

**IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas**

---

**The Honorable Perry H. Gravely Circuit Court Judge**

---

**Case No. 2020-CP-23-00631  
Appellate Case No. 2020-000904**

---

**RECEIVED**

**Dec 16 2020**

**SC Court of Appeals**

**MARY EARLE**

**Respondent,**

**vs.**

**BOULDER LP**

**Appellant.**

---

**INITIAL REPLY BRIEF OF APPELLANT**

---

M. Kevin McCarrell (S.C. Bar #76255)  
Emily I. Bridges (S.C. Bar #102199)  
Fox Rothschild LLP  
2 West Washington Street, Suite 1100 (29601)  
Post Office Box 87  
Greenville, SC 29602  
(864) 751-7600 / (864) 751-7800 (fax)  
[kmccarrell@foxrothschild.com](mailto:kmccarrell@foxrothschild.com)  
[ebridges@foxrothschild.com](mailto:ebridges@foxrothschild.com)  
*Attorneys for Appellant*

**TABLE OF CONTENTS**

Argument In Reply ..... 1

    I. The Plain Language of the Statute Controls. .... 1

    II. Respondent Had the Opportunity to Present Evidence of the Proper Rent to be Paid as Bond. .... 4

    III. The Court Should Ignore Respondent’s Materials that Were Not Presented to the Lower Courts. .... 5

Conclusion ..... 5

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Hitachi Data Sys. Corp. v. Leatherman</i> , 309 S.C. 174, 420 S.E.2d 843 (1992) .....	2
<i>Kiriakides v. United Artists Communications, Inc.</i> , 312 S.C. 271, 440 S.E.2d 364 (1994) .....	3
<i>Multi-Cinema, Ltd. v. S.C. Tax Comm’n</i> , 292 S.C. 411, 357 S.E.2d 6 (1987) .....	2
<i>Municipal Ass’n of South Carolina v. AT&amp;T Communications of S. States, Inc.</i> , 361 S.C. 576, 606 S.E.2d 468 (2004) .....	2
<i>Unisun Ins. Co. v. Schmidt</i> , 339 S.C. 362, 529 S.E.2d 280 (2000) .....	3
<i>Wade v. Berkeley Cnty.</i> , 348 S.C. 224, 559 S.E.2d 586 (2002) .....	2
<b>Statutes</b>	
S.C. Code Ann. § 27-37-80.....	4
S.C. Code Ann. § 27-40-790.....	1, 2, 3, 4
S.C. Code Ann. § 27-40-790(b).....	2
S.C. Code § 27-40-790(a).....	1
S.C. Code Ann. §§ 27-40-10, <i>et seq.</i> .....	1
<b>Other Authorities</b>	
<i>The Honorable Scott D. Whittle, Op. S.C. Att’y Gen.</i> , 2016 WL 386068, at *3 (2016).....	2
<i>South Carolina Appellate Court Rules Rule 210</i> .....	5

## Argument In Reply

In her Brief, Respondent appears to argue that South Carolina statutory law simply does not apply to her and mistakenly alleges that she was not provided an opportunity at the bond hearing to provide information about the proper amount of a bond to be paid. Both of these arguments are without merit.

### **I. The Plain Language of the Statute Controls.**

As noted in Appellant's<sup>1</sup> Initial Brief, the South Carolina Residential Landlord and Tenant Act (the "Act"), S.C. Code Ann. §§ 27-40-10 *et seq.*, establishes the law by which a magistrate judge is to administer hearings and trials related to the eviction of residential tenants. The provision particularly at issue before the Court in this matter is South Carolina Code Ann. § 27-40-790, which establishes the manner by which the magistrate court is to set the monthly amount that must be paid between the time of a request for a jury trial and the jury trial itself. As explained more fully in Appellant's Brief, S.C. Code Ann. § 27-40-790(a) addresses the payment of funds into the Court during pending contested eviction matters and specifically requires the Court to ". . . hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter." Section § 27-40-790 further states:

In the event that the basis for the disagreement of the amount of rent due is the landlord's alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

Subsection (b) of this stated further provides that:

---

<sup>1</sup> In her Brief, Respondent briefly makes mention that Appellant has been dissolved. The apartment complex was purchased, and the purchase was finalized in approximately March 2019. Although Boulder LP has now been dissolved, the complex has continued to operate as a d/b/a of "Boulder Creek", and Respondent's lease was assigned to the new operating entity, AHF - Boulder Creek, LLC.

