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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers, ……Appellant

v.

Rizan Properties, LLC, Anthony Pearson, and Tiesha Dash,……..Defendants

Of which Rizan Properties, LLC is the Respondent

RECORD ON APPEAL

Mark Fessler
South Carolina Legal Services
701 South Main St.
Greenville, S.C. 29601
Phone: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org
Attorney for Appellant

Knox Haynsworth, III
Brown, Massey, Evans,
McLeod & Haynsworth, LLC
106 Williams St.
Greenville, SC 29601
Phone: (864) 271-7424, ext. 105
Fax: (864) 271-3192
knoxhaynsworth@bmemhlaw.com
Attorney for Respondent

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO.: 2020-CP-23-02076
Jerry Powers, Plaintiff, vs. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendants.	)	ORDER

This action involves a lease and a separate option relating to real property located in Greenville County, South Carolina. An Order granting Rizan Properties, LLC's (hereinafter 'Rizan') motion for summary judgment was filed on January 27, 2021. An Order denying Plaintiff's motion to reconsider was filed on February 11, 2021. Those Orders are currently on appeal.

The remaining issue before the Court is the claim by Rizan against Plaintiff for breach of contract relative to unpaid rent, damages allegedly the responsibility of Plaintiff and attorneys' fees.

The parties entered into the pertinent lease and option in 2013, with an end date of May 1, 2021. As relates to Plaintiff, he moved out of the house after discussions with the principal of Rizan and receiving an Eviction Notice from Rizan dated December 3, 2018. The house has remained empty and vacant since that time.

It appears that the most significant event arising out of the parties' contractual agreements involve a large tree limb falling on the back portion of the house in 2015. Plaintiff

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testified that he called Mr. Rigdon, at that point the principal of Rizan, and advised him of the damage. Plaintiff testified that Mr. Rigdon told him that under the lease Plaintiff was responsible for the damages and that Plaintiff would need to repair the same. Plaintiff testified that he did not have sufficient monies at that time, so he waited until weeks later when he saw water "gushing in" through the roof area that was damaged by the tree before he began making repairs. This water damage led to a partial collapse of an interior ceiling. Plaintiff testified that he spent around three thousand ($3,000.00) dollars on the repairs and saw no more leaks, except for occasional leaks in the bedroom area. Plaintiff testified that he put a blue tarp in the attic area to stop these water leaks from dripping onto his bed.

Meredith Rigdon, the widow of Lukas Rigdon, testified on behalf of Rizan. She testified, as Plaintiff has agreed, that the house had been completely renovated before Plaintiff moved there in 2011. Ms. Rigdon also testified that the first time she was in the house was May of 2019 and that the house was vacant and in significant disrepair, with much water damage.

After moving out of the house in January of 2019, