiffs owed Madani more than the security deposit before the plaintiffs ever attempted to comply with The Act by sending a letter to Madani requesting return of the security deposit.

Plaintiffs attempt to manipulate The Act to recover some amount of damages for violation of The Act is wholly unsupported by the South Carolina Rules of Civil Procedure and The Act itself. By Ms. Madani's very counter-lawsuit against them, plaintiffs were on notice, pursuant to the definition contained within The Act, that Ms. Madani claimed an amount in excess of the security deposited by plaintiffs.

As a matter of law, plaintiffs' claim for violation of SC Code §27-40-410 "Security Deposits" must be dismissed. Plaintiffs' claim is for a technical violation of The Act, which was not violated if the entire Act is applied to the procedural history and facts of this case. To allow plaintiffs to create another cause of action such as this once litigation has commenced by communicating directly with a represented party and then such plaintiffs, who are also represented by counsel, to claim that they are not on notice that their security deposit will not be returned creates a result contrary to the South Carolina Rules of Civil Procedure and in stark contrast to public policy and fairness.

The plaintiffs' failure to provide Ms. Madani with their forwarding address and their filing of this lawsuit resulted in restricting Ms. Madani to only communicating through her counsel and to plaintiffs' counsel. In this case the notice requirement of The Act was communicated through pleadings and Madani's demand of several months' rent and damages, which places plaintiffs on notice that Madani is claiming far more than plaintiffs' deposited security.

Plaintiffs claim is for a technical violation of The Act, which must be dismissed as a matter of law.

b. SC CODE §27-40-410 DOES NOT MANDATE AN AWARD OF THREE TIMES THE SECURITY DEPOSIT WITHHELD AND SUCH FINDING IS INCONSISTENT WITH THE JURY'S VERDICTS

It is well settled that the words of a statute will be given their plain and ordinary meaning. Miller v. Doe, 441 S.E.2d 319 (1994). The use of the word "may" signifies permission and generally means that the action spoken of is optional or discretionary. State v. Wilson, 274 S.C. 352 (1980). South Carolina has long held "that statutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Abraham v.

Palmetto Unified School District No. 1, 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000), *citing* Matter of Decker, 322 S.C. 215, 471 S.E.2d 462, 463 (1995).

SC Code §27-40-410 gives the Court discretion over an award, stating in pertinent part that:

“(b) If the landlord fails to return to the tenant any...security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover... money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees...”

Nothing within this code section mandates that the Court must (or SHALL) award three times the amount found to be wrongfully withheld. Pursuant to South Carolina law, this Court cannot ignore the word “MAY” contained within the statute, which our courts have defined as signifying optional or discretionary. In this case, the plaintiffs chose to request a trial by jury. The plaintiffs failed to put into evidence one penny of damages. The jury returned a verdict in the amount of \$950 in favor of plaintiffs for their §27-40-410 cause of action. Such verdict is all that plaintiffs should be awarded, if anything.

Plaintiffs rely upon Prevatte v. Ashbury Arms, 302 S.C. 413 (1990) in support of their contention that they should be awarded three times the jury verdict. Prevatte is wholly distinguishable from the facts of our case, and holds no precedential value upon the argument of plaintiffs. In Prevatte the Court looked at whether this statute gives the trial judge the discretion to deny the prevailing tenant attorney's fees. The Court held that the statute does not give the trial judge discretion to deny the prevailing tenant attorney fees, only the discretion as to the amount of such fees and costs. The Prevatte Court did not address the issue of whether the statute mandates an award of treble damages to a prevailing tenant, because that issue was not on appeal. Prevatte does nothing to overturn the litany of South Carolina cases defining the word “may” in statutes and the rules of statutory construction. The Prevatte Court specifically states

that it is not addressing any portion of the statute other than the attorney fee provision. See Id., pg 415.

Pursuant to the statute a court MAY award an amount up to three times the amount wrongfully withheld from the tenant by the landlord and reasonable attorney fees. Giving the trial judge the discretion as to the amount of the award (up to three times the amount wrongfully withheld, and attorney fees to the prevailing tenant) falls in line with the purpose and meaning of The Act. Every case presented is different. Every set of facts is different. The legislature did not include the words "shall" or "must" within the statute because it was conferring the power of discretion to the trial court to determine a justifiable amount.

One can surmise that where there is evidence of malice, willfulness or wantonness on the part of the landlord, the court is given discretion to award three times the amount wrongfully withheld and increase the amount of attorney fees and costs. If, as in this case, there is some technical failure to adhere to The Act, then the court is given the discretion to award an amount less than three times the amount withheld and lessen the amount of attorney fees and costs. There was absolutely no evidence presented that could be construed to show that Ms. Madani acted in some willful, wanton, or malicious manner in the withholding of plaintiffs' deposit. Why would Ms. Madani, a represented defendant, write to a represented plaintiff during litigation, when Ms. Madani has claimed damages in her counter-suit far in excess of any security deposited, the plaintiffs are on notice of the same, and such communication is impermissible? She would not and the SCRCF prohibit the same.

Additionally, where, as is the case here, plaintiffs request a trial by jury, the plaintiffs are relying upon the jury to render an award, as opposed to the Court.

For these reasons if the Court does not dismiss the verdict of the jury in regards to the plaintiffs' S.C. Code §27-40-410 claim, at the very most the Court should render a verdict in an amount of \$950.00.

3. S.C. CODE §27-40-660 DOES NOT REQUIRE THE COURT TO AWARD THREE MONTHS PERIODIC RENT TO PLAINTIFFS AND BOTH PLAINTIFFS CANNOT RECOVER WHERE THERE IS ONE LEASE

S.C. Code §27-60-660 (hereinafter "Ouster Statute" or "The Ouster Statute") is similar to that of S.C. Code §27-40-410 in that it contains the optional and discretionary language of "may," and also includes the mandatory language of "shall." The Ouster Statute states in part:

"If a landlord unlawfully removes or excludes the tenant from the premises...the tenant MAY...recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord SHALL return security recoverable under § 27-40-410." S.C. Code §27-60-660.

The Ouster Statute illustrates that the State legislature knows what it is doing when it uses words and phrases. In the one instance the statute allows the prevailing tenant to recover up to three months' periodic rent or twice the actual damages sustained by him. The statute goes on to require that the landlord SHALL return the security recoverable under §27-40-410 if the rental agreement is terminated. This illustrates the legislature's intent that the tenant's recovery is discretionary and optional up to three months' periodic rent and as to attorney fees and costs. There is no discretion or option given to the court where the rental agreement is terminated.

Not one scintilla of evidence was presented by plaintiffs as to any damage sustained by them as a result of Ms. Madani changing the locks of the apartment. Plaintiffs' testimony differed and changed as to how long they were allegedly "locked out" of the apartment. The jury found that the plaintiffs had been locked out of the apartment because it was an undisputed fact

that Ms. Madani had changed the lock, but the jury awarded nothing to the plaintiffs. As such, they should not receive any amount of judgment in regards to their Ouster Statute claim. Once again, the State legislature is giving discretion to the Court to determine damages based upon the facts and circumstances of individual cases. The plaintiffs demanded a jury trial and the jury found that the plaintiffs had sustained no damages.

Assuming, arguendo, that the Court awards damages to plaintiffs based upon the jury's Ouster Statute verdict, such verdict should only be for the plaintiffs as one, not two separate awards. There was one rental lease in this case. There was one landlord on the lease. There was one tenant in the lease that was comprised of two persons. The lease agreement defines "Tenant" as Rickey and Christy Phelps. Rickey and Christy Phelps, together, is the Tenant, and have one cause of action against their landlord, Ms. Madani. The Ouster Statute gives a cause of action to the "Tenant." There are not two separate lease agreements for Rickey and Christy Phelps. Rickey and Christy Phelps are a married couple and are treated as the "Tenant" for purposes of the lease agreement and The Ouster Statute. There cannot be a double recovery for the Tenant-plaintiffs. Madani cannot seek to recover for unpaid rent and damages twice and plaintiffs cannot be allowed to recover twice pursuant to one lease agreement.

Because The Ouster Statute contains optional language as to the monetary recovery for plaintiffs, plaintiffs should only be allowed to recover what the jury has awarded them, \$0.0. In the event the Court, in its discretion, awards the plaintiffs some amount equal to or less than three months rent, such award can only be one award to the Tenant-plaintiffs.

4. THE LEASE, WHICH THE JURY HAS FOUND PLAINTIFFS' BREACHED, ALLOWS FOR THE PREVAILING PARTY, MADANI, TO RECOVER ATTORNEY FEES AND COSTS

The lease agreement states in part: "Should it become necessary for Landlord or Tenant to employ an attorney to enforce any conditions or covenants hereof, the prevailing party...shall be entitled to reasonable attorney's fees and costs."

Ms. Madani was forced to hire the undersigned to defend her against plaintiffs' claims. Madani countersued plaintiffs, and prevailed, for plaintiffs' breach of the lease by failing to pay rent and damaging the apartment.

Because Madani was the prevailing party at trial, attorney fees and costs must be added to her final award. The attorney fees and costs incurred by Madani for the enforcement of the lease conditions and covenants are in the amount of \$4,275.00. See Exhibit 1, Affidavit of Andrew J. Toney.

CONCLUSION

Ms. Madani must be awarded three months rent (\$2,850.00), three months' rent late payments (\$300), damages (\$301.85), and attorney fees (\$4,275.00), for a total award of \$7,726.85.

Plaintiffs' award for violation of S.C. Code §27-40-410 (security deposit statute) should be dismissed and plaintiffs' award for violation of S.C. Code §27-40-660 (Ouster Statute) should remain. Alternatively, plaintiffs' award of \$950 should remain and be credited towards Madani's judgment.

Plaintiffs did not present one piece of evidence or elicit any testimony that shows Ms. Madani acted with any malice or wantonness towards plaintiffs. The plaintiffs appeared at trial with no one to support their allegations, did not even make an attempt to claim that they had

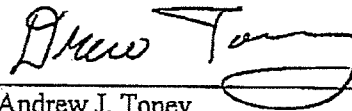
suffered any damages, and admitted to breaching their lease. Plaintiffs' entire case seeks to recover some windfall gain for allegations of technical violations of our State's statutes. Such statutes simply do not make mandatory the damages plaintiffs assert.

Ms. Madani did not want to sue plaintiffs to recoup her lost rent and sustained damages. Plaintiffs' commencement of litigation forced Ms. Madani to seek recovery of her damages. Any amount Ms. Madani is awarded will be offset by any award for plaintiffs; i.e., if Ms. Madani is awarded \$7,726.85 in damages and attorney fees and plaintiffs are awarded \$7,726.85 in damages and attorney fees the net is zero, with each judgment credited toward the other and neither party being permitted to enforce against the other.

Therefore, in accordance with South Carolina common law, South Carolina statutory law, the applicable provisions of the lease and the findings of the jury, Ms. Madani requests that judgment, including attorney fees and costs, be found in her favor in the amount of \$7,726.85.

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

April 25, 2016
Hilton Head Island, South Carolina

EXHIBIT 1

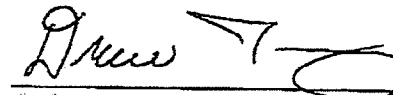
STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BEAUFORT	)	C.A. No. 2015-CV-0710301411
	)	
Rickey Phelps and Christy Phelps,	)	
	)	
Plaintiffs,	)	
	)	AFFIDAVIT OF ANDREW J. TONEY
vs.	)	
	)	
Shamsy Madani,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Andrew J. Toney, who being duly sworn,
states as follows:

1. I am over 21 years of age, am competent, and am a resident of Beaufort County, South Carolina.
2. I am a member of the South Carolina bar, bar number 73037, and a lawyer with the firm of Mullen Wylie, LLC.
3. I represent Ms. Shamsy Madani in the above-captioned suit.
4. My hourly rate is \$250/hour.
5. Plaintiffs filed the summons and complaint and two subsequent amended complaints.
6. I was hired to answer the various complaints and assert claims on Ms. Madani's behalf pertaining to plaintiffs' breach of their lease.
7. The plaintiffs admitted to breaching their lease, yet refused to pay their contractually obligated amounts.
8. Plaintiffs demanded a trial by jury for this matter, which increased the time and expense of defending the same and prosecuting Ms. Madani's counterclaims.

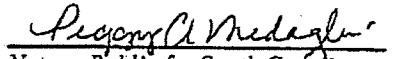
9. I have reviewed all materials relating to such suit, answered and prepared pleadings, attended a roster meeting, prepared for trial, and attended trial, for a total of 17 hours.
10. Ms. Madani offered to drop her claims, on multiple occasions, if plaintiffs dropped their claims.
11. Plaintiffs refused to drop their claims in exchange for a complete settlement, despite admitting to breaching their lease.
12. My legal fees in this case are \$4,250 for the prosecution of claims that plaintiffs admit to, but failed to remedy, and necessitated by plaintiffs' filing of this suit and demanding trial by jury.
13. Ms. Madani has expended \$25.00 in copying costs and postage related to this litigation.
14. Ms. Madani's total legal fees and costs are \$4,275.00.

FURTHER THE AFFIANT SAYETH NOT.



Andrew J. Toney

SWORN TO before me this 25
day of April, 2016.

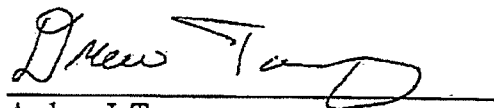


Notary Public for South Carolina
My commission expires: 11-21-17

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BEAUFORT	)	C.A. No. 2015-CV-0710301411
	)	
Rickey Phelps and Christy Phelps,	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shamsy Madani,	)	
	)	
Defendant.	)	
	)	

The undersigned certifies that a copy of Ms. Shamsy Madani's Notice of Motion, Motion and Memorandum in Support of Motion for Nisi Additur, New Trial Absolute, Judgment Notwithstanding the Verdict, Attorney Fees and Costs, and in Opposition to Plaintiffs' Demand for Judgment in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs
Chris S. Truluck, Esquire
1720 Main Street, Suite 104
Columbia, SC 29201


Andrew J. Toney

April 26, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

SHAMSY MADANI'S NOTICE OF MOTION
AND MOTION FOR RECONSIDERATION
AND NEW TRIAL)

vs.)

Shamsy Madani,)

Defendant.)

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT-SOUTH
2016 MAY 20 AM 9:34

YOU WILL PLEASE TAKE NOTICE THAT the Defendant/Counterclaiming Plaintiff, Shamsy Madani (hereinafter "Madani") pursuant to S.C.R.C.P. 59 and 60 will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the Honorable Nancy D. Sadler for an Order of this Court granting her Motion to Reconsider the Court's Order on Post Trial Motions of the Parties filed April 28, 2016 and the Court's Order on Post Trial Motions of the Parties signed on May 12, 2016.

Madani's Motion is based upon the grounds that the Court's Orders were based upon factual errors, errors at law and clerical mistake. The errors include, but are not limited to, the following:

1. Pursuant to Rule 60, SCRCP, Madani requests that the Court correct its Order on Post Trial Motions of the Parties filed on April 28, 2016 as counsel for Madani was never provided a copy of the same and was, therefore, unable to make any motion pursuant to Rule 59, SCRCP, or respond to the Court's requests contained in the Order. Specifically, the Court found that each party was entitled to an award of attorney fees and requested each party submit affidavits of attorney fees and notify the Court if a hearing is requested.

On Thursday, May 12, 2016, Counsel for Madani received an email from the Court attaching the Court's Order on Post Trial Motions of the Parties signed May 12, 2016. On Monday, May 16, 2016, Counsel for Madani inquired to the Court about other orders that may exist in the case. Counsel for Madani was notified that the Clerk of Court emailed to Counsel for Madani the April 28, 2016 Order on April 28, 2016 via the email address Courtmail07_DoNotReply@sccourts.org to the undersigned. Upon review of all emails received by the undersigned on April 28, 2016, in both my "inbox" and "junk mail" folders, no email exists from the Clerk of Court to me on April 28, 2016. As such, I was unable to request a hearing on the attorney fees appropriate or to file a Motion to Reconsider pursuant to Rule 59, SCRPC, or for a new trial, within 10-days of the issuance of the April 28, 2016 Order. The undersigned did not receive the April 28, 2016 Order via email or U.S. Mail and as such, because of the clerical error of the Court, was unable to file the appropriate motions.