[i]n the event the amount of rent is in controversy, the court shall determine the amount of rent to be paid to the landlord in the same manner as in subsection (a) or (b) of [Section 790]

S.C. Code Ann. § 27-40-790(b)

“The first question of statutory interpretation is whether the statute’s meaning is clear on its face.” *Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). “[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Municipal Ass’n of South Carolina v. AT&T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (citing *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). “The language must also be read in a sense which harmonizes its subject matter and accords with its general purpose.” *Hitachi Data*, 309 S.C. at 178, 420 S.E.2d at 846 (citing *Multi-Cinema, Ltd. v. S.C. Tax Comm’n*, 292 S.C. 411, 357 S.E.2d 6 (1987)).

This statute is clear that a tenant is required to pay the fair market value of the rent as bond for the time between the request for a jury trial and the jury trial itself. The statute does not permit any other considerations to be included in any calculation, and this is where the Circuit Court erred. In its Order, the Circuit Court remanded the matter to the magistrate court to set the bond considering both the statute ***and any applicable public housing guidelines*** (emphasis added). (Order). This is a clear error, which Respondent fails to address.

“Section 27-40-790 . . . establishes that rent must be paid by the tenant for [her] continued use and occupancy of the premises during the duration of the action for possession.” The Honorable Scott D. Whittle, 2016 WL 386068, at \*3, Op. S.C. Att’y Gen. (2016). Neither the legislature nor the South Carolina Attorney General has held that public housing guidelines or subsidies are to be considered when setting the amount of bond. The statute clearly and on its face

requires the magistrate court to set the rent to be paid while an ejectment action proceeds to be at the fair market value.

In her Brief, Respondent appears to argue that because the Lease between Appellant and Respondent incorporates guidelines promulgated by the federal U.S. Department of Housing and Urban Development, these HUD regulations and guidelines control the amount Respondent could be required to pay as a bond. However, this argument is incorrect. There is not any language in any of the HUD regulations governing how courts are to implement a bond requirement or otherwise altering the language of the South Carolina statute at issue.

Courts must “reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent.” *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); *see also Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994). The language of the statute detailing the process for setting a bond is clear on its face and includes no exceptions. Based on Respondent’s logic, which would read into the plain language an exception for tenants that receive any type of assistance, the parties could contract out of South Carolina statutory law, specifically S.C. Code Ann. § 27-40-790. This was not contemplated by the Lease or the South Carolina legislature. Nowhere in the lease is there a statement that, once there has been an eviction filing, the parties are no longer required to comply with South Carolina law.

The circuit court erred in ordering the magistrate court to consider anything other than the fair market value of the unit. Assuming remand was appropriate, the order should simply have stated that the magistrate is to follow the unambiguous and precise language of S.C. Code Ann. § 27-40-790, setting the amount to be paid by Respondent at the fair market value of the unit.

## **II. Respondent Had the Opportunity to Present Evidence of the Proper Rent to be Paid as Bond.**

Respondent spends much of her Brief claiming the magistrate failed to comply with equity and due process. This is an inaccurate characterization of the magistrate hearing. The hearing at issue was the bond hearing at which the magistrate is required to only set the bond amount to be paid by the tenant during the pendency of the jury trial. This is not a hearing on the merits of the issues, as the tenant has already requested such be part of a full jury trial.

Earle appeared at this hearing with counsel and was given the opportunity to speak regarding the amount of the bond, among other issues. (Return, p. 1). Earle attempted multiple times to argue the merits of the matter, which the magistrate court noted. (Return, p. 1). The magistrate court reminded Earle and her counsel that the bond hearing was not the appropriate venue for arguments regarding the merits of the eviction action, but did permit them to speak. (Return, p. 1). The property manager of Boulder also appeared with counsel and was granted the opportunity to present information regarding the appropriate rent amount. The magistrate court similarly reminded Boulder and its counsel not to delve into the merits of the eviction action or rent owed as this would be for a jury to determine. The court ordered Earle to pay \$282.00 per month. (Return, p. 1). Although neither party specifically advocated for the bond to be the fair market value of the unit, this in no way changes the error of the circuit court in including within its order that the magistrate court should consider “applicable housing guidelines.” That phrase is nowhere in the applicable South Carolina statute and, as such, is improper.

Respondent further contends that Appellant seeks to deny Respondent her federal subsidies or otherwise fails to operate in good faith. While these allegations are denied, they are also premature. When a tenant requests a jury trial, as Respondent did, the merits of the eviction action are to be heard by a jury. S.C. Code Ann. § 27-37-80. Pursuant to S.C. Code Ann. § 27-40-790,

the bond hearing is the time at which the parties discuss what constitutes the fair market value of the property at issue. (Return p. 1). There was no violation of tenant's rights to equity or due process in this instance. As such, this argument is without merit.

