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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

RICKEY PHELPS AND CHRISTY PHELPS.....Petitioners,

v.

SHAMSY MADANI.....Respondent.

RESPONDENT’S RETURN TO PETITION FOR A WRIT OF CERTIORARI

Submitted by:

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The Respondent respectfully submits the following Return to the Petition for Writ of Certiorari previously filed by the Petitioners, Ricky Phelps and Christy Phelps.

STATEMENT OF THE CASE

Plaintiffs-Petitioners Rickey and Christy Phelps (“Phelps”) filed this landlord-tenant action in magistrate court against Defendant-Respondent Shamsy Madani (“Madani”) after they had been evicted from their apartment for failure to pay rent.

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 in magistrate court, 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 more than 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 more than 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 court.

The magistrate court jury trial of this case occurred on Monday, April 18, 2016. At trial Phelps presented only themselves as witnesses and did not offer one piece of evidence as to any damages sustained by them because 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).

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 court issued an Order on post-trial motions of the parties on April 28, 2016. The magistrate court's 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 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 court issued its Final Order on June 6, 2016, confirming its award.

Thereafter, Madani appealed the magistrate court's 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. On appeal from the circuit court, the court of appeals issued a decision affirming the circuit court's Order. Phelps unsuccessfully sought reconsideration and now asks this Supreme Court to grant certiorari.

ARGUMENT AND CITATION OF AUTHORITY

The Phelps seek to have this Supreme Court grant it the extraordinary relief of further review in this case in which:

- a. The circuit court reversed the magistrate court's judgment and remanded for a new trial;
- b. The unanimous panel of the court of appeals affirmed the circuit court decision; and
- c. The court of appeals rejected a subsequent request for rehearing.

It is well established that the discretionary review requested here should be granted only where there are exceptional circumstances and special and important reasons for such further review.

Consequently, the Supreme Court should look for such exceptional circumstances, or special and important reasons, in the following factors:

1. Are there novel questions of law at issue?
2. Was there a dissent at the court of appeals?
3. Is the court of appeals decision in conflict with a prior decision of this Court?
4. Are there substantial constitutional issues directly involved?
5. Is there a factual question included and does the court of appeals decision conflict with a decision of the United States Supreme Court?

Here no such factors exist, and Petitioners do not address any of these factors.

Respondent is unable to decipher from Petitioners' Brief which basis for discretionary review they assert are at issue in this case. The test for discretionary review is the existence of special, important, and novel "questions of law," not merely novel factual circumstances or arguments of counsel. Such special, important and novel questions of law do not exist in the instant action.

1. RESPONDENT PROPERLY RAISED HER CONCERNS REGARDING THE JURY'S VERDICT WHEN GIVEN THE OPPORTUNITY

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 v. Allen, 336 S.C. 439 (Ct. App. 1999). 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 considering 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 circuit court found that this inconsistency in the final award constituted an irreconcilable verdict. As such, the circuit court ordered that the final order of the trial court be reversed, and the case be remanded for a new trial. The circuit court's ruling is the only possible ruling available to it considering the inconsistent and irreconcilable final verdict awarded. The court of appeals unanimously affirmed the circuit court's order. No special circumstances now exist that would allow this Writ to be granted.

2. THE CIRCUIT COURT PROPERLY REVERSED THE MAGISTRATE COURT'S JUDGMENT AND FINDING THE JURY'S VERDICT IRRECONCILABLE

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. See 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 court to pay more than \$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 circuit court found that as a matter of law the trial court's verdict was irreconcilable. The only way to remedy an irreconcilable verdict is the granting of a new trial, which the circuit court, and the court of appeals affirmed. No novel question of law has been presented. South Carolina law has been and is clear on this issue. Therefore, the decision of the circuit court and court of appeals must be affirmed, and this Writ should not be granted.

CONCLUSION

Petitioner has not attempted to raise a novel question of law, there was no dissent in the court of appeals, there is no conflict with the court of appeals decision and prior decisions of this Court, there are no substantial constitutional issues involved, and there is no factual question and the court of appeals' decision does not conflict with a decision of the United States Supreme Court. This was a magistrate court verdict that was so confused it became irreconcilable.

Because Respondent raised the issue of irreconcilable verdict when given a chance to do so by the magistrate court, and because in South Carolina it is long settled that a circuit court when reviewing a magistrate court's verdict may reverse for errors of law or fact, the Petition for Writ of Certiorari filed by the Petitioner, Phelps should be denied in all respects.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,

s/Andrew J. Toney

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PROOF OF SERVICE

This is to certify that I have on this 15th day of September, 2020 delivered a true and correct copy of Respondent’s Return to Petition for a Writ of Certiorari in the above captioned case by depositing a copy of the same via email to:

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