2. Pursuant to April 28, 2016 Order, counsel for Madani requests a hearing to determine attorney fees and costs. On April 25, 2016, counsel for Madani filed his Motion for Nisi Additur, New Trial Absolute, Judgment Notwithstanding the Verdict and for Attorney Fees. In support of that motion, the undersigned filed an affidavit of attorney fees. This motion and affidavit were filed within 10-days of the jury being discharged, pursuant to Rule 59, SCRPC. Pursuant to Rule 59, SCRPC, the Rule 59 motion "shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter."

Plaintiffs' motion Rule 59 motion was filed greater than 10-days after the discharge of the jury and is prohibited pursuant to the South Carolina Rules of Civil Procedure. As such, Plaintiffs' Rule 59 motion must be disregarded as untimely.

The lease agreement between the parties states in part: "Should it become necessary for Landlord or Tenant to employ an attorney to enforce any conditions or covenants hereof, the prevailing party...shall be entitled to reasonable attorney's fees and costs."

Ms. Madani was forced to hire the undersigned to defend her against plaintiffs' claims. Madani countersued plaintiffs, and prevailed, for plaintiffs' breach of the lease by failing to pay rent and damaging the apartment.

Because Madani was the prevailing party at trial, attorney fees and costs must be added to her final award

Because counsel for Madani timely filed a motion requesting attorney fees and costs only Madani's motion should be considered and only Madani should be awarded attorney fees and costs, and due to the clerical mistake discussed above a hearing should be granted to determine Madani's attorney fees and costs.

3. Madani requests that a new trial be granted as the jury's verdict of zero dollars to plaintiffs is irreconcilable as a matter of law. In South Carolina such verdict requires the granting of a new trial.

Madani requests a new trial be granted as it is evident from the jury's verdict that such verdict is so confused that it is not absolutely clear what was intended. See Anderson v. Aetna Casualty and Surety, 175 S.C. 254 (1934); Camden v. Hilton, 360 S.C. 164 (Ct. App. 2004).

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge should not be required to guess as to what the jury sought to render. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). The trial court did not abuse its discretion by granting a new trial under the "thirteenth juror doctrine" where the

2 verdicts handed down by the jury were inconsistent and were not justified by the evidence.

Buxton v Thompson Dental Co., 415 SE2d 844 (Ct. App 1992).

Any magistrate may grant a new trial in any case tried in his court for reasons for which new trials have usually been granted in the courts of law of this State...S.C. Code Ann. § 22-3-990.

The court cannot lawfully enter judgment on an inconsistent or incomplete verdict. Stevens v. Allen, 336 S.C. 439 (Ct. App. 1999), Krepps by Krepps v. Ausen, 324 S.C. 597 (Ct. App. 1996).

The jury verdict in this case favors Madani and it is evident from the verdict that the jury found in favor of Madani. It is not possible based upon the verdict of the jury that Madani should now be ordered to pay in excess of \$9,000 to the losing parties.

In part, the jury found in favor of plaintiffs for the unlawful ouster claim and awarded zero dollars. Once a plaintiff proves damages proximately caused by the defendant, the verdict of zero damages is inconsistent or incomplete as a matter of law. See Stevens, at 449-450. In Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct.App.1993), *rev'd in part on other grounds*, 318 S.C. 453, 458 S.E.2d 427 (1995), this Court held:

In this case, the jury returned a verdict in nuisance of "no dollars" actual damages for the plaintiff. As a matter of law, this was either an inconsistent or incomplete verdict. If the jury found the defendant did not unlawfully interfere with the plaintiff's use and enjoyment of his land, even though the diversion of surface water was annoying or harmful to him, the verdict was legally inconsistent. On that view of the evidence, the verdict should have been for the defendant. If the jury found an unlawful interference amounting to a private nuisance, but no actual damages resulting to the plaintiff, it should have returned a verdict for the plaintiff and awarded nominal damages (i.e., one dollar). If it found unlawful interference resulting in actual damage to the plaintiff, even if the amount of the damages was difficult to ascertain, the jury had a duty to return a verdict for the plaintiff and to award damages in a specific dollar amount that, in its best judgment, based on the evidence before it, would compensate the plaintiff for his actual loss. Having found the fact of damage, the jury was required to find the amount of damage. In either of these latter cases, a verdict of "no dollars" for the plaintiff is legally

incomplete. Since the defendant is liable for violating the plaintiff's substantive right, the plaintiff is entitled by law to an award of damages.

Johnson, 315 S.C. at 415-16, 433 S.E.2d at 900-01.

The South Carolina Supreme Court affirmed the Court of Appeals in Stevens V. Allen, 342 S.C. 47, 536 S.E.2d 663 (2000), and stated:

A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law. We hold that, if a jury finds the plaintiff has failed to prove damages proximately caused by the defendant's negligence, then its verdict should be for the defendant. We agree with the Court of Appeals' conclusion that, under South Carolina law, the proper and most consistent approach of treating such verdicts is to require, upon request, the trial court to re-submit the matter to the jury. If the jury cannot reach a consistent verdict, the trial court may then order a new trial nisi or a new trial absolute.

Plaintiffs failed to request that the Court resubmit the matter to the jury. The only remedy available now is that a new trial be ordered. Madani requests that a new trial be granted so that a verdict in accordance with South Carolina law may be rendered.

4. Plaintiffs' award of damages pursuant to their claims are barred by res judicata, collateral estoppel or in the alternative a new trial must be granted due the inconsistency of the jury's verdict.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). "[F]or purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted

but, rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon." Id.

"The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles." Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct.App.1995) (citing Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944)). In Watson, our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation[])[.] ... Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221–22, 31 S.E.2d at 319–20.

It is uncontested by the parties that the plaintiffs were ejected from the subject apartment by a suit previously filed by Madani seeking ejectment. Madani filed a civil action against plaintiffs styled Shamsy Madani v. Rickey Phelps and Others, Civil Case Number 2015CV0710301177. Such Complaint sought ejectment for plaintiffs failure to pay rent when due or when demanded. Plaintiffs failed to answer or otherwise respond to such Complaint and by Order of this Court on November 12, 2015, a Writ of Ejectment was entered by this Court. Plaintiffs in such previous civil action failed to counterclaim against Madani for any cause of action and in fact failed to answer the Complaint. As such, Madani's allegations were admitted by plaintiffs, accepted by the Court and plaintiffs were ejected.

Res judicata and collateral estoppel preclude all claims made by plaintiffs in the instant action.

Additionally, by the verdict of the jury, plaintiffs are precluded by collateral estoppel from recovering under their theory of violation of the security deposit statute contained within the S.C. Landlord Tenant Act, S.C. Code Ann §27-40-410. The jury cannot find that plaintiffs have breached their lease and owe Madani rent for failing to pay it and at the same time order that plaintiffs are owed their security deposit. At the very least this is an inconsistent verdict, which requires the granting of a new trial, pursuant to South Carolina law discussed above. It is impossible for Madani to owe plaintiffs their security deposit and at the same time be owed unpaid rent. Plaintiffs lived rent free in Madani's apartment for three months and the jury found that plaintiffs had breached their lease agreement, as did the Court in the ejectment proceeding.

Plaintiffs are barred by res judicata and collateral estoppel from asserting the claims contained within their lawsuit.

5. Madani requests the Court to reconsider its May 12, 2016 Order on Post Trial Motions of the Parties as it is in error as to attorney fees and the judgment in favor of plaintiffs. It is unclear in the Court's Order as to whether the Court considered the affidavit of the undersigned and the undersigned was not able to be heard on the matter of attorney fees and costs. In the Court's April 28, 2016 Order it orders that both parties are to be awarded attorney fees and costs, requests affidavits of the attorneys, and requests that counsel notify the Court if a hearing is requested.

Counsel for Madani would have requested such hearing and would have resubmitted his affidavit of fees and costs had he received such Order. Madani requests that a hearing be held on attorney fees and costs.

6. Pursuant to Rule 60, SCRCP the clerical mistake of the Court should be corrected by the Court to specify a date of judgment, so that Madani may file all appropriate motions, if the Court deems that the instant would be otherwise time barred. It is unclear as to which Order of the Court is determinative as to the commencement of the prescribed time limits in which a party has to file a Rule 59 motion. Because counsel for Madani never received from the Court the April 28, 2016 Order, the Court should correct the clerical mistake and issue a new Order.

7. If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial *nisi additur*. Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985). In order to grant a moving party additur, the Court must determine that the jury award was inadequate based upon the evidence. See Bailey v. Peacock, 318 S.C. 13 (1995).

The jury in this case found that plaintiffs breached their lease for failing to pay rent. It is undisputed that the plaintiffs lived in the apartment until November 21, 2016. It is undisputed, and the plaintiffs freely admitted, that they did not pay rent for the months of September, October and November 2015. The jury in this case found that the plaintiffs breached their lease by failing to pay rent. The jury's award for breaching the lease by failing to pay rent is inadequate for the number of months that the plaintiffs failed to pay rent and rent late charges.

For these reasons, the judgment in favor of Ms. Madani for plaintiffs' failure to pay rent must be increased from \$1,050.00 to \$3,150.00, or in the alternative a new trial must be ordered pursuant to new trial *nisi additur*.

7. Pursuant to Rule 59, Madani requests the Court reconsider its Order in regards to plaintiffs claim for violation of S.C. Code §27-40-410. By the filing of Madani's counterclaim and the ruling of the Court in the Order for Writ of Ejectment, plaintiffs were on notice that Madani claimed the security deposit.

SC Code §27-40-410 states in pertinent part:

"(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address."

The South Carolina Residential Landlord and Tenant Act (hereinafter "Act" or "The Act") defines "notice" in SC Code §27-40-240. SC Code §27-4-240 states in pertinent part:

"(A) A person has notice of a fact if:

- (1) the person has actual knowledge of it;
- (2) the person has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

- (1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(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 at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt."

In October 2015, Madani filed her civil Application for Ejectment against plaintiffs for their failure to pay rent. Plaintiffs failed to answer such complaint. Plaintiffs were ejected for their admitted failure to pay rent. There can be no better notice to plaintiffs than a civil complaint alleging failure to pay rent, properly served upon them. Plaintiffs failed to answer or otherwise plead in regards to the Application for Ejectment, thereby admitting the allegations contained therein. They were on notice of Madani's claim to their security deposit, pursuant to the terms of the residential lease agreement, when Madani served them with the Application for Ejectment.

Plaintiffs commenced the instant action by and through their attorney. Plaintiffs filed this action on December 1, 2015. Ms. Madani answered the plaintiffs' complaint and immediately asserted a counterclaim for plaintiffs' failure to pay several months rent and causing damage to the apartment, all in violation of the lease agreement. Plaintiffs did not notify Ms. Madani of their new address until two months after moving out of the apartment, after which time their lawsuit had been commenced and Ms. Madani had countersued them for failing to pay several months rent and causing damage to the apartment.

Pursuant to The Act's definition of "Notice," Ms. Madani gave notice or notification to plaintiffs when she filed and served her Application for Ejectment and answered plaintiffs' complaint and counterclaimed for plaintiffs' failing to pay rent for several months and damaging the apartment. Madani actually gave notice to the plaintiffs, through their attorney, that the

plaintiffs owed Madani more than the security deposit before the plaintiffs ever attempted to comply with The Act by sending a letter to Madani requesting return of the security deposit. Plaintiffs admitted they owed rent by failing to answer the Application for Ejectment. How can it be possible that plaintiffs can make any claim to the unreturned security deposit?

Plaintiffs attempt to manipulate The Act to recover some amount of damages for violation of The Act is wholly unsupported by the South Carolina Rules of Civil Procedure and The Act itself.

As a matter of law, plaintiffs' claim for violation of SC Code §27-40-410 "Security Deposits" must be dismissed. Plaintiffs' claim is for a technical violation of The Act, which was not violated if the entire Act is applied to the procedural history and facts of this case.

Plaintiffs claim for violation of The Act should be dismissed as a matter of law.

8. Pursuant to Rule 59, Madani requests that the Court reconsider its award of three times the amount of the security deposit to plaintiffs. S.C. Code §27-40-410 does not mandate an award of three times the security deposit withheld and such finding is inconsistent with the jury's verdicts.

It is well settled that the words of a statute will be given their plain and ordinary meaning. Miller v. Doe, 441 S.E.2d 319 (1994). The use of the word "may" signifies permission and generally means that the action spoken of is optional or discretionary. State v. Wilson, 274 S.C. 352 (1980). South Carolina has long held "that statutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Abraham v. Palmetto Unified School District No. 1, 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000), citing Matter of Decker, 322 S.C. 215, 471 S.E.2d 462, 463 (1995).

SC Code §27-40-410 gives the Court discretion over an award, stating in pertinent part that:

“(b) If the landlord fails to return to the tenant any...security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover... money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees...”

Nothing within this code section mandates that the Court must (or SHALL) award three times the amount found to be wrongfully withheld. Pursuant to South Carolina law, this Court cannot ignore the word “MAY” contained within the statute, which our courts have defined as signifying optional or discretionary. In this case, the plaintiffs chose to request a trial by jury. The plaintiffs failed to put into evidence one penny of damages. The jury returned a verdict in the amount of \$950 in favor of plaintiffs for their §27-40-410 cause of action. Such verdict is all that plaintiffs should be awarded, if anything.

Pursuant to the statute a court MAY award an amount up to three times the amount wrongfully withheld from the tenant by the landlord and reasonable attorney fees. Giving the trial judge the discretion as to the amount of the award (up to three times the amount wrongfully withheld, and attorney fees to the prevailing tenant) falls in line with the purpose and meaning of The Act. Every case presented is different. Every set of facts is different. The legislature did not include the words “shall” or “must” within the statute because it was conferring the power of discretion to the trial court to determine a justifiable amount.

For these reasons if the Court does not dismiss the verdict of the jury in regards to the plaintiffs’ S.C. Code §27-40-410 claim, at the very most the Court should render a verdict in an amount of \$950.00.

9. Madani requests this Court, pursuant to Rule 59, SCRCP, reconsider its award of three months periodic rent to plaintiffs for their claim pursuant to S.C. Code §27-60-660.

S.C. Code §27-60-660 (hereinafter "Ouster Statute" or "The Ouster Statute") is similar to that of S.C. Code §27-40-410 in that it contains the optional and discretionary language of "may," and also includes the mandatory language of "shall." The Ouster Statute states in part:

"If a landlord unlawfully removes or excludes the tenant from the premises...the tenant MAY...recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord SHALL return security recoverable under § 27-40-410." S.C. Code §27-60-660.

The Ouster Statute illustrates that the State legislature knows what it is doing when it uses words and phrases. In the one instance the statute allows the prevailing tenant to recover up to three months' periodic rent or twice the actual damages sustained by him. The statute goes on to require that the landlord SHALL return the security recoverable under §27-40-410 if the rental agreement is terminated. This illustrates the legislature's intent that the tenant's recovery is discretionary and optional up to three months' periodic rent and as to attorney fees and costs. There is no discretion or option given to the court where the rental agreement is terminated.

Not one scintilla of evidence was presented by plaintiffs as to any damage sustained by them as a result of Ms. Madani changing the locks of the apartment. Plaintiffs' testimony differed and changed as to how long they were allegedly "locked out" of the apartment. The jury awarded plaintiffs zero dollars. As such, they should not receive any amount of judgment in regards to their Ouster Statute claim. The jury's award of zero dollars indicates their ruling is in favor of Madani. The plaintiffs demanded a jury trial and the jury found that the plaintiffs had sustained no damages. Plaintiffs did not request that jury further deliberate on the damages. The jury's verdict was in favor of Madani and should stand or a new trial should be ordered.

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

CERTIFICATE OF SERVICE)

Plaintiffs,)

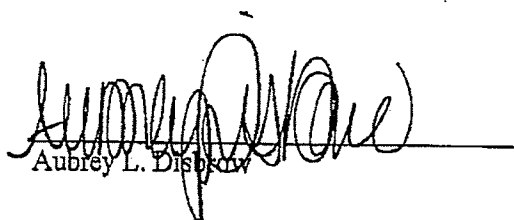
vs.)

Shamsy Madani,)

Defendant.)

The undersigned certifies that a copy of Shamsy Madani's Notice of Motion and Motion for Reconsideration and New Trial in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs
 Chris S. Truluck, Esquire
 1720 Main Street, Suite 104
 Columbia, SC 29201



Aubrey L. Dishow

May 20, 2016
 Hilton Head Island, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

C/A NO: 2015CV0710301411

AFFIDAVIT IN SUPPORT OF AWARD OF
REASONABLE ATTORNEY'S FEES

Chris S. Truluck, personally appeared before me, on this day and after being duly sworn, according to law, and upon my oath and states as follows:

1. That this affidavit is made on the basis of my personal knowledge and in support of the Plaintiffs' suit against Shamsy Madani ("Defendant") for violations of S.C. Code § 27-40-660 and violation of S.C. Code § 27-4-410 as found by the Jury on April 18, 2016.
2. On or about October 19, 2015 Rickey and Christy Phelps ("Plaintiffs") contacted me seeking legal advice as a result of their unlawful ouster of their residence by Defendant.
3. On October 24, 2015, after conducting research on Plaintiffs' action, I accepted representation and the responsibility for costs on a contingency fee basis of 33.3.% of any award and drafted a demand letter to Defendant for proposed settlement of the case in the amount of \$3,075.00. A copy of Plaintiff's fee agreement is hereby attached as Exhibit B. A copy of Plaintiff's demand letter is hereby attached as Exhibit C.
4. On October 28, 2015, I received approximately three calls from Defendant and discussed the case with her for a total of an hour. She offered to waive any amounts outstanding to settle the matter but denied any settlement to Plaintiffs.
5. From November 3 to November 9, 2015 I conveyed Defendant's counteroffer to Plaintiffs and that offer was declined. My clients decline was conveyed to Defendant on November 9, 2016.
6. On November 10, 2015 I drafted Plaintiffs' Summons and Complaint w/ Cover Letter to Court and, upon review by Plaintiffs, mailed the pleading with filing fee on November 24, 2015.

7. Until December 18, 2015 I continued to receive requests, calls and voicemails from Defendant and complied with these requests to again forward to her the demand letter and pleadings.
8. On December 18, 2015, I was first contacted by Drew Toney as Defendant's counsel by way of emailed letter threatening to initiate frivolous proceeding by stating, "[i]f your clients chose to institute litigation, Ms. Madani will counterclaim for all damages allowed by South Carolina law, including frivolous proceedings." A copy of Defendant's correspondence is hereby attached as Exhibit C.
9. On December 21, 2016 I spoke with Defendant's counsel regarding his frivolous claims countersuit and informed him of the events at hearing on Defendant's request for ejectment on October 28, 2015 and validity of Plaintiffs' claim.
10. On or about January 14, 2016 I received a copy of Defendant's Answer and Counterclaim and informed my clients of the same and potential consequences.
11. On January 22, 2016 I amended Plaintiff's Complaint in the necessity of pleading general non-compliance pursuant to S.C. Code § 27-40-610 where it is only available as a counterclaim or defense to a claim for damages for rent.
12. On February 25, 2016 I attended a pre-trial conference and made requests for bifurcation of the claims, discovery from Defendant and inquired from Defendant's counsel why he had not answered the Plaintiff's Amended Complaint; similarly that he was liable to be held in default.
13. Upon information and belief, John Castellano, as custodian for the Bluffton Clerk of Court, believes that Defendant's counsel never requested a copy of the audio transcript of Defendant's ejectment proceedings held on October 28, 2015.
14. On February 25, 2016, as a result of Defendant's failure to take any action in response to Plaintiff's letter requesting return of their security deposit, I again amended Plaintiffs' Complaint to include a claim for violation of S.C. Code § 27-4-410.
15. On April 4, 2016, I researched and drafted Plaintiffs' Reply to Defendants Amended Answer and Counterclaim in order to preserve defenses as presented at trial and as instructed to the Jury.

16. From April 13 to April 17, 2016, I researched and drafted jury instructions, verdict forms and the nature of defenses and presentation in civil jury trials in preparation of trial scheduled on April 18, 2016.

17. On April 18, 2016 I successfully presented Plaintiffs' case-in-chief while simultaneously presenting Plaintiffs' rebuttal to Defendant's case-in-chief and defenses.

18. I obtained verdicts in Plaintiffs' favor on all Plaintiffs' claims and reduced damages against Plaintiff in as much as \$3,000.00. At the current time, I have obtained an order awarding almost four times the Defendant's verdict.

19. Upon return of the verdicts, this Court requested memorandum regarding the application of treble damages to Plaintiff's verdicts and on April 19, 2016, I provided case law on point addressing the application of treble damages in the hopes of avoiding incurring additional attorney's fees. Defendant's made no response to my correspondence and so I incurred additional fees in drafting Plaintiffs' ten page memorandum in support of trebling Plaintiffs' verdicts.

20. On April 25, 2016 Defendant submitted its memorandum in defense against trebling damages but also moved for a new trial and judgment notwithstanding the verdict despite having failed to preserve its motions at trial at the directed verdict stage.

21. Defendant's counsel also prematurely submitted a request for an award of attorney's fees although the contractual provision in the subject lease only provided for attorney's fees to the prevailing party.

22. On April 27, 2016, I drafted a return to Defendant's motion for new trial, JNOV and attorney's fees.

23. On May 2, 2016, upon receipt of this Court's order finding for Plaintiff in the amount of \$5,700 and Defendant in the amount of \$1,316.85, award of attorney's fees to both parties and consolidation of Jury Verdicts to Plaintiff for violation of S.C. Code § 27-40-660, I drafted Plaintiffs motion for reconsideration of the award of attorney's fees to the non-prevailing party and judgment notwithstanding the verdict.

24. I have been a member South Carolina Bar and active litigator for nearly eight (8) years and in good standing throughout.

25. I attest, as confirmed in conversation with South Carolina Legal Services' attorney, Adam Protheroe, that I am one of the few lawyers handling Residential Landlord Tenant Act cases in South Carolina.

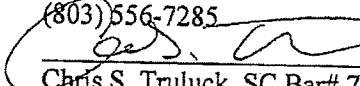
26. I asserts that the nature, extent and difficulty of this case was great in that it involved multiple claims, counterclaims, defenses and issue seldom reviewed by the appellate courts.

27. I committed no less than sixty (60) hours of my time to the preparation and litigation of this case.

28. My hourly rate is \$250.00.

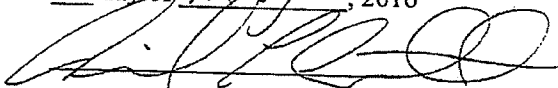
29. A copy of my accounting is hereby attached as Exhibit ~~E~~ in the amount of \$14,480.00 and is a true and accurate business record for the Truluck Law Firm, each entry created by me at the time of execution.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

SWORN TO BEFORE ME this

3 day of May, 2016



Notary Public

My commission expires: 2-27-23

IN THE MAGISTRATE'S COURT
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

JURY TRIAL

RICKEY PHELPS AND CHRISTY PHELPS,

Plaintiffs,

vs.

CASE NO. 2015-CV-0710301411

SHAMSY MADANI,

Defendant.

BEFORE: THE HONORABLE NANCY D. SADLER,
MAGISTRATE JUDGE

REPORTED RONDA K. BLANTON, RPR
BY: NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
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CHARLESTON, SC 29415
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office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

1 the -- the door and everything. They contacted
2 her. Told her that she was wrong for changing
3 the locks and that she needed to --

4 MR. TONEY: Objection.

5 THE COURT: No, no hearsay. You can't
6 repeat what other people told you or him.

7 THE WITNESS: Okay.

8 Q. Just keep it what -- what's in your
9 observation.

10 A. Okay.

11 THE COURT: And the jury should
12 disregard that.

13 Q. We'll let -- we'll let Mr. Phelps
14 testify to anything about that.

15 A. Yes.

16 Q. Now, shortly thereafter, were eviction
17 proceedings initiated against you?

18 A. Yes. After that.

19 Q. Do you remember about what time you were
20 served with any eviction proceedings?

21 A. It was later in October. I don't know
22 the exact date.

23 Q. Well, let me ask you this too. When did
24 you actually regain access to the property?

25 A. It had been over a week.

1 Q. Some time after, that you came and met
2 with me in my office; is that correct?

3 A. Yes.

4 Q. Okay. And you retained my services
5 pursuant to at least some of this litigation;
6 correct?

7 A. Correct.

8 Q. At some time later, did you mail a
9 letter to Miss Madani asking that your security
10 deposit be returned?

11 A. Yes.

12 Q. (Inaudible.) Now, this is Plaintiff's
13 Exhibit 3. Would you take a look at that and
14 tell me what it is to the best of your
15 recollection?

16 A. Asking for my security deposit to be
17 returned of 950 dollars with the address for it
18 to be mailed to.

19 Q. And -- and can you say -- well, it has
20 the address on it. That's what you're telling
21 the jurors?

22 A. Yes.

23 Q. It has the address. And let me bounce
24 back a little bit.

25 The Judge in this case has already

1 MR. TONEY: May I set up my --

2 (Inaudible.)

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 BY MR. TONEY:

6 Q. Mrs. Phelps, you don't dispute that you
7 entered into a lease agreement with Mrs. Madani;
8 isn't that correct?

9 A. No, I do not.

10 Q. And the terms of that lease agreement
11 were that you were to pay 950 dollars per month
12 in rent to Mrs. Madani; is that correct?

13 A. Yes.

14 Q. If you didn't pay that rent within five
15 days of the first of the month, there was a 100
16 dollar late charge; is that correct?

17 A. Yes.

18 Q. And you testified earlier and it was --
19 I didn't completely understand all the months and
20 dates, but there was some payment issue in -- in
21 July of 2015; is that correct?

22 A. Yes.

23 Q. And you never paid any -- any late fee
24 in July of 2015, did you?

25 A. No.

1 Q. All right. And then August of -- of
2 2015, you paid August of 2015 rent; is that
3 correct?

4 A. Yes.

5 Q. All right. In September there was
6 another issue with the payment of the rent; is
7 that correct?

8 A. Yes.

9 Q. And you testified that you've never paid
10 September of 2015's rent; isn't that correct?

11 A. Correct.

12 Q. All right. And you never paid October
13 of 2015's rent; is that correct?

14 A. I wasn't responsible.

15 Q. Did you ever pay October of 2015's rent?

16 A. No.

17 Q. Did you ever pay November of 2015's
18 rent?

19 A. No.

20 Q. Did you ever pay any portion of December
21 of 2015's rent?

22 A. No.

23 Q. Did you ever pay any late charges for
24 September of 2015?

25 A. No.

1 Q. Did you ever pay any late charges for
2 October of 2015?

3 A. No.

4 Q. Did you ever pay any late charges for
5 November of 2015?

6 A. No.

7 Q. Did you ever pay any late charges for
8 December of 2015?

9 A. No.

10 Q. All right. We talked about this key
11 issue and -- and you -- you don't dispute that --
12 that you received --

13 MR. TONEY: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q. You don't dispute that you received
16 exhibit -- Exhibit 1, do you?

17 A. No, I do not.

18 Q. All right. And -- and Exhibit 1 is a
19 notice that was posted to Apartment 219 in
20 Westbury; is that correct?

21 A. Yes.

22 Q. And that notice was received by either
23 you or your husband; is that correct?

24 A. Correct.

25 Q. And upon receiving that notice, you

1 probably mimic whatever Mrs. Phelps said.

2 Do you -- do you agree with everything
3 that you've heard that she recites so far as far
4 as what you actually witnessed?

5 A. Yes.

6 Q. Were you also locked out of the
7 apartment in question?

8 A. I was.

9 Q. Can you tell me about how much time you
10 were locked out of that apartment?

11 A. To the best of my remembrance, a minimum
12 of two weeks. Somewhere in that neighborhood.
13 You know, I --

14 Q. And there was some questions that
15 Mrs. Phelps was not able to answer because she
16 was not there.

17 A. Right.

18 Q. Could you address some of those issues?

19 A. The initial one starting from --

20 MR. TONEY: Your Honor, I object. I
21 don't know what the question is.

22 THE COURT: You don't either.

23 MR. TRULUCK: Well, Your Honor, I
24 suppose there's a -- once I was leading. Once
25 it's too broad. I'll try to straighten a little

1 THE COURT: Yes, sir.

2 Q. Let me hand you what was previously or
3 has been marked as Plaintiff's Exhibit No. 4.
4 Could you flip through that document and -- and
5 identify it for me?

6 A. What part of it? All of it? On top?

7 Q. If you could just look at it and tell me
8 what it is.

9 THE COURT: Let me just tell the jury in
10 case I doubt y'all would notice it. We had the
11 lease agreement marked at Plaintiff's No. 1. We
12 found the original. So we marked it No. 4. I
13 kept the copy here, and I'm not going to send it
14 back to you. We've got the original in evidence.
15 So that's the reason for the difference in
16 numbers. Okay. Go ahead.

17 A. This is the lease that I signed with
18 Mr. and Mrs. Phelps.

19 Q. Okay. And -- and when was that lease
20 entered into?

21 A. March 20.

22 Q. Okay. And if you go to the -- to the
23 last page of -- of that lease, to the very last
24 page, Mrs. Madani.

25 A. Uh-huh.

1 Q. Is your signature on that page?

2 A. Yes.

3 Q. Okay. And -- and what is the date of --
4 of signing of this lease?

5 A. 3-17.

6 Q. What year?

7 A. 2015.

8 Q. Okay. And -- and below the signature
9 lines for Rickey Phelps and Christy Phelps, what
10 is that writing down there?

11 A. I gave my address to them so they can
12 get in touch with me if they want or send the
13 rent or whatever they wish to get in touch with
14 me.

15 Q. Okay. And -- and how was the -- the
16 rent to be -- to be paid to you?

17 A. Monthly.

18 Q. Okay. And -- and how much was the rent?

19 A. 950.

20 Q. All right. And -- and how was that 950
21 dollars to -- to get to you?

22 A. The first day of each month and the
23 second day it's already delinquent; however, it's
24 okay within five days. I accept that.

25 Q. Okay. And after five days of the first

1 of month, what happens?

2 A. If they are late, there's 100 dollars
3 late fee.

4 Q. Okay. But how were you personally or
5 physically to get the -- the rent payment each
6 month?

7 A. I get from all my tenant. They mail it
8 to me.

9 Q. Okay. And -- and where do they mail it
10 to?

11 A. To this address, 111 Cutter Circle,
12 Bluffton, South Carolina 29909.

13 Q. Okay. And what is that address?

14 A. My house.

15 Q. Okay. And -- and did the -- did the
16 Phelps mail their rent to you?

17 A. Maybe once. Or twice. Mostly they
18 insist they come and bring it to me.

19 Q. All right. And did the Phelps give you
20 a security deposit?

21 A. Yes, they did.

22 Q. And how much was the security deposit?

23 A. 950.

24 Q. All right. And what is that security
25 deposit meant for?

1 A. To go towards if the apartment is
2 damaged, if they break something, and if they
3 don't keep it good, and if there's something
4 wrong with it, and to be fixed, then that -- and
5 also if the rent is not paid. That is -- that
6 security deposit goes for all the fixing if
7 there's damage. And it's also rent is not paid.

8 Q. Okay.

9 A. And cleaning. All of that.

10 Q. Do you know when the Phelps moved into
11 the apartment?

12 A. They moved in -- they were supposed to
13 move in the 20th.

14 Q. Of what month?

15 A. March.

16 Q. 2015?

17 A. 2015.

18 Q. Okay. And did they pay you April rent?

19 A. Yes.

20 Q. Okay. And did they pay you May rent?

21 A. Yes.

22 Q. Did they pay you June rent?

23 A. Yes.

24 Q. Did they pay you July rent?

25 A. Not July rent. They -- I did not

1 Q. Let me hand you this blue piece of
2 paper. Do you recognize that blue piece of paper
3 that I've handed you?

4 A. Yes.

5 Q. Okay. And -- and what is that blue
6 piece of paper?

7 A. This was one of the sticker on the door
8 frequently, and there was more. Yes, this is
9 from furniture store.

10 Q. And did you -- did you pull that -- that
11 blue notice off of Apartment 219?

12 A. Yes, I did.

13 Q. Okay. And -- and can you -- were there
14 many of those type stickers on the door or a few?

15 A. Yes. There was more.

16 Q. More than that one?

17 A. Even from one church also that we
18 haven't heard from you.

19 Q. Okay.

20 A. That was there and --

21 MR. TONEY: Your Honor, I move to
22 introduce this as Defense Exhibit No. 2.

23 THE COURT: Any objection?

24 MR. TRULUCK: No objection, Your Honor.

25 Q. Okay. And what was the condition of --

1 of the door to Apartment 219?

2 A. No good. And they were -- seemed like
3 they were pushed in and out to -- it was loose.
4 And the lock was literally one or two more push,
5 that lock would have been out.

6 Q. Okay.

7 A. So --

8 Q. And is it your responsibility as the
9 landlord to keep the apartment in good condition?

10 A. Of course.

11 Q. At some point in October, did you change
12 the lock to Apartment 219?

13 A. I -- the last time I went there, it was
14 October 2; and I thought that, okay, this door is
15 going to get break into and I'm going to protect
16 them. And I called locksmiths, and I changed the
17 lock -- the key that somebody was putting in the
18 lock to open the door didn't -- maybe they could
19 open it broke in there. So I called the
20 locksmith, and he came; and he removed it, and he
21 fixed and put the new lock there and gave me the
22 new key.

23 Q. Okay. And do you know what date you --
24 you changed the lock?

25 A. 2. October 2.

1 Q. 2015?

2 A. Yes, 2015.

3 Q. Let me hand you what's been marked
4 previously as Plaintiff's Exhibit No. 1. Can you
5 identify Exhibit No. 1 for me?

6 A. Yes. This -- this is -- this is the day
7 I did, and I put this on the door.

8 Q. How did you attach that to the door?

9 A. A piece of tape.

10 Q. Okay. And what date did you do that?

11 A. October 2.

12 Q. Okay. And how do you know it was
13 October 2?

14 A. Because I remember I did -- I -- the
15 October 2 I -- you must have the --

16 Q. Well, let me ask you this: Do you keep
17 a -- a calendar of -- of -- (Inaudible.)

18 A. Yes, yes. Everything I do I put it on
19 my calendar.

20 Q. Okay.

21 A. Uh-huh.

22 MR. TONEY: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. Let me hand you this document.

25 A. Yes.

1 was there. And we went -- the third floor --
2 apartment's on third floor. We went up to third
3 floor, and sheriff said, oh --

4 MR. TRULUCK: Objection, Your Honor.

5 A. No, I can't. Okay.

6 Q. Don't tell me what the sheriff said.

7 A. Okay.

8 Q. What happened when you got to the
9 apartment?

10 A. We saw the -- we saw the door lock
11 changed, and they didn't leave the key with
12 anybody off --

13 Q. Who did?

14 A. Mr. Phelps.

15 Q. Okay.

16 A. And Mrs. Phelps. They didn't leave the
17 key with office. They didn't give me the key.
18 They didn't give the key to -- to anybody and
19 they left.

20 Q. All right. (Inaudible.)

21 A. And they also --

22 Q. Let me stop you right there.

23 A. Okay.

24 Q. So when you got to the -- to the
25 apartment, the -- the lock had been changed?

1 A. Lock that's been changed.

2 Q. Okay. Let me --

3 MR. TONEY: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q. Let me hand you this document.

6 A. Yes. This is the locksmith.

7 Q. Okay. I've handed you a document,

8 and -- and can you identify that for me?

9 A. Yes. It is the locksmith and they -- he
10 changed the locks and -- and put a brand new one
11 there.

12 Q. Okay.

13 A. And we paid him 117 dollars and 50
14 cents.

15 Q. Okay. You paid the locksmith 117
16 dollars and 50 cents --

17 A. Yes.

18 Q. -- to change the lock?

19 A. Yes.

20 Q. Okay.

21 MR. TONEY: Your Honor, we'd like to
22 introduce this as Defense Exhibit No. 4.

23 A. Yes.

24 THE COURT: Any objection?

25 MR. TRULUCK: Yes, Your Honor.

1 THE COURT: Okay.

2 Q. That's actually -- so Exhibit No. 4, is
3 that the invoice you paid for the changing the
4 lock after the Phelps had moved out?

5 A. Yes.

6 Q. And what necessitated that? What made
7 that necessary?

8 A. To get in.

9 Q. Okay.

10 A. To get into the apartment.

11 Q. Okay. All right. And do you know
12 who -- who had changed the locks?

13 A. The locksmith.

14 Q. I know the locksmith changed them for
15 you. Do you -- do you know who changed the locks
16 before you got there?

17 A. Mr. Phelps and Mrs. Phelps.

18 Q. Okay.

19 A. And the 13 that they were to be out of
20 there, I don't know the day before they did it or
21 when they did and --

22 Q. Okay.

23 A. -- because we were there almost to the
24 end to check and see.

25 Q. Once you gained access into the

1 apartment, what did it look like?

2 A. Yes. Bad. Water, the toilet was
3 busted. Broken. Water everywhere. The carpet
4 was all wet. And they -- all the -- the wall was
5 wet. And all the smoke alarms was taken out of
6 the ceiling and on the kitchen counter. And the
7 shades for the light fixture all taken down on
8 the kitchen counter. And the dust all over
9 the -- the fan and dirt everywhere, and we
10 just -- I couldn't believe it that they left it
11 like that.

12 The dust doesn't show in the video or
13 anything and -- and we took picture, and it's
14 there; and the toilet was busted.

15 Q. Okay. Let me ask you about the toilet
16 and the plumbing.

17 Did you have to hire somebody to come in
18 and repair the toilets?

19 A. I sure did. I did. I called the
20 plumbing, yes.

21 MR. TONEY: Your Honor, may I approach
22 the witness?

23 THE COURT: Yes.

24 A. Yeah.

25 Q. I'm handing you a document. Can you

1 identify this document?

2 A. Yes. That's the job invoice, and this
3 is the plumber that we called and came and
4 stopped the water and changed the broken toilet
5 and fixed it; and I paid him 141 dollars and 25
6 cents.

7 Q. Okay.

8 MR. TONEY: Your Honor, I move to
9 introduce this as Defense Exhibit --

10 THE COURT: Five.

11 MR. TONEY: -- 5.

12 THE COURT: Any objection?

13 MR. TRULUCK: No objection, Your Honor.

14 Q. Okay. And you testified that the --
15 the -- or did you testify that the apartment was
16 dirty?

17 A. Yes.

18 Q. And did you -- did you have to pay
19 somebody to do any sort of special cleaning of
20 this apartment?

21 A. Yes, yes. I called Jessica Johnson from
22 Johnson Cleaning Company; and she's been cleaning
23 places for me for long time, even cleaning my own
24 house. And she came.

25 I do two kinds of cleaning, regular or

1 deep cleaning. The deep cleaning is we will
2 remove the -- they will remove the refrigerator,
3 stove, and they clean all in behind the
4 appliances; and they vacuum the fan blades, and
5 they clean the blinds. And they clean the place,
6 and they wash all the baseboard; and they scrub
7 the bathrooms, and that's a cleaning. Deep
8 cleaning.

9 Q. Let me hand you this document,
10 Mrs. Madani. Can you identify that for me?

11 A. Yes. That is the Johnson's Cleaning
12 Company, and I paid them 125. And that's not
13 really what she charges others; but because I
14 have so many places and she does a lot, even my
15 own house, so she charges less.

16 Q. So she's kind of giving you a deal on --
17 (Inaudible.)

18 A. Yes.

19 MR. TONEY: Your Honor, I move to
20 introduce this as Defense Exhibit No. 6.

21 A. Yes.

22 THE COURT: Any objection?

23 MR. TRULUCK: No objection, Your Honor.

24 Q. All right. Was there anything wrong
25 with the smoke alarms in the apartment?

1 A. I called the electrician. He came, and
2 he said I don't know.

3 Q. Don't tell me what he said. But can you
4 just tell me, was there anything visibly wrong
5 with the smoke detectors?

6 A. They have taken it off the ceiling, out
7 of the ceiling; and they left them on top of the
8 kitchen counter. I don't know why they did that.
9 If -- if it did -- if it needs battery, it's the
10 tenant's duty to put -- replace the battery.
11 It's in the lease.

12 Q. Okay. And did you pay somebody to -- to
13 come and make the repairs to the smoke detectors?

14 A. Yes.

15 Q. Okay. Let me hand you --

16 A. I called the electrician.

17 Q. -- (Inaudible.)

18 A. Yes.

19 Q. If you could just look at that; and
20 after you've had a chance to review it, let me
21 know what it is.

22 A. Yes. It is the company -- the
23 electrician came and installed all the smoke --
24 smoke alarm and charged 130 dollars. I paid him,
25 and this is the invoice.

1 Q. Okay.

2 MR. TONEY: Your Honor, I move to

3 introduce this as Defense Exhibit No. --

4 (Inaudible.)

5 A. Yes.

6 THE COURT: Any objection?

7 MR. TRULUCK: No objection, Your Honor.

8 A. And key to mailbox.

9 Q. All right. And how are people -- people
10 that live in Westbury, how are they to get their
11 mail?

12 A. There is a mailbox, one for every
13 apartment.

14 Q. Okay. And is there a key for that
15 mailbox?

16 A. There's only one key that goes to the
17 tenant; and when they move, they will return to
18 the office or to myself.

19 Q. Okay. And when the Phelps left the
20 apartment, did they leave you a key to the
21 mailbox?

22 A. No.

23 Q. All right. And did you have somebody
24 come out and -- and make -- change the lock for
25 the mailbox?

1 A. Yes. And there is a law that nobody can
2 fix or locksmiths that cannot do the change the
3 key to the mailbox of apartment building. Only
4 Post Office.

5 Q. Okay.

6 A. And I called the Post Office, and they
7 came and changed it.

8 Q. Okay. Let me hand you this receipt; and
9 if you could, look at it and let me know what it
10 is.

11 A. This is the 40 dollars that I paid for
12 the key to the mail -- Post Office. I don't know
13 who they sent --

14 Q. Okay.

15 A. -- to do that.

16 Q. You paid 40 dollars to change the lock
17 on the mailbox?

18 A. That's correct.

19 Q. Okay.

20 MR. TONEY: Your Honor, I move to
21 introduce this as Exhibit No. 8.

22 A. Yeah.

23 MR. TRULUCK: No objection, Your Honor.

24 MR. TONEY: You say no objection?

25 MR. TRULUCK: Uh-huh.

1 MR. TONEY: Okay.

2 Q. All right. Pursuant to the -- the terms
3 of the lease --

4 A. Water.

5 Q. -- who were -- who was to be responsible
6 for paying the water bills for the apartment?

7 A. Tenants pay water bills and electricity.

8 Q. Okay. And at the time the -- the Phelps
9 left the Apartment 219, were there any
10 outstanding water bills?

11 A. Plenty.

12 Q. Okay. Do you know how many -- how much
13 in water the Phelps had not paid?

14 A. 260 some dollars.

15 Q. Okay. Let me hand you a document; and
16 after you've looked at it, let me know whether or
17 not this --

18 A. Yes.

19 Q. -- you recognize that document.

20 A. That's correct. And there is the total
21 of 261 dollars and 85 cents total of water bill
22 that they --

23 Q. All right. Let's back up for a second.
24 There's some highlighting on that.

25 A. Yes.

1 Q. Who did that highlighting?

2 A. The company. The -- either they did or
3 the office because this mail came to me from the
4 office of Westbury because the High Tide is the
5 management for the Westbury. Between them, this
6 came to the office.

7 Q. Okay.

8 A. And the office send it to me.

9 Q. Let me -- the first -- (Inaudible.)
10 Invoice No. 6719.

11 A. Yes.

12 Q. What dates are -- are that invoice for?

13 A. 11-3-2015.

14 Q. No, no. If you look at -- at -- you got
15 11-3-25015 and Invoice No. 6719?

16 A. Yes.

17 Q. To the right of that, does it tell you
18 what dates of service that is for? If you
19 look -- if you look at the -- the left-hand
20 column says date; correct?

21 A. Date. Yes.

22 Q. Okay. And then if you go down to
23 11-3-2015.

24 A. It says that is --

25 Q. Invoice No. 6719.

1 A. Yes. It says 200.

2 Q. Yes, ma'am. I'm not asking about the
3 price. I'm asking you about the date.

4 A. Okay. 11-3-2015.

5 Q. Okay. And then to the right of that, it
6 has an invoice number; correct?

7 A. Yes. That's 6719.

8 Q. Okay. And what are the dates for
9 service --

10 A. Oh, yes. 7-19 to 30-2015.

11 Q. Okay. But that line item is -- is it
12 referring to charges July 1 through August 30,
13 2015?

14 A. Correct.

15 Q. And that -- how much was that -- how
16 much is the amount for that?

17 A. 238 dollars and 39 cents.

18 Q. Okay. And then if you go down to -- to
19 the last line item, is that another line item for
20 water -- (Inaudible.)

21 A. Yes, yes. And that is for 10-31-2015.

22 Q. What is the amount of -- of water usage
23 or water bill for that period?

24 A. 23 dollars 46 cents. And then the total
25 comes to 261 dollars 85 cents.

1 Q. And whose responsibility is it to pay
2 that, that water bill?

3 A. Tenants, Mr. and Mrs. Phelps.

4 Q. And did they ever pay that 261 dollars
5 and 85 cents?

6 A. As you see, no.

7 Q. Okay.

8 MR. TONEY: Move to introduce this --

9 A. I did.

10 MR. TONEY: -- as Defense Exhibit No. 9.

11 THE COURT: Nine.

12 MR. TONEY: Nine. The Post Office was
13 eight.

14 THE COURT: Any objection?

15 MR. TRULUCK: No objection.

16 Q. Are there any other invoices or bills
17 associated with the Phelps' -- the --
18 (Inaudible.) Apartment 219?

19 A. The rents.

20 Q. The rents, yes. And we'll summarize
21 that in a minute, but so we have the -- the
22 locksmith charge of 117 dollars and 50 cents.

23 A. Yes.

24 Q. You have the plumbing charge of 141
25 dollars and 25 cents.

1 A. Correct.

2 Q. You have the cleaning charge of 125
3 dollars.

4 A. Correct.

5 Q. You have the smoke alarm change of 130
6 dollars.

7 A. Correct.

8 Q. You have the key charge of 40 dollars.

9 A. Correct.

10 Q. And then you have the water bills for
11 261 dollars and 85 cents.

12 A. Correct.

13 Q. And those are damages that you're
14 looking to the Phelps to reimburse you for; is
15 that right?

16 A. Yes.

17 Q. All right. And were any pictures taken
18 at the time right after the -- the Phelps moved
19 out?

20 A. Yes.

21 Q. Okay. Let me hand you a group of
22 photographs. If you could just go through each
23 of those yourself; and when you finish, let me
24 know whether or not you can -- what these
25 photographs are.

1 A. Yes. This is the carpet.

2 Q. Let's do it this way. It might be too
3 difficult to do them all -- (Inaudible.)

4 A. Okay.

5 THE COURT: Why don't I number them, and
6 we'll see what's admitted and what's not.

7 MR. TONEY: Okay.

8 THE COURT: So it starts with 11; is
9 that right?

10 MR. TONEY: Pardon? The exhibit number?

11 THE COURT: Yes.

12 MR. TONEY: 10.

13 THE COURT: (Inaudible.)

14 THE WITNESS: But you don't have a
15 sticker on that. Oh. Jury fell asleep. They
16 are asleep. That's --

17 THE COURT: Exhibits 10 through 33 are
18 marked for identification only.

19 THE WITNESS: That's it.

20 (Inaudible.)