**III. The Court Should Ignore Respondent's Materials that Were Not Presented to the Lower Courts.**

In her Brief, Respondent cites to numerous documents that were allegedly part of the tenant file or Respondent claims were provided to Appellant. However, none of these documents were presented to the magistrate court or to the circuit court. Of the documents listed in Respondent's Designation of Matter, the following documents were not before either the Magistrate Court or the Court of Common Pleas: (1) Lease Agreement with all attachments – Including Owner's Certification of Compliance with HUD Tenant Eligibility and Rent Procedures; (2) Self-Affidavit of Mary Earle; (3) Tenant File Notes; (4) Notice to Vacate; (5) Letters to Boulder, Fax Coversheets, and Mary Earle Earning Information sent to Boulder.

Pursuant to Rule 210 of the *South Carolina Appellate Court Rules*, the Record on Appeal may not contain any material that was not presented to the lower court. As such, Appellant respectfully requests that this Court does not consider any of the material to which Respondent cited that is not included in the Record on Appeal as it was not presented to the lower court.

**CONCLUSION**

Respondent's arguments are without merit. The Court must follow the clear dictates of the South Carolina law, which requires that the magistrate to set the bond at the fair market value. There is no exception or consideration of any applicable public housing guidelines, as erroneously included by the circuit court in its order. Moreover, Respondent conflates the requirements of the bond hearing and the jury trial on the merits that Respondent requested, and has improperly

requested this Court consider materials that were not before either the magistrate court or the circuit court.

Based on the circuit court's errors, Appellant respectfully requests this Court reverse the circuit court's remand.

Respectfully submitted,

/s/ Emily I. Bridges

M. Kevin McCarrell (S.C. Bar #76255)

Emily I. Bridges (S.C. Bar #102199)

Fox Rothschild LLP

2 West Washington Street, Suite 1100 (29601)

Post Office Box 87

Greenville, SC 29602

(864) 751-7600 / (864) 751-7800 (fax)

[kmccarrell@foxrothschild.com](mailto:kmccarrell@foxrothschild.com)

[ebridges@foxrothschild.com](mailto:ebridges@foxrothschild.com)

*Attorneys for Appellant*

Dated: December 16, 2020

**RECEIVED**  
**Dec 16 2020**  
**SC Court of Appeals**

In the Court of Appeals  

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

---

The Honorable Perry H. Gravely Circuit Court Judge

---

Case No. 2020-CP-23-00631  
Appellate Case No. 2020-000904  

---

MARY EARLE

Respondent,

BOULDER LP

vs.

Appellant.

---

PROOF OF SERVICE  

---

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Appellant, do hereby certify that service of the INITIAL REPLY BRIEF OF APPELLANT was made on all counsel of record, specified below, by sending same via e-mail and mailing a copy of the same by United States Mail, postage prepaid, to the following addresses on December 16, 2020:

Vanessa Cason, Esq.  
P.O. Box 2842  
Greenville, SC 29602  
(864) 277-9093  
(864) 277-3627 (fax)  
vanessa@vcasonlaw.com  
*Attorney for Respondent*



---

Legal Assistant to M. Kevin McCarrell  
& Emily I. Bridges

RECEIVED

Dec 16 2020

SC Court of Appeals



Suite 1100  
2 W. Washington Street  
Greenville, SC 29601  
Tel (864) 751-7600 Fax (864) 751-7800  
www.foxrothschild.com

EMILY BRIDGES  
Direct No: 864.751.7618  
Email: EBridges@Foxrothschild.com

December 16, 2020

*Sent via E-mail (ctappfilings@sccourts.org) & US Mail*

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: *Mary Earle v. Boulder LP*  
Case No. 2020-CP-23-00631  
**Appellate Case No. 2020-000904**

Dear Ms. Kitchings:

Enclosed are Appellant's Initial Reply Brief and Proof of Service. These same documents are being both mailed and e-mailed to Clerk's office and counsel for Respondent.

Thank you for your assistance in this matter.

Sincerely,

FOX ROTHSCHILD LLP

*/s/ Emily I. Bridges*

Emily I. Bridges

EIB/ela

Enclosures

cc: Vanessa Cason, Esquire (via e-mail-vanessa@vcasonlaw.com & US Mail)

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada  
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington