

RECEIVED

MAR 24 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL GREENVILLE COUNTY

Court of Common Pleas

Perry H. Gravely, 13th Circuit Judge

Appellate Case No. 2020-001182

Sean Eric Roach,

Respondent,

v.

Lee C. Yarborough

Appellant,

REPLY BRIEF OF APPELLANT

s/ Wesley D. Few/

Wesley D. Few, LLC

Post Office Box 9398

Greenville, SC 29604

(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR APPELLANT LEE C.
YARBOROUGH

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
REPLY	1

**TABLE OF
AUTHORITIES**

Cases

Bowers v. Thomas, 644 S.E.2d 751, 753 (Ct. App. 2007)1

Griffith v. Griffith, 332 S.C. 630, 640, 506 S.E.2d 526, 531 (Ct. App. 1998)1

Statutes

S.C. Code Ann. § 18-7-1701

S.C. Code Ann. § 16-3-1700 *et seq.*.....2

Other Authorities

None at this time

REPLY

Respondent misleads this Court as to the holding in Bowers v. Thomas, 644 S.E.2d 751, 753 (Ct. App. 2007). (R. at 11). The full quote from Bowers read as follows: “Specifically, ‘[i]n ejectment proceedings first heard in magistrate’s court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence.’”

Id. at 753. The Court of Appeals in Bowers also stated, as follows:

[T]he Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law.

Id. (commenting primarily on an affirmance by the Circuit Court).

In an ejectment proceeding, one party is deemed to have acted in accordance with the lease or not. As noted in Bowers, the issue to be determined is binary, namely, whether the “rent is paid when due ...[or not].” Id.

In this case, the Circuit Court was required to conduct a review of the evidence to determine if the facts supported a finding of Harassment in the 2nd degree. Specifically, the Circuit Court was required to “give judgment according to the justice of the case ... as to any or all the parties and for errors of law or fact.” S.C. Code Ann. § 18-7-170.

The fact that Respondent invoked his 5th Amendment Privilege not to testify, and has continued to do the same in the pending federal case, creates a presumption / adverse inference in a civil case that Respondent was responsible for the eight (8) highly offensive mailings. See e.g., Griffith v. Griffith, 332 S.C. 630, 640, 506 S.E.2d 526, 531 (Ct. App. 1998) (quoting Yale Law Journal article stating, “In a civil suit involving only private parties, no party brings to the battle the awesome powers of the government, and therefore to permit an adverse inference to be drawn from exercise of the [5th Amendment] privilege does not implicate the policy considerations

underlying the privilege.”).

The Circuit Court here gave no deference at all to the fact that the Respondent refused to testify regarding the mailings. In fact, the Circuit Court’s stated finding discounting the mailings, stating that the mailings “did not appear to target [Appellant],” *Id.* at 3, is clear error. As shown in Appellant’s Initial Brief at pp. 13-14, the mailings included pictures of Appellant super-imposed on the movie character, Hilly Holbrook, a/k/a Two Slice Hilly, from the movie The Help. Appellant is identified by name in the cards, and they were sent to her neighbors, and members of the national board she serves on, NAPEO.¹ Appellant is targeted as the owner of a Christian Woman-owned company,” and also called a “racist,” in the cards. *Id.*

As set forth in Appellant’s Initial Brief, to establish Harassment in the 2nd Degree, under S.C. Code Ann. § 16-3-1700(B), Appellant / Yarborough was required to show the following by a preponderance of the evidence:

“Harassment in the second degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

Id. (underline emphasis added).

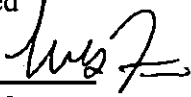
The Circuit Court’s order does not make a finding that Respondent’s mailings were not intentionally sent, or that the mailings following up on the numerous electronic and other threats from Respondent that occurred in May and June of 2019 did not create a pattern that was repeated. The Circuit Court, nor the Respondent are in any position to state that Appellant did not suffer emotional distress, including weight loss, anxiety, which required an unexpected doctor’s

¹ National Association of Professional Employer Organizations, where Appellant now serves as the Chair[person] of its Board of Directors. <https://www.napeo.org/about-napeo/leadership-committees/2019-2020-board-of-directors>

office visit on Nov. 9, 2019, in the midst of the onslaught of the mailings, which started on or about October 31, 2019 and ended on or about December 2, 2019.

For at least the reasons set forth herein, and in Appellant's Initial Brief and Record on Appeal, Appellant/Yarborough respectfully requests that the order of the Magistrate Court be re-instated and this remanded to the Magistrate Court for consideration of a permanent restraining order.

Respectfully submitted

s/ Wesley D. Few/ 

Wesley D. Few, LLC

Post Office Box, 9398

Greenville, SC 29604

(864) 527-5906 wes@wesleyfew.com

ATTORNEYS FOR APPELLANT LEE C.
YABOROUGH

Greenville, South Carolina
March 18, 2021

RECEIVED

MAR 24 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Perry H. Gravely, Thirteenth Circuit Judge

Appellate Case No. 2020-001182

Lee C. Yarborough,

Appellant,

v.

Sean Eric Roach,

Respondent.

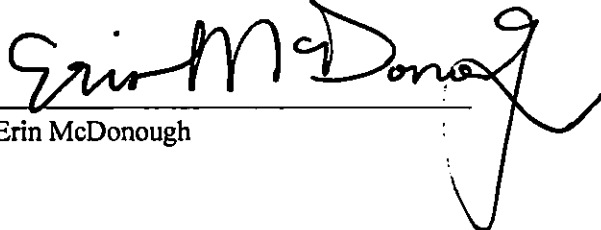
PROOF OF SERVICE

The undersigned hereby certifies that on March 18, 2021, the **Appellant Lee C. Yarborough's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal** were served on all counsel of record and the Court of Appeals Clerk of Court via U.S. Mail, as follows:

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

David E. Rothstein, Esq.
1312 Augusta Street
Greenville, SC 29605

ATTORNEYS FOR RESPONDENT SEAN ERIC ROACH


Erin McDonough

March 18, 2021
Greenville, South Carolina

WESLEY D. FEW, LLC

Attorney at Law

P.O. Box 9398

Greenville, South Carolina 29604

www.wesleyfew.com | wes@wesleyfew.com

O: 864-527-5906

RECEIVED

MAR 24 2021

SC Court of Appeals

March 18, 2021

Via U.S. Mail

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

RE: Sean Eric Roach, Respondent v. Lee C. Yarborough, Appellant
Appellate Case No: 2020-001182
Case No.: 6:19-cv-03546-HMH
Our File No.: 00280-002

Dear Clerk of Court,

Enclosed for filing is Appellant Lee C. Yarborough's Initial Reply Brief and Designation of Matter in the above referenced case, to be included in the Record on Appeal, along with the certificate of service for the same. Please return a file stamped copy for our files in the return addressed envelope also enclosed.

With warm regards, I remain

Very Truly Yours,



Wesley D. Few

WDF/ekm

Enclosures

CC: David E. Rothstein, Esq. (*Via U.S. Mail*)
Greenville County Court of Common Pleas (*Via e-file*)
Client (*Via Email only*)

WESLEY D. FEW, LLC
P.O. Box 9398
GREENVILLE, SOUTH CAROLINA 29604

FIRST CLASS
US POSTAGE
02 1P \$001.40⁰⁰
257121C118 MAR 24 2021
MAILED PERMIT NO. 5002 GREENVILLE, SC

RECEIVED
MAR 24 2021
SC Court of Appeals

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