21 THE WITNESS: Yeah.

22 MR. TONEY: I think, Your Honor, I'm
23 just going to use a couple of these rather than
24 go through all of them.

25 THE COURT: Okay.

1 MR. TONEY: But I still want to --
2 unless the defense will stipulate to all of them
3 being -- (Inaudible.)

4 MR. TRULUCK: (Inaudible.)

5 MR. TONEY: Okay. Okay. Let's just do
6 that then.

7 Q. Mrs. Madani, let me hand you what has
8 been marked as Defense Exhibit 10 for
9 identification purposes only, 10 through 33. And
10 if you could, flip through those; and once you
11 have, let me know what they depict, just in
12 general.

13 THE COURT: General.

14 A. What I picked?

15 Q. No. What they show.

16 A. Oh, oh, oh, okay.

17 Q. Not each picture, but just in general,
18 what are these pictures of?

19 A. Yes. It's the -- the stove and then the
20 carpet and --

21 Q. Is it of Apartment 219?

22 A. Yes.

23 Q. Okay. And when were those photographs
24 taken?

25 A. The cleaning lady before she cleaned,

1 she take.

2 Q. Okay. Is that after the Phelps --

3 A. Yes.

4 Q. -- moved out?

5 A. Yes.

6 Q. And was it before a new tenant had moved
7 in?

8 A. No, no. Before.

9 Q. Okay.

10 A. Before. We don't -- we -- we clean the
11 place and then -- regardless. When tenant
12 leaves, we clean the place; and then somebody
13 else moves in.

14 Q. Okay. And do those photographs depict
15 what you saw when you first entered the
16 apartment?

17 A. Correct.

18 Q. And once you opened the door, is that
19 what the Phelps --

20 A. That's what it was, yes. Uh-huh.

21 Q. Okay.

22 A. And most -- mostly the cleaning.

23 MR. TONEY: (Inaudible.) As Defense
24 Exhibit 10 through 33.

25 THE COURT: Any objection.

1 MR. TRULUCK: No objection, Your Honor.

2 Q. Let me just ask you about a couple of
3 pictures. I don't want to go through all of
4 these. I know we're all getting late in the day.

5 A. Okay.

6 Q. If you look at Exhibit 28, what is
7 Exhibit 28 a picture of?

8 A. That is the bathtub.

9 Q. Okay. What is that picture showing?

10 A. Dirty.

11 Q. Okay.

12 A. It's the -- the fan.

13 Q. And what is Exhibit 22 showing you?

14 A. That's the carpet.

15 Q. Was the carpet wet?

16 A. Wet. Yes.

17 Q. Did you have to clean that?

18 A. Cleaning lady did.

19 Q. What does Picture 19 showing the jury?

20 A. You see there, dirt.

21 Q. Okay.

22 A. They you go.

23 Q. How about Defense Exhibit 18?

24 A. Yeah. That's the blind that was --

25 Q. It's a broken blind?

1 A. Yeah. That's a --

2 Q. Is exhibit -- what is Exhibit 16
3 showing?

4 A. The wet carpet.

5 Q. Okay. And Exhibit 11, what is that?

6 A. Stove.

7 Q. Okay. Okay. I believe you testified to
8 this, but there was never any rent paid for
9 November; is that right?

10 A. That's correct.

11 Q. Okay. Was there any rent ever paid by
12 the Phelps for December?

13 A. December they weren't there.

14 Q. Okay. When did you rent the apartment
15 out again?

16 A. March 17.

17 Q. No. When did you rent it out to
18 somebody new?

19 A. That's what I did. Happen to be
20 March 17, 2016.

21 Q. Didn't you rent the apartment to
22 somebody new in December?

23 A. Yes. I'm sorry.

24 Q. Was it December 17 --

25 A. Yeah.

1 cleaning was not done; and they locked the door,
2 and they didn't give us the key. There was no
3 reason for the lock to be changed. They left,
4 but they did it. And they took the key and took
5 the key to the mailbox, and they -- they just did
6 all of that.

7 Q. And how about the unpaid rent?

8 A. Yes. And they never paid the rents for
9 August -- September, October, November.

10 Q. Okay.

11 A. They didn't pay rent.

12 Q. Okay. And -- and would you dispute that
13 950 -- you had 950 dollars in a security deposit;
14 is that right?

15 A. That's correct.

16 Q. And any amount of -- of damages which
17 includes rent, you would apply that 950 dollars
18 security deposit toward that; is that right?

19 A. That is the lease says and we -- yes. I
20 did.

21 Q. And -- and when the Phelps moved out
22 around November 21 of 2015, they didn't -- they
23 never sent a forwarding address to you, did they?

24 A. No.

25 Q. It wasn't until the next time you heard

1 Q. You would have filed a lawsuit against
2 them if they hadn't -- if they had not filed a
3 lawsuit against you, you would have filed a
4 lawsuit against them?

5 A. No, no.

6 Q. Okay. And as part of your damages, as
7 we sit here today, you're claiming the late fee
8 for July.

9 A. I'm --

10 Q. You're claiming the rent and the late
11 fee for September; is that correct?

12 A. For September, October, November.

13 Q. Okay. And then are you claiming part of
14 the rent for December?

15 A. December.

16 Q. Or half of December?

17 A. November.

18 Q. You're claiming for November. Are you
19 claiming half of the rent for December?

20 A. December.

21 Q. Okay. And that rent all along was 950
22 dollars?

23 A. That's correct.

24 Q. And the late fee was 100 dollars?

25 A. That's correct.

1 Q. And we've already gone through all
2 the -- the damages --

3 A. Yes.

4 Q. -- you had to pay after the Phelps moved
5 out; is that right?

6 A. Yes.

7 Q. Are there any other damages that you're
8 claiming in this lawsuit?

9 A. No.

10 MR. TONEY: Okay. Miss Madani, that's
11 all the questions I have for you. Please answer
12 any questions that Mr. Truluck may have for you.

13 THE WITNESS: Okay. I -- I want to just
14 say something.

15 MR. TONEY: Well, you can't say it
16 unless you have a question.

17 THE WITNESS: Okay. All right.

18 THE COURT: I'll tell you what, I'm
19 going to let the jury walk around for a minute
20 'cause it's getting -- we all ate lunch, and you
21 guys are probably tired. Why don't you guys get
22 some water and -- so we'll take about two or
23 three minutes.

24 UNIDENTIFIED VOICE: Your Honor, how
25 much time, ma'am?

1 Q. And we've already gone through all
2 the -- the damages --

3 A. Yes.

4 Q. -- you had to pay after the Phelps moved
5 out; is that right?

6 A. Yes.

7 Q. Are there any other damages that you're
8 claiming in this lawsuit?

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APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016-CP-07-01475

RECEIVED
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SC Court of Appeals

Shamsy Madani, ... Respondent,

v.

Rickey Phelps and Christy Phelps Appellants.

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STATEMENT OF ISSUES ON APPEAL

1. DID THE APPELLATE JUDGE ERR IN FINDING RESPONDENT PRESERVED THE ISSUE OF IRRECONCILABLE VERDICTS FOR APPELLATE REVIEW?
2. DID THE APPELLATE JUDGE ERR IN FINDING THE LOWER COURT JUDGE ABUSED HER DISRECTION IN FINDING THE VERDICTS RECONCILABLE?

STATEMENT OF THE CASE

On November 30, 2015 Rickey Phelps and Christy Phelps (“Appellants”) brought this action alleging violation of S.C. Code § 27-40-660 (“Unlawful Ouster”) as against Shamsy Madani (“Respondent”), their landlord, for unlawful ouster of Appellants from their residential property and further alleging violation of S.C. Code § 27-4-410 (“Security Deposit”) for Respondent’s failure to return Appellants’ security deposit as properly and timely requested. Respondent counterclaimed for common law breach of contract for lost rent and damages. On April 18, 2016 the jury returned verdicts in favor of Appellants on both claims, however, found zero damages as to the claim of unlawful ouster. The jury returned a verdict in favor of

Respondent for \$1,351.85 for loss rent and damages. Respondent made no motion of inquiry to the jury regarding the verdicts before their dismissal.

By order of the trial court on June 1, 2016, Respondent's post-trial motion for reconsideration and new trial made upon arguments that the jury's verdict of zero dollars as to the unlawful ouster was irreconcilable as a matter of law was denied. Respondent appealed and after hearing on March 20th, 2017 ("Hearing") Judge Marvin H. Dukes, III issued an order on August 3, 2017 finding that a new trial was required as a result of an "irreconcilable verdict". On August 22, 2017 Appellants filed and served this appeal.

FACTS

On April 18, 2016 the above listed action came before the Judge Nancy Sadler of the Beaufort County Magistrate Court ("Judge Sadler") on Appellants' claims for Respondent's violations of Unlawful Ouster and violation of Security Deposit as well as Respondent's counterclaim for common law breach of contract ("Breach"). Appl.'s Comp., Respd.'s Ans. Prior to trial, both parties stipulated by representation to Judge Sadler that the rent at issue in the subject matter was \$950.00 and that a security deposit provided by Appellants to Respondent was \$950.00. At the close of all the evidence, Respondent moved for directed verdicts awarding unpaid rent for the months of September, October and November as well as dismissal of Appellants' claims or defenses made upon allegations Respondent unlawfully gained access to Appellants' residence. Both motions were denied. *Prt. Trans.* at 33. Appellants next moved that Respondent's defenses of unclean hands, estoppel and res judicata be dismissed as inapplicable equitable defenses in Appellants' action at law and Judge Sadler accepted Respondent's withdrawal of those defenses. *Prt. Trans.* at 30-31.

At the conclusion of trial, the matter was submitted to the jury with instructions on Unlawful Ouster, Security Deposit and S.C. Code § 27-40-640 ("General Defense"), without objection from Respondent, which provides for a general defense against the Respondent's claims for damages for non-compliance with the Residential Landlord Tenant Act ("RLTA"). The jury was also given verdict forms on each cause of action by agreement and consent of Appellants and Respondent. *Verd.* The jury returned a verdict in favor of Appellants as against Respondent for her violation Unlawful Ouster with zero (0) actual damages and in favor of Appellants as against Respondent for

violation of Security Deposit with a finding in the amount of the security wrongfully withheld of \$950.00. Verd. at 46-48. The Jury also returned a verdict in favor of Respondent against Appellants in the amount of \$301.85 for damage to the subject rental property and \$1,050.00 in actual damages for failure to pay rent. Id. at 49-50. Judge Sadler dismissed the jury without further motion, inquiry or request from Respondent. Prt. Trans. at 34-35. By order of Judge Sadler on June 1, 2016, Respondent's post-trial motion for reconsideration and new trial made upon arguments that the jury's verdict of zero dollars as irreconcilable as a matter of law was denied. Ord. Jun. at 1-2. Judge Sadler stated:

At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75,100 (\$401.75) and this was clearly the intention of the jury based on its verdicts. The South Carolina Code, however, states, 'If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410.' In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

Id. Respondent appealed to the Beaufort Court of Common Pleas and Appellants filed their Memorandum in Opposition to Respondent's appeal on October 26, 2016 arguing Respondent failed to preserve the issue for appellate review and that Unlawful Ouster did not require a finding of actual damages proving the verdicts reconcilable. Memo. at 53-54. After hearing on March 20th, 2017 ("Hearing") Judge Marvin H. Dukes, III found that a new trial was required as a result of "irreconcilable verdict". Ord. Aug. at 4. Upon diligent search by the Appellants no transcript exists to provide the arguments made at Hearing. This appeal timely followed.

Arguments

I. BECAUSE RESPONDENT FAILED TO TIMELY OBJECT TO ANY PERCEIVED ERRONEOUS OR IRRECONCILABLE VERDICT ISSUED FROM THE JURY SHE HAS FAILED TO PRESERVE THE ISSUE FOR APPEAL.

Appellants argue that because Respondent allowed the court to release the jury without any attempt to discover the jury's intentions she has failed to preserve the issue for review and the Court of Common Pleas should have affirmed the lower court. The Court in *Camden v.*

Hilton provided:

The rule that parties seeking to reform a verdict must first voice their objection before the jury is discharged has been followed in South Carolina since at least 1920 ("The defendant's counsel made no attempt to find out what the jury intended and their objections come too late. It was [counsel's] business to clarify and ask for a correction and reformation of the verdict before the jury were [sic] discharged.") [T]his court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the injury has been discharged, claim advantage of the error, thus invited by acquiescence.

Camden v. Hilton, 360 S.C. 164, 171-72, S.E.2d 88 (2004). As in *Camden*, Respondent failed to bring her concerns of confusion or irreconcilability to the attention of the trial court and submit inquire to the jury before their dismissal. *Prt. Trans.* at 34-35. Similarly, Respondent made no objection to the verdict form submitted to the jury and did not request an amendment that should the jury find zero damages they should find for Respondent. Respondent's plea to the Court of Common Pleas for review of the jury's verdict should not have been allowed where Respondent had acquiesced to the finding.

II. BECAUSE THE TRIAL JUDGE BELOW FOUND THE JURY'S VERDICTS TO BE RECONCILABLE HER FINDING SHOULD NOT BE OVERTURNED WHERE SHE DID NOT ABUSE HER DISCRETION AND THE VERDICTS WERE, OTHERWISE, SUPPORTED BY THE FACTS AND APPLICABLE LAW.

Appellants next argue the jury verdicts should not be reversed where the jury's verdict in favor of Appellants as to Respondent's violation of Unlawful Ouster was reconcilable as a matter

of law and Judge Sadler did not abuse her discretion in so finding. Respondent characterized the verdict forms as being confused where zero damages were awarded.

First, it is not irreconcilable to conceive that the jury did not find actual damages in favor of Appellants where none were presented and that, in the alternative, Unlawful Ouster provides for statutory damages by way of trebling rent in lieu of actual damages, accordingly. Judge Sadler correctly provided:

At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75,100 (\$401.75) and this was clearly the intention of the jury based on its verdicts. The South Carolina Code, however, states, 'If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410.' In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

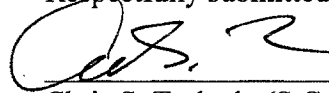
Ord. Jun. at 1-2. Similarly, should any numerical variation in the jury's verdict forms create concerns of irreconcilability General Defense provides, "the tenant may rely on the rental agreement or the provision of this chapter to assert defenses . . . for any amount recoverable thereunder" S.C. Code § 27-40-640. At trial, the Appellants presented sufficient evidence of Respondent's inappropriate access to the residence such that Respondent's motion for directed verdict as to Appellants' defense of unlawful access was denied. Appellants further presented evidence that the Respondent's behavior violated the RLTA's requirement for written instruction as to any changes in the location of payment of rent. Judge Sadler instructed the jury as to General Defense, without objection from Respondent, and it is not irreconcilable that the amounts determined were the result of defensive offset for Respondent's inappropriate behavior.

Summarily, Judge Sadler's determination that the jury verdicts were reconcilable was supported by the applicable law and facts of the case and should not have been reversed by the appellate court.

CONCLUSION

For these reasons, this Court should reverse the judgment of the circuit court reversing the trial judge's finding that the jury verdicts were reconcilable.

Respectfully submitted,



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November 28, 2017

Certificate of Counsel in Final Brief

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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NOV 30 2017

Marvin H. Dukes, III, Circuit Court Judge SC Court of Appeals

Case No. 2016CP0701475

Shamsy Madani, ... Respondents,

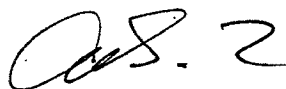
v.

Rickey Phelps and Christy Phelps Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

November 28, 2017



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STATE OF SOUTH CAROLINA

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Marvin H. Dukes, III, Circuit Court Judge

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Arguments

I. THE APPELLATE-CIRCUIT COURT IMPROPERLY CONCLUDED THAT THE TRIAL COURT JUDGMENT CONSTITUTED AN IRRECONCILABLE VERDICT

Respondent argues that a finding of zero (0) damages without a subsequent award for other damages under South Carolina Law is irreconcilable. Resp. Int. Pg. 5-6 (Mar. 8, 2018). However, Respondent's argument is inapplicable where she relies on precedent for common law causes of action such as nuisance and negligence. The statutory remedy available to Appellants reads, "[i]f a landlord unlawfully removes or excludes the tenant from the premises . . . the tenant may recovery . . . an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees." S.C. Code § 27-40-660. On April 18, 2016 the Jury, hearing the case above listed, returned a verdict in favor of Appellants as against Respondent for violation of S.C. Code § 27-40-660 with zero (0) actual damages. The parties, having pleaded and previously stipulated, agreed the rent at issue in this

case to be conclusively \$950.00. Where S.C. Code § 27-40-660 requires no finding of actual damages and provides for an award in the alternative based on monthly rent, whichever is greater, Respondent's argument as to irreconcilability based on zero (0) damages in common law causes of action is inapplicable and must fail as damages here are awarded according to statute.

The Court of Appeals stated as follows in *Prevatte v. Asbury Arms* as to the statutory construction of the phrase "the tenant may recover" as provided in the Residential Landlord Tenant Act:

The word 'may' does not refer to the judge, but to the tenant. It gives the tenant a right he does not have at common law: the tenant may elect to seek recovery under the statute rather than the common law. To the extent that the word 'may' connotes discretion, it is a discretion vested in the tenant to elect his remedies, not in the court to deny a remedy clearly provided for by the statute. The Judge erred when he stated: 'Under 27-40-410(b) it says the court may award' [Emphasis added.] That is not what the statute says

The appellate courts of this state have never construed this language as giving the trial judge discretion to award or deny

The statute is unambiguous and absolute. The use of the 'the tenant may recover' rather than 'the tenant shall recover' does not give the court any discretion. Rather it is a statement of the steps the tenant, as a matter of right, may take if the landlord does not comply with the statute."

Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642, 643-644 (Ct. App. 1990) (finding the prescriptions in the damages provision mandatory and not discretionary); *Parker v. Brown*, Op. No. 2008-UP-324 (Ct. App. 2008) (finding a treble award of the previously returned security deposit appropriate where the itemization was untimely sent); *Schumacher v. Hoover*, Un. Pub. Op. No. 2013-UP-432 (Ct. App. 2013) (affirming Judge Casey Manning's application of treble damages pursuant to *Prevatte v. Asbury Arms*).

Appellants filed suit pursuant to S.C. Code § 27-40-660 and specifically elected the remedy of statutory damages in the amount of \$2,850.00 and continue to seek this remedy from the Court upon the return of the verdicts in Appellants' favor. In relying on the Courts statutory construction in *Prevatte*, Appellants respectfully submit that the appropriate award for Respondent's violation of S.C. Code § 27-40-660 is "three months' periodic rent or twice the

actual damages sustained by them, whichever is greater, and reasonable attorney's fees" where the Court in *Prevatte* has concluded the word "may," as preceding the available remedy, is not discretionary as to the Court. S.C. Code § 27-40-660. In the present case, the Jury determined that Appellants suffered zero (0) actual damages, however, the rent has been conclusively established at \$950.00. Where three months' periodic rent equals \$2,850.00, greater than zero (0) actual damages, Appellants respectfully submit this Court should find judgment in their favor for Respondent's violation of S.C. Code § 27-40-660 in amount of \$2,850.00 is reconcilable and is statutorily prescribed.

Appellants, otherwise, refer to their argument contained in Appellants Final Brief filed on November 30, 2017 and incorporate by reference as if stated herein in the interests of economy. App. Fin. PG. 5-7 (Nov. 30, 201).

II. THE DUTY TO RAISE THE ISSUE OF IRRECONCILABLE VERDICT(S) LIES WITH THE PARTY SEEKING TO REFORM THE VERDICT NOT THE PREVAILING PARTY

Respondent next argues that it was Appellants duty to raise the issue of irreconcilable verdict and that Respondent further preserved the issue of irreconcilability. Appellants are now incapable of following the argument of Respondent that a party satisfied with the verdicts, and finding the verdicts reconcilable, would be required to raise the issue of irreconcilability. The Court in *Camden v. Hilton* provided:

The rule that parties seeking to reform a verdict must first voice their objection before the jury is discharged has been followed in South Carolina since at least 1920 ("The defendant's counsel made no attempt to find out what the jury intended and their objections come too late. It was [counsel's] business to clarify and ask for a correction and reformation of the verdict before the jury were [sic] discharged.") [T]his court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the injury has been discharged, claim advantage of the error, thus invited by acquiescence.

Camden v. Hilton, 360 S.C. 164, 171-72, S.E.2d 88 (2004).

Appellants did not object to the jury verdict forms submitted or the jury verdict forms as returned before discharge. As provided in *Camden*, "parties seeking to reform a verdict must

first voice their objection before the jury is discharged.” *Id.* The Appellants were satisfied with the finding of the jury, the final application of statutory damages as properly determined by the trial court and as subsequently appealed by the Respondent and former defendant at the trial level.

Further, Respondent continues to fail to reference any objection to the verdicts in the transcript before discharge of the jury such that it is abundantly clear she has not properly preserved the issue of irreconcilability. Appellants continue to respectfully submit the issue of irreconcilability was not preserved for appeal and that the objection was incumbent upon the Respondent who sought reformation. Despite filing post-trial and post-discharge motions the issue was not preserved by Respondent and Appellants respectfully request this Court to find so accordingly.

III. THE TRIAL COURT POSSESSED SUBJECT MATTER JURISDICTION PURSUANT TO S.C. CODE § 27-40-130 AND S.C. CODE § 22-3-10, OTHERWISE, WHERE NO INDIVIDUAL CLAIM AS PLEADED AMOUNTED TO MORE THAN \$7,500.00.

Respondent argues that the trial court was devoid of subject matter jurisdiction where the amount of the award alleged in Appellants’ Amended Complaint could have exceeded the statutory limit set forth in S.C. Code § 22-3-10 such that the matter should have been transferred to the Circuit Court. Appellants respectfully disagree.

First, none of Appellants individual claims, as pleaded or in any eventuality amounted to more than \$2,850.00 each. Similarly, Appellants counterclaim for contractual breach, as plead or upon evidence submitted at trial, could not amount to more than \$7,500.00. Second, Appellant previously, and successfully, argued before the trial court that “[t]here was one rental lease in this case . . . the Tenant(s) . . . have one cause of action against their landlord . . . [and] [t]here cannot be double recovery.” Def. Mot. New Trial. PG. 11 (Apr. 25, 2016). The trial court ordered that Appellants were only entitled to one recovery in the amount of \$2,850.00 despite two jury verdicts finding for each respondent against Respondent for unlawful ouster. By Respondent’s own position, the Appellants can only recover in the amount of \$2,850.00 for Respondent’s unlawful ouster and \$2,850.00 for Respondent’s failure to return the security deposit amount to a

maximum award of \$5,700.00 if the analysis for jurisdiction was based on aggregate value rather than individual claims. Third, Respondent's reliance on *Mosseri v. Austin* is misguided where the Court found transfer to the circuit court was appropriate where an individual claim was pleaded above \$7,500.00 and the motion to transfer was made in an action concerning a commercial lease as distinguished from a residential lease as in this case. *Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc.*, 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007). Similarly, Respondent never moved to have the matter transferred to the circuit court such that this argument was not preserved and, in contradiction, admitted the magistrate jurisdiction was appropriate pursuant to her Answer to Second Amended Complaint and Counterclaim. Ans. Sec. Amen. Pg. 1, ¶ 2 (Mar. 8, 2016). S.C. Code § 22-3-10 provides jurisdiction in cases where the "sum claimed does not exceed" \$7,500.00. For the Respondent to properly submit her argument refuting jurisdiction it is Appellants' position that a determination would have to have been made, upon motion of Respondent, as to whether the "sum claimed" as pleaded in any complaint or answer by the trial court exceed S.C. Code § 22-3-10 jurisdictional amount before the issue is properly preserved. S.C. Code § 22-3-10

Finally, and as repeatedly ignored by Respondent, the controlling statute for jurisdiction in matters concerning residential leases as was at issue in this matter is S.C. Code § 27-40-130;

[t]he circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by this chapter [, the Residential Landlord Tenant Act,] or with respect to any claim arising from a transaction subject to this chapter.

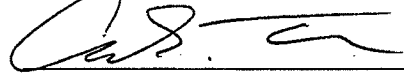
S.C. Code § 27-40-130. S.C. Code § 27-40-130 provides no statutory monetary limit or requirement that the claims involve the possession of property as suggested by Respondent.

Where the trial court had concurrent subject matter jurisdiction over matters concerning the Residential Landlord Tenant Act pursuant to S.C. Code § 27-40-130 Respondent's argument must fail and jurisdiction was proper. Alternatively, Respondent's argument that the trial court lacked subject matter jurisdiction pursuant to S.C. Code § 22-3-10 must also fail where Respondent failed to move to have the case transferred to the circuit court, admitted jurisdiction and the individual claims as pleaded never amounted to more than \$7,500.00.

CONCLUSION

For these reasons, this Court should reverse the judgment of the circuit court reversing the trial judge's finding that the jury verdicts were irreconcilable and remand the matter for further proceedings in accordance with the lawful verdicts.

Respectfully submitted,



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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475

RECEIVED
MAR 16 2018
SC Court of Appeals

Shamsy Madani, ... Respondent,

v.

Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Reply Brief in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by U.S. Mail, postage prepaid, on March 16, 2018 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

March 16, 2018

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Civil Action No. 2016-CP-07-1475
Appellate Case No. 2017-0001761

SHAMSY MADANI.....Respondent

v.

RICKEY PHELPS AND CHRISTY PHELPS.....Appellants.

FINAL BRIEF OF RESPONDENT

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MAR 29 2018

SC Court of Appeals

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STATEMENT OF THE CASE

Plaintiffs-Appellants Rickey and Christy Phelps (“Phelps”) filed this landlord-tenant action against Defendant-Respondent Shamsy Madani (“Madani”) after they had been evicted from their apartment for failure to pay rent.

The Magistrate Court jury trial of this case occurred on Monday, April 18, 2016. The jury returned a verdict in favor of Madani in the amount of \$301.85 for damages caused by Phelps to Madani’s apartment, and returned a verdict in favor of Madani for \$1,050.00 for Phelps’ failure to pay rent, for a total verdict in favor of Madani of \$1,351.85.

The jury returned a verdict in favor of Phelps in the amount of \$950 for Madani’s failure to return the security deposit, and returned a verdict in favor of each of the Phelps for \$0.0 for Madani’s unlawful ouster of Phelps. Madani’s judgment exceeded that of Phelps by \$401.85. The jury found that Phelps breached the lease, which required the award of attorney fees and costs to Madani.

The Magistrate’s Court issued an Order on Post Trial Motions of the parties on April 28, 2016. The Magistrate’s Court April 28, 2016 Order, awarded the Phelps the following: \$2,850.00 for Madani’s breach of S.C. Code §27-40-660 and \$2,850.00 for Madani’s breach of S.C. Code §27-40-410. The April 28, 2016 Order also awards to Madani \$1,316.85, finds that both parties are entitled to an award of attorney fees and costs, and offers to hold a hearing with counsel to determine the award of attorney fees.

On May 12, 2016, the Magistrate’s Court issued an Order on Post Trial Motions of the Parties. The Court’s May 12, 2016 Order, upholds its previous rulings and awards

only Phelps' attorney fees and costs in the amount of \$5,080.00, for a total award to Phelps of \$10,780 and a total award to Madani of \$1,316.85.

In response to the Court's May 12, 2016 Order, Madani timely filed a motion to reconsider, which the Court accepted and considered. The Magistrate's Court issued its Final Order on June 6, 2016, confirming its award.

Thereafter, Madani appealed the Magistrate's Court Judgment to the Beaufort County Court of Common Pleas. On August 3, 2017, the Beaufort County Court of Common Pleas issued its order reversing and remanding the Magistrate Court's Order and ordering a new trial. This appeal followed.

FACTS

This is an alleged breach of the South Carolina Landlord Tenant Act case brought by Phelps against Madani.

Beginning on March 20, 2015, Phelps rented an apartment from Madani for \$950/month, Phelps paid a \$950 security deposit, and the lease agreement expired on March 1, 2016. (Supp. R. pp. 75-78). Phelps admittedly failed to pay rent for the months of September, October, and November 2015. (Supp. R. pp. 71-73). On October 2, 2015, Madani changed the lock of Phelps' apartment door and put a notice on Phelps' door of the changed lock and informed the Phelps to contact Madani for the new key. (Supp. R. pp. 79-81). This was done because neighbors complained of unidentified third-parties attempts to access the apartment and, thereby, damaging the apartment's lock. (Supp. R. p. 80).

Phelps called Madani when they saw the notice regarding the key and testified that they were locked out of the apartment for either one week or two weeks (they could

not verify how long they allege to have been locked out), and did not testify as to where they stayed or as to any damages incurred. (Supp. R. p. 74) Phelps obtained a key to the apartment and continued to live in the apartment for at least another month and a half without paying rent. (Supp. R. p. 69).

By Order of the Bluffton Magistrate, Phelps were evicted from the apartment on November 13, 2015. (Supp. R. p. 1). Phelps never provided Madani notice of their new address or demanded return of their security deposit, presumably because they had not paid three months rent and had been evicted. (Supp. R. p. 101).

On December 1, 2015, Phelps filed a lawsuit against Madani, alleging unlawful ouster as their sole cause of action. (Supp. R. pp. 10-11). On January 11, 2016, Madani answered Phelps' complaint and counterclaimed for breach of lease for Phelps' failure to pay several months rent and damage caused to the apartment. (Supp. R. pp. 12-17). Madani's claim that Phelps failed to pay several months rent placed them on notice that Madani claimed damage in excess of Phelps' \$950 security deposit.

On January 16, 2016, more than 60-days after being evicted, Phelps sent a letter to Madani requesting return of the security deposit, which Madani did not respond to due to her counterclaim encompassing damages in excess of the \$950 security deposit. (Supp. R. p. 70). On January 22, 2016, Phelps filed their amended complaint, adding as a cause of action general violation of the South Carolina Landlord Tenant Act. (Supp. R. pp. 18-21). Madani answered the amended complaint and counterclaimed, once again, for breach of lease for Phelps' failure to pay rent and damage caused to the apartment by Phelps. (Supp. R. pp. 22-27)

On February 26, 2016, Phelps, without leave of court, once again amended their complaint to add as a cause of action failure to comply with SC Code §27-40-410 for failing to respond to Phelps' request for return of their security deposit, despite Madani having done so in her counterclaim contained in her answer to the original and amended complaints. (Supp. R. pp. 28-32).

Each of the Phelps claimed damages caused by Madani's alleged unlawful ouster, for a total claim of \$5,700 and the Phelps together claimed violation of the security deposit statute in the amount of \$2,850, exclusive of claimed damages for general violations of the South Carolina Landlord Tenant Act, attorney fees and costs. In total, by the face of the second amended complaint, Phelps' claims totaled \$8,550.00, exclusive of claimed damages for general violations of the South Carolina Landlord Tenant Act, attorney fees and costs. The case remained in Magistrate's Court.

At trial Phelps presented only themselves as witnesses and did not offer one piece of evidence as to any damages sustained by them as a result of Madani's alleged actions. Madani testified on behalf of herself and introduced as damages \$3,725.00 in unpaid rent and late rent charges, and \$815.38 in actual damages caused by Phelps use of the apartment, for a total damage claim of \$4,540.38. (Supp. R. pp. 82-100; Supp. R. pp. 102-103).

ARGUMENT

1. THE APPELLATE-CIRCUIT COURT PROPERLY CONCLUDED THAT THE MAGISTRATE COURT'S JUDGMENT CONSTITUTED AN IRRECONCILABLE VERDICT

In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. S.C Code Ann. § 18-7-170.

The Appellate-Circuit Court granted a new trial as it was evident from the jury's verdict and the final order of the trial Court that such verdict was so confused that it is not absolutely clear what was intended. See Anderson v. Aetna Casualty and Surety, 175 S.C. 254 (1934); Camden v. Hilton, 360 S.C. 164 (Ct. App. 2004).

