THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-001-824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross. . . . . Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves. . . . . .Respondents,

And

Stephen P. Cross . . . . . Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves. . . . . .Respondents.

RESPONSE TO PETITION FOR REHEARING

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ARGUMENT

In *Fair v. US*, 334 S.C. 321, 323, 513 S.E.2d 616 (S.C. 1999) the court ruled "We construe § 27-40-440(a)(2) in conjunction with § 27-40-510(2) and hold that under the RLTA, a landlord may be held liable only for defects relating to the inherent physical state of the leased premises. Accordingly, we answer the certified question as follows: The "fit and habitable" provision of the RLTA found in § 27-44-40(a)(2) does not alter ***the common law rule*** that a landlord is not liable to a tenant's invitee for injury caused by a tenant's dog." *Fair v. US*, 334 S.C. 321, 323, 513 S.E.2d 616 (S.C. 1999). (Emphasis added). The decision in *Fair* above sets out the common law rule recognized in South that the Landlords have no duty regarding tenants' pets.[1]

In Mitchell v. Bazzle, 304 S.C. 402, 404 S.E.2d 910 (S.C. App. 1990), the Court of Appeals was presented with the following question, "The clear question presented by this appeal is whether at the time of the attack the law of South Carolina imposed a duty on Peebles to Jessica to terminate Bazzle's month-to-month lease in order to remove Bazzle's dog from the land."[2] *Id.* 404 S.E.2d at 91. The Appellants in this case raise the exact issue that was decided in *Mitchell* and *Bazzle.* Clearly, Appellant asks this court to change the existing common law of South Carolina.

Appellant cites the landlord's duty articulated in RESTATEMENT SECOND OF TORTS §329 (2nd 1979) regarding "a condition which [the landlord] realizes or should realize will

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[1] Specifically, the ruling found that the Residential Land Lord Tenant Acts (RLTA) provision requiring land lords to keep the premises in a reasonably fit and habitable condition does not change the existing common law regarding landlord liability for pets.

[2] *Mitchell* predated *Fair* which affirmed that Mitchell was correctly decided. "In refusing to find liability, the Court of Appeals declined to adopt the analysis of a California case, Uccello v. Laudenslayer, 44 Cal.App.3d 504, 118 Cal.Rptr. 741 (1975). Uccello found as a matter of public policy that a landlord who has notice and right to control a tenant's possession of a vicious animal may be liable for injuries to the tenant's invitee caused by the animal." *Fair* at FN 2. Respondents would point out that in expressly declining to adopt the *Ucello* analysis, the court rejected the rationale that led to the cases cited by the Appellants and the public policy considerations that Appellants put forth.

involve unreasonable risk of physical harm to others" at the time the landlord "transfers its possession to the tenant". Appellants argue that this is an exception to the general rule, an exception that the April 7, 2021 decision failed to consider. It is not at all clear that "condition" in this context includes a tenant's activities or a tenant's pet. It is also not clear that a Landlord's refraining from terminating a lease is the same thing as "transferring possession". For example, does each ending of a periodic lease, and the renewal thereof, carry with it a Landlord's duty to the public to remedy dangerous physical conditions that have come to a landlord's attention, even conditions that may have been caused by the tenant? The line of cases rejecting Landlord liability for tenants' pets suggest that §329 has application only to the physical condition of property and does not apply to a Landlord's decision to allow renewal of a lease.

In the event this court finds that a landlord has a duty under the circumstances of this case, this ruling should given only prospective effect as it changes existing South Carolina Law and creates liability where none existed heretofore. *Marcum v. Bowden,* 372 S.C. 452, 643 S.E.2d 85 (2007).

Respectfully Submitted,

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May 7, 2021
Anderson, South Carolina

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SC Court of Appeals

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PROOF OF SERVICE FOR RESPONSE TO PETITION FOR REHEARING

The undersigned hereby certifies that on the 7th day of May, 2021 a copy of the Respondents' **Response to Petition for Rehearing**, was served on the other parties of

this Appeal, by placing a copy of the same in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

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May 7, 2021

VIA Email: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Cross, et al v. Weaver, et al*
Appellate Case No. 2018-001824

Dear Ms. Kitchings;

Enclosed for filing please find the following:

1) Respondents' Petition for Rehearing and 6 copies of the same;
2) Certificate of Service on Appellants.

With Kindest Regards, I remain

Sincerely yours,

David F. Stoddard
Attorney for Respondent

DFS/klb
Enc.
Cc: David Brousseau via email daveb@mssblawfirm.com