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge should not be required to guess as to what the jury sought to render. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). The trial court did not abuse its discretion by granting a new trial under the "thirteenth juror doctrine" where the 2 verdicts handed down by the jury were inconsistent and were not justified by the evidence. Buxton v Thompson Dental Co., 415 SE2d 844 (Ct. App 1992).

The court cannot lawfully enter judgment on an inconsistent or incomplete verdict. Stevens v. Allen, 336 S.C. 439 (Ct. App. 1999), Krepps by Krepps v. Ausen, 324 S.C. 597 (Ct. App. 1996).

The jury verdict in this case favors Madani and it is evident from the verdict that the jury found in favor of Madani. (Supp. R. pp. 2-6). It is not possible based upon the

verdict of the jury that Madani should have been ordered by the Magistrate's Court to pay in excess of \$9,000 to the losing parties, Phelps.

In part, the jury found in favor of Phelps for the unlawful ouster claim, BUT awarded zero dollars. Once a plaintiff proves damages proximately caused by the defendant, the verdict of zero damages is inconsistent or incomplete as a matter of law.

See Stevens, at 449-450. In Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895

(Ct.App.1993), rev'd in part on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995), this Court held:

In this case, the jury returned a verdict in nuisance of "no dollars" actual damages for the plaintiff. As a matter of law, this was either an inconsistent or incomplete verdict. If the jury found the defendant did not unlawfully interfere with the plaintiff's use and enjoyment of his land, even though the diversion of surface water was annoying or harmful to him, the verdict was legally inconsistent. On that view of the evidence, the verdict should have been for the defendant. If the jury found an unlawful interference amounting to a private nuisance, but no actual damages resulting to the plaintiff, it should have returned a verdict for the plaintiff and awarded nominal damages (i.e., one dollar). If it found unlawful interference resulting in actual damage to the plaintiff, even if the amount of the damages was difficult to ascertain, the jury had a duty to return a verdict for the plaintiff and to award damages in a specific dollar amount that, in its best judgment, based on the evidence before it, would compensate the plaintiff for his actual loss. Having found the fact of damage, the jury was required to find the amount of damage. In either of these latter cases, a verdict of "no dollars" for the plaintiff is legally incomplete. Since the defendant is liable for violating the plaintiff's substantive right, the plaintiff is entitled by law to an award of damages.

Johnson, 315 S.C. at 415-16, 433 S.E.2d at 900-01.

The South Carolina Supreme Court affirmed the Court of Appeals in Stevens V. Allen, 342 S.C. 47, 536 S.E.2d 663 (2000), and stated:

A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law. We hold that, if a jury finds the plaintiff has failed to prove damages proximately caused by the defendant's negligence, then its verdict should be for the defendant. We agree

with the Court of Appeals' conclusion that, under South Carolina law, the proper and most consistent approach of treating such verdicts is to require, upon request, the trial court to re-submit the matter to the jury. If the jury cannot reach a consistent verdict, the trial court may then order a new trial nisi or a new trial absolute.

The Appellate-Circuit Court found that as a matter of law the trial court's verdict was irreconcilable. The only manner in which to remedy an irreconcilable verdict is the granting of a new trial. The Appellate-Circuit Court's Order must be affirmed.

2. THE DUTY TO RAISE THE ISSUE OF IRRECONILABLE VERDICT AT TRIAL WAS THAT OF PHELPS, NOT MADANI, AND MADANI DID PRESERVE THE ISSUE FOR APPEAL WHERE THE TRIAL JUDGE CREATED AN IRRECONILABLE AND INCONSISTENT VERDICT AFTER THE JURY WAS DISCHARGED

When the jury presented its verdict at the conclusion of the trial, it found in favor of Madani. In part, the jury found for each of the Phelps and awarded zero dollars. Phelps did not request the trial judge re-submit the matter to the jury. Upon the jury's finding of zero dollars for the Phelps, pursuant to South Carolina law, it was finding in favor of Madani. See Stevens, 342 S.C. 47. It was incumbent upon Phelps, not upon Madani, to request the jury return to reconsider the matter.

Upon the award of the trial judge on April 28, 2016, Madani filed a motion to reconsider and argued, in part, the inconsistency and irreconcilability of the Court's order. (Supp. R. pp. 33-63). The trial court considered Madani's Motion to Reconsider and New Trial and issued its final Order on June 6, 2016. (Supp. R. pp. 7-9). Madani timely brought her motion to the trial Court regarding the trial Court's misapplication of South Carolina law in light of the jury's verdict, and the trial court ruled on such motion. The irreconcilability and inconsistency of the trial court's final order stems from the fact that: 1) upon the jury's award of zero dollars to the Phelps and failure of Phelps to

request the jury reconsider, the verdict was in favor of Madani; 2) the trial court's subsequent award of monetary damages to Phelps based upon the jury's verdict of zero dollars; and, 3) the ultimate net verdict grossly favoring Phelps, despite the jury's award of a greater amount to Madani.

The Appellate-Circuit Court found that this inconsistency in the final award constituted an irreconcilable verdict. As such, the Appellate-Circuit Court ordered that the final order of the trial court be reversed and the case be remanded for a new trial. The Appellate-Circuit Court's ruling is the only possible ruling available to it in light of the inconsistent and irreconcilable final verdict awarded. As such, the ruling of the Appellate-Circuit Court must be upheld.

3. THE MAGISTRATE COURT'S ORDER WAS VOID, OR IN THE ALTERNATIVE SHOULD HAVE BEEN RENDERED VOID BY THE APPELLATE-CIRCUIT COURT FOR LACK OF SUBJECT MATTER JURISDICTION.

The definition of "void" under the voidness provision of relief-from-judgment rule...encompasses...judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. Linda Mc Co., Inc. v. Shore, 375 S.C. 432, 653 S.E.2d 279(Ct. App. 2007); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002); McDaniel v. U.S. Fidelity and Guar. Co., 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996).

For purposes of applying the rule authorizing a trial court to grant a party relief from a void judgment, a "void judgment" is one that, from its inception, is a complete nullity and is without legal effect; the definition of "void" under the rule only encompasses judgments from courts which...lacked subject matter jurisdiction or personal jurisdiction. Ware v. Ware, 404 S.C. 1, 743 S.E.2d 817 (2013).

Definition of “void,” under rule which allows court to relieve a party or his legal representative from a final judgment, order, or proceeding if the judgment is void, only encompasses judgments from courts which...lacked subject matter jurisdiction...Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010).

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment on motion for relief from judgment. S.C. Rules Civ.Proc., Rule 60(b)(4). Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009).

It is well-settled that issues relating to subject matter jurisdiction maybe raised at any time. See Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995); GNOC Corp. v. Estate of Rhyne, 312 S.C. 86, 439 S.E.2d 274 (1994); State v. Gorie, 256 S.C. 539, 183 S.E.2d 334 (1971). The question of lack of subject matter jurisdiction may be raised at anytime during the action and cannot be waived or conferred by consent. Petroleum Transp., Inc. v. Public Service Comm'n, 255 S.C. 419, 179 S.E.2d 326 (1971). Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598 (1994); Watson v. Watson, 319 S.C. 92, 460 S.E.2d 394 (1995).

In this case, the Phelps' causes of action were as follows:

- 1) Noncompliance by Landlord in General Pursuant to S.C. Code §27-40-610, wherein the Phelps sought actual damages, attorney's fees and costs, and punitive damages;

- 2) Unlawful Ouster Pursuant to S.C. Code §27-40-660, wherein each of the Phelps demanded \$2,850, or three months periodic rent, for a total of \$5,700, attorney fees, and punitive damages; and,
- 3) Failure to Return Security Deposit Pursuant to S.C. Code §27-40-410, wherein the Phelps sought three times the security deposit, or \$2,850, attorney fees, and punitive damages. (Supp. R. pp. 19-23).

By the face of the second amended complaint and the argument of Phelps' counsel at trial, Phelps' damages, before attorney fees or punitive damages, total \$8,550. (Supp. R. pp. 28-32).

South Carolina has determined that "wherein treble damages are sought by the plaintiff, the amount in controversy which would determine the jurisdiction of magistrate's court to hear the case is the trebled amount being sought." See 1980 S.C. Op. Atty. Gen. 5 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-1, 1980 WL 81885.

Additionally, a reasonable attorney's fee and costs allowed by statute or contract is not interests or costs, but is a part of the amount in controversy. See Cast-A-Stone Products of South Carolina, Inc. v. Aetna Cas. & Sur. Co., 379 F.Supp. 929 (U.S. Dist.Ct. D. S.C., 1974).

The amount prayed for in the Phelps' second amended complaint exceeds the jurisdictional limit of the Magistrate's Court and the amount actually awarded exceeds the jurisdictional limit of the Magistrate's Court.

Pursuant to S.C. Code §22-3-10, Magistrates have concurrent civil jurisdiction in the following cases:

- (1) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;
- (2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars;
- (3) in actions for a penalty, fine, or forfeiture, when the amount claimed or forfeited does not exceed seven thousand five hundred dollars...
- (12) in all actions provided for in this section when a filed counterclaim involves a sum not to exceed seven thousand five hundred dollars, except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land...

S.C. Code Ann. §22-3-10.

Part “10” of S.C. Code §22-3-10 does not control or allow the Magistrate’s Court to have subject matter jurisdiction in this case. South Carolina’s courts have found that where “tenant’s counterclaim for damages, alleging constructive eviction, conversion, unjust enrichment, loss of business revenue, and failure to return deposit, was not within the scope of exception to jurisdiction limits of magistrate’s court for disputes involving “landlord and tenant and the possession of land,” and thus transfer of case to court of common pleas was required; two of tenant’s counterclaims exceed magistrate’s jurisdictional limit of \$7,500, and the action did not involve possession of the property.” See Mosseri, Mosseri, Castro v. Austin’s at the Beach, Inc. , 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007).

Possession of property must be in dispute for the case to fall under S.C Code § 22-3-10 (10) and (12). See Id. As to any action brought in a magistrate's court for past due rent not brought as an action for distraint or ejectment, such action must be brought pursuant to one of the jurisdictional grants of authority, other than that as to landlord-tenant matters, provided by S.C. Code Ann. § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply.

In this case the sum claimed by Phelps and the counterclaiming Madani exceed the jurisdictional limit of the Magistrate's Court and possession of the property is not in dispute. (Supp. R. pp. 28- 32). As such, the Magistrate Court's judgment is void and a new trial should have been ordered by the Appellate-Circuit Court. Additionally, the affidavit of Phelps' counsel as to attorney's fees and costs, and the award of the Magistrate's Court, prove that the amount in controversy exceeded the jurisdictional limit of the Magistrate's Court. (Supp. R. pp. 64-67; Supp. R. pp. 7-9).

Because the Magistrate Court's final Order is void, the Appellate-Circuit Court should have ordered that such judgment be stricken and that the case be refilled in the Court of Common Pleas.

CONCLUSION

The fundamental question presented in this appeal is whether the Phelps can be awarded a zero dollar verdict, which in South Carolina constitutes a verdict in favor of Madani, and, yet, receive an ultimate Magistrate Court verdict award of \$9,463.15 greater than that of Madani, the prevailing party. The Appellate-Circuit Court recognized the inconsistency of such verdict award and ordered the only possible solution, that being reversing the Magistrate Court's order and remanding the case for a new trial. The

Appellate-Circuit Court's Order must be affirmed and this case reverse and remanded to the Magistrate's Court.

In the alternative, the Magistrate's Court's Order is void pursuant to South Carolina law. The Magistrate's Court lacked subject matter jurisdiction and, as such, its judgment is void. Because the final Order is Void, this Court should vacate the judgment and order the case be filed in the Court of Common Pleas.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew J. Toney", is written over a horizontal line.

Andrew J. Toney
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PO Box 5969
Hilton Head Island, SC 29938
(843)785-6969
Attorney for Respondent

March 28, 2018

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Shamsy Madani, Respondent,

v.

Rickey Phelps and Christy Phelps, Appellants.

Appellate Case No. 2017-001761

Appeal From Beaufort County
Marvin H. Dukes, III, Circuit Court Judge

Unpublished Opinion No. 2020-UP-108
Submitted March 20, 2020 – Filed April 15, 2020

AFFIRMED

Christopher Stephen Truluck, of Columbia, for
Appellants.

Andrew James Toney, of Mullen Wylie, LLC, of Hilton
Head Island, for Respondent.

PER CURIAM: Tenants-Appellants Rickey and Christy Phelps filed suit against their ex-landlord-Respondent Shamsy Madani in magistrate court under the Residential Landlord and Tenant Act (RLTA) for (I) unlawful ouster under section 27-40-660 of the South Carolina Code (2007) and (II) failure to return security deposit under section 27-40-410 of the South Carolina Code (2007). Respondent

counterclaimed for breach of contract, claiming Appellants (I) damaged her property and (II) failed to pay rent. The jury found for Appellants on unlawful ouster and failure to return the security deposit, but found for Respondent on her breach of contract claim for damages to the property and failure to pay rent. The jury awarded Appellants the following: zero dollars for unlawful ouster or exclusion and \$950 for failure to return security deposit. Conversely, the jury awarded Respondent: \$301.85 for damage to Respondent's property and \$1,050 for Appellants' failure to pay rent. The magistrate court issued an order awarding Appellants three times the rent (\$950) under section 27-40-660 and three times the security deposit (\$950) under section 27-40-410—totaling \$5,700. The court subsequently awarded Appellants attorney's fees in the amount of \$5,080. Appellants' award totaled \$10,780 and Respondent's award totaled \$1,316.85. Respondent appealed the judgment to the circuit court arguing the jury's award was irreconcilable and inconsistent. The circuit court reversed the magistrate court's judgment and remanded for a new trial. Appellants argue the circuit court erred in reversing and remanding for a new trial because (1) Respondent failed to preserve the irreconcilable verdict issue for appeal and (2) the verdict was reconcilable.¹ We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the "irreconcilable verdict" issue was preserved for appellate review: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Camden v. Hilton*, 360 S.C. 164, 171, 600 S.E.2d 88, 91 (Ct. App. 2004) ("[P]arties seeking to reform a verdict must voice their objection before the jury is discharged . . ."); *Dykema v. Carolina Emergency Physicians, P.C.*, 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002) ("[F]ailure to challenge the verdict upon being given an opportunity to do so results in a waiver."). The magistrate court excused the jury before either party had an opportunity to question the jury's intentions in rendering its verdict. Upon being given the opportunity by the court, Respondent raised her concerns regarding the verdict.

¹ Respondent argues that the magistrate court lacked subject matter jurisdiction to hear the matter. We disagree. See S.C. Code Ann. § 27-40-130(a) (2007) ("The circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to *any* conduct in this State governed by [the RLTA] or with respect to *any* claim arising from a transaction subject to [the RLTA].") (emphases added)).

2. As to whether the circuit court erred in reversing the magistrate court's judgment and finding the jury's verdict irreconcilable: S.C. Code Ann. § 18-7-170 (2014) ("In giving judgment[,] the [circuit] court may affirm or reverse the judgment of the [magistrate court], in whole or in part, as to any or all the parties and for errors of law or fact."); *Hadfield v. Gilchrist*, 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct. App. 2000) ("Unless we find an error of law, we will affirm the [circuit court]'s holding if there are any facts supporting [the court's] decision."); *Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 283, 178 S.E. 819, 830 (1934) ("A jury's verdict should be upheld when possible to do so and to carry into effect what was clearly [the] jury's intentions."); *id.* at 283–84, 178 S.E. at 830 ("But when the verdict is so confused that it is not absolutely clear what was intended, the court should order a new trial."); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010) ("Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge 'should not be required to guess as to what a jury sought to render.'" (quoting *Prego v. Hobart*, 287 S.C. 116, 118, 336 S.E.2d 725, 726 (Ct. App. 1985))); *Stevens v. Allen*, 342 S.C. 47, 53, 536 S.E.2d 663, 666 (2000) ("A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law.").

AFFIRMED.²

LOCKEMY, C.J., and GEATHERS and HEWITT, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475
Appellate Case No. 2017-001761

RECEIVED

May 20 2020

SC Court of Appeals

Shamsy Madani, ... Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

APPELLANTS' PETITION FOR REHEARING

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Attorney for Respondent

APPELLANTS HEREBY RESPECTFULLY MOVE PURSUANT TO RULE 221(a),
SCACR, for this Court to rehear points believed to have been overlooked or misapprehended
upon the following grounds:

1. RESPONDENT WAS NOT DENIED THE OPPORTUNITY TO TIMELY OBJECT TO THE IRRECONCILABILITY OF THE JURY'S VERDICTS WHEN SHE FAILED TO RAISE THE ISSUE ON NO LESS THAN THREE (3) OCCASIONS POST-TRIAL AND HAS NOT RAISED THIS ISSUE OF THE MAGISTRATE'S DENIAL OF HER OPPORTUNITY TO QUESTION THE JURY.

2. WHETHER A VERDICT ASSESSING LIABILITY AGAINST A DEFENDANT BUT AWARDING ZERO DAMAGES IS INCONSISTENT WHERE A STATUTORY CLAIM PROVIDES A MECHANISM FOR ASSESSING DAMAGES AND DOES NOT REQUIRE A FINDING OF NOMINAL DAMAGES AND/OR INVALIDATE(S) OTHER SEPARATE CLAIMS IF SO INCONSISTENT.

3. WHETHER RESPONDENT'S APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION BEFORE THE CIRCUIT COURT AND, SUBSEQUENTLY, THIS COURT WAS DENIED.

FACTS

As provided in this Court's order issued April 15, 2020 affirming the lower court, the jury awarded Appellants the following on April 18, 2016: zero dollars for unlawful ouster or exclusion and \$950 for failure to return security deposit. Order at 2. Upon publishing the verdicts, the magistrate Judge Nancy Sadler ("Magistrate") excused the jury. Fin. Rec. at 38. Respondent made no objection to excusing the jury or to any issues concerning irreconcilability before the Jury was physically out of the presence of the Magistrate and/or the courthouse. *Id.* There appears no mention in the record that the jury's dismissal was instantaneous and Appellants attorney now asserts that the jury departed the courtroom in a manner such that any party could have easily objected to their dismissal in a timely fashion as provided by certification attached hereto as Exhibit A. Ex. A.

Following dismissal, Respondent appeared to make a motion notwithstanding the verdict pursuant to Rule 50, SCRCF for an insufficient defense verdict stating "there should be a judgment notwithstanding the verdict . . . to give three months rent," however, she does not request a new trial for inconsistent verdicts or any other issue to include denial of her opportunity to question the jury before their dismissal. Fin. Rec. at 40. The magistrate took the post-trial

motions into consideration and allowed the parties seven (7) days to submit their post-trial arguments in writing in full. Fin. Rec. at 48. In Respondent's memorandum submitted April 25, 2016, she argued for a new trial *nisi additur* for an insufficient defense verdict, however, failed to request a new trial for inconsistent or irreconcilable verdicts. Supp. Fin. Rec. at 38. Respondent similarly failed to object to the magistrate's denial of an opportunity to question the jury with regard to any inconsistent verdicts in her first post-trial motion. *Id.* The Magistrate issued an order awarding Appellants three times the rent (\$950) under section 27-40-660 and three times the security deposit (\$950) under section 27-40-410 –totaling \$5,700. *See* Fin. Rec. at 1 (where magistrate stated “[t]he Motions apply to the Court's Order on Post-Trial Motions of the parties filed April 28, 2016 and the Court's Order on post-trial motions of the parties signed on May 12, 2016”). Respondent finally moved for reconsideration on May 20, 2016 arguing irreconcilability of verdicts and requesting a new trial as addressed now on appeal after two post-trial motions had been ruled upon by Magistrate; order filed April 28, 2016 and signed May 12, 2016. Supp. Fin. Rec. at 50. It further does not appear from the record that Respondent has ever asserted error for appellate review for Magistrate's denial of an opportunity to object to the verdicts issued at trial on April 16, 2016 but rather asserts it was not Respondent's obligation to object. *See* Resp. Final. Brief. at 7.

This Court issued its order affirming the lower court's reversal for irreconcilability of the verdicts on April 15, 2020 stating, “[t]he magistrate court excused the jury before either party had an opportunity to question the jury's intentions in rendering its verdict. Upon being given the opportunity by the court Respondent raised her concerns regarding the verdict . . . [and] . . . verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law.” Order at 2-3.

1. RESPONDENT WAS NOT DENIED THE OPPORTUNITY TO TIMELY OBJECT TO THE IRRECONCILABILITY OF THE JURY'S VERDICTS WHEN SHE FAILED TO RAISE THE ISSUE ON NO LESS THAN THREE (3) OCCASIONS POST-TRIAL AND HAS NOT RAISED THIS ISSUE OF THE MAGISTRATE'S DENIAL OF HER OPPORTUNITY TO QUESTION THE JURY.

As provided above, Appellant's counsel has certified that there were no exigent circumstances surrounding the departure of the jury upon their dismissal by Magistrate such that

Respondent was denied an opportunity to question their verdicts after publication. In fact, the excusal of a jury under any normal circumstance in the absence of an objection to the verdict would look exactly like the transcript provided in the record; dismissal of the jury and defendant's silence. Respondent first did not raise an objection during dismissal of the jury. Similarly, the record does not indicate any warning from Magistrate that objections should not have been made or would not be heard. Second, after the jury departed and Respondent waived her first opportunity to raise the issue of irreconcilable verdicts, Respondent addressed the Magistrate, through counsel, and asked for a judgment notwithstanding the verdict for an insufficient defense verdict; not for a denial of an opportunity to question the jury or irreconcilability of the verdicts. Upon the Magistrate holding post-trial motions in abeyance for seven (7) days and allowing the parties to submit arguments in writing in full, Respondent for a third time failed to preserve the issue of irreconcilability of the verdicts in her memorandum on April 25, 2020 and only requested the Magistrate rule on her motion for new trial *nisi additur* for an insufficient defense verdict. Also, Respondent similarly, for a third time, failed to object to the denial of an opportunity to question the jury as to the irreconcilable verdicts. It was not until Respondent's fourth opportunity did she raise the issue of irreconcilable verdicts in her motion for reconsideration filed on May 20, 2020 which was ultimately denied by Magistrate upon finding that S.C. Code § 2-40-660 provided for a statutory award in lieu of actual damages.

Summarily, this Court should rehear the issue of whether Respondent was denied the opportunity to question the jury as to the irreconcilability of the verdicts by Magistrate's dismissal, whether Respondent timely raised the issue of irreconcilability and/or denial of opportunity to object on the record immediately following the dismissal, or whether Respondent timely raised the issue of irreconcilability and/or denial of opportunity to object in her motion filed April 25, 2016 resulting in preservation of the issue currently affirming the reversal and order of new trial below. In the event this Court declines to rehear the matters above-requested, Appellants request the Court clarify Magistrate's abuse of discretion in dismissal of the jury to avoid further complications.

2. WHETHER A VERDICT ASSESSING LIABILITY AGAINST A DEFENDANT BUT AWARDING ZERO DAMAGES IS INCONSISTENT WHERE A STATUTORY CLAIM PROVIDES A MECHANISM FOR ASSESSING DAMAGES AND DOES

**NOT REQUIRE A FINDING OF NOMINAL DAMAGES AND/OR INVALIDATE(S)
OTHER SEPARATE CLAIMS IF SO INCONSISTENT.**

As provided in this Court's order issued April 15, 2020 affirming the lower court, the jury awarded Appellants the following on April 18, 2016: zero dollars for unlawful ouster or exclusion and \$950 for failure to return security deposit. Order at 2. This Court affirmed reversal of all awards rendered below and remanded the matter for full retrial stating, "[v]erdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge 'should not be required to guess as to what a jury sought to render[;] *Stevens v. Allen*[;] . . . [a] verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law." Order at 2-3.

Appellant and Magistrate have both been able to surpass guesswork in determining what the jury sought to render as guided by S.C. Code § 27-40-660.

Defendant [] argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. . . . At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. . . . Had there been not statutory right to changes in the verdict, the Defendant would have 'netted' Four hundred one dollars and 74/100 (\$401.75) [H]owever, . . . if a landlord unlawfully removes or excludes the tenant from the premises, the tenant may . . . recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

Fin. Rec. at 1. Appellants agree that Magistrate's determination that there is "no requirement that actual damages exist under the statute and the jury's award is . . . not irreconcilable."

In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing. *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992). If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. *Wynn v. Doe*, 255 S.C. 509, 180 S.E.2d 95 (1971). The Court in *Stevens v. Allen* so vacated a jury verdict upon award of zero damages in a comparative negligence common law cause of action and not a

statutory claim with prescribed damages upon verdict of liability. *Stevens v. Allen*, 342 S.C. 47, 53, 536 S.E.2d 663, 666 (2000) (the jury, using special verdict forms, returned a verdict finding Stevens and Allen each 50% negligent, but awarded the Stevens "zero damages" in both the survival and wrongful death actions). The Supreme Court of South Carolina and the "Court of Appeals have routinely held that to state a cause of action for negligence the plaintiff must allege facts which demonstrate the concurrence of three elements: (1) a duty of care owed by the defendant; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. *Stevens v. Allen*, 536 S.E.2d 663, 342 S.C. 47, 51 (S.C. 2000) (citing *Kleckley v. Northwestern Nat. Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218 (2000); *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153). However, this action on appeal addresses a statutory remedy providing the "the tenant may . . . recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater" S.C. Code § 27-40-660.

At trial below, the jury found Respondent had violated S.C. Code § 27-40-660 but did not find evidence of actual damages and, the amount of rent haven been stipulated to by the parties, there was no other appropriate remedy then for Magistrate to award the greater of two times zero damages or three time the rent as clearly provided by S.C. Code § 27-40-660. S.C. Code § 27-40-660. If this Court maintains that a zero damages plaintiff's verdict effects an irreconcilability for S.C. Code § 27-40-660, it will be inserting a new element into S.C. Code 27-40-660 requiring a showing of nominal damages which is clearly not provided by the legislature and contrary to its apparent language.

Should this Court maintain that the jury's verdict issued for Respondent's violation of S.C. Code § 27-40-660 is irreconcilable because they failed to award actual damages, Appellant respectfully submits the zero award for unlawful ouster should have no effect on the jury's award for failure to return Appellants security deposit pursuant to S.C. Code § 27-40-410. [I]t is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found. *Rhodes v. Winn-Dixie Greenville, Inc.*, 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967). By comparison, "[i]t is well settled in South Carolina that claims for personal injuries and for loss of consortium are separate and distinct." *Graham v. Whitaker*, 282 S.C. 393, 397, 321 S.E.2d 40, 43 (1984). "Thus, a judgment for the defendant in one action does not automatically bar recovery in

the other action.” *Daves v. Cleary*, 584 S.E.2d 423, 355 S.C. 216 (S.C. App. 2003) (citing *Priester v. Southern Ry. Co.*, 151 S.C. 433, 149 S.E. 226 (1929); *Ryder v. Jefferson Hotel Co.*, 121 S.C. 72, 113 S.E. 474 (1922); *see also Burroughs v. Worsham*, 352 S.C. 382, 403, 574 S.E.2d 215, 225 (Ct.App.2002) (claims for personal injury and loss of consortium are separate and distinct, not derivative of each other, and each litigant is entitled to a verdict based on the law and the evidence). In this matter, the jury returned a verdict in favor of Appellant for Respondent’s violation of S.C. Code § 27-40-410 and further identified that the amount wrongfully withheld was \$950.00. Supp. Fin. Rec. at 2. Whether Respondent wrongfully prevented Appellants from entering their home is a wholly separate issue from whether Respondent wrongfully withheld Appellants security deposit.

Summarily, this Court should rehear the issue of whether S.C. Code § 27-40-660 requires a finding of nominal damages preceding a statutory award and whether any irreconcilable verdict issued for a violation of S.C. Code § 27-40-660 for unlawful ouster precludes a verdict issued for a violation of S.C. Code § 27-40-410 for failure to return a security deposit.

3. WHETHER RESPONDENT’S APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION BEFORE THE CIRCUIT COURT AND, SUBSEQUENTLY, THIS COURT WAS DENIED.

Finally, Respondent first appealed from the magistrate court on June 30 ,2016 alleging, in addition to irreconcilability of the verdicts, lack of subject matter jurisdiction of the magistrate court to hear the matter as cross-appealed from now. The court below failed to rule on this issue and generally reversed for irreconcilability of the verdicts and remanded. This Court has provided in footnote 1:

“Respondent argues that the magistrate court lacked subject matter jurisdiction to hear the matter. We disagree. See S.C. Code Ann. § 27-40-130(a) (“The circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by [the RLTA] or with respect to any claim arising from a transaction subject to [the RLTA].”

In anticipation of Respondent’s forthcoming request for costs and for the purpose of better advising the South Carolina Bar as to this critical decision, Appellants respectfully request that this Court rehear and or amend its order to reflect the denial of Respondent’s cross-appeal for

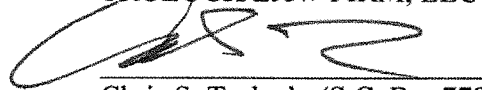
lack of subject matter jurisdiction, explicitly.

THEREFORE, having fully set forth in this petition for rehearing Appellants particularized points they believe were overlooked or misapprehended by the Court, Appellants pray that this Court rehear these matters and:

1. Affirm the award of the magistrate court upon failure of Respondent to timely preserve the issue of irreconcilable verdicts and/or denial of her opportunity to question the jury with regard to the irreconcilable verdicts;
2. Affirm the award of the magistrate court for Respondent's violation of S.C. Code § 27-40-660 where there exist no requirement of nominal damages preceding a plaintiff's verdict;
3. Affirm the award of the magistrate court for Respondent's violation of S.C. Code § 27-40-410 where there exist no irreconcilability either with the verdict issued for violation S.C. Code § 27-40-410 or as between the two verdicts issued in favor of the Appellant..

May 20, 2020

TRULUCK LAW FIRM, LLC



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1507 Richland Street
Columbia, SC 29201
(803) 556-7285
Attorney for Appellants

EXHIBIT A

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475
Appellate Case No. 2017-001761

Shamsy Madani, ... Respondents,

v.

Rickey Phelps and Christy Phelps Appellants.

AFFIDAVIT IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

In lieu of an affidavit, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt:

1. I represented Rickey Phelps and Christy Phelps at all times in the civil action upon review including at trial on April 18, 2016.
2. I was in the courtroom at the publishing of the verdicts and dismissal of the jury.
3. Judge Nancy Sadler ("Judge Sadler"), the presiding magistrate, dismissed the jury after publishing the verdicts, however, did not create any urgency of departure such that a request by either party to question the jury as to the verdicts could not have been reasonably raised.
4. The jury departed the courtroom in typical fashion and without undue haste.
5. Judge Sadler similarly did not make an indication that any request or objection would not be considered should it be raised.

(Signature page to follow)

May 20, 2020



Chris S. Truluck
Attorney for Appellants

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475
Appellate Case No. 2017-001761

Shamsy Madani, ... Respondent,

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PROOF OF SERVICE

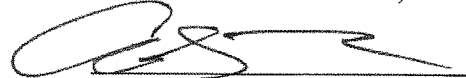
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May 20 2020

SC Court of Appeals

The undersigned attorney hereby certifies that a true copy of the Appellants' Petition for Rehearing in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by Electronic Mail on May 20, 2020 at dtoney@mullenwylie.com.

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Attorney for Appellants

May 20, 2020

The South Carolina Court of Appeals

Shamsy Madani, Respondent,

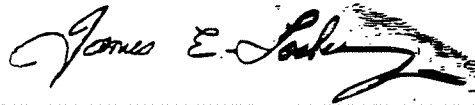
v.

Rickey Phelps and Christy Phelps, Appellants.

Appellate Case No. 2017-001761

ORDER

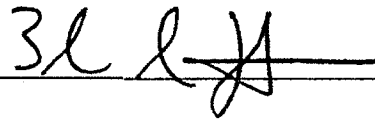
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Christopher Stephen Truluck, Esquire
Andrew James Toney, Esquire
The Honorable Marvin H. Dukes, III

FILED
Jul 17 2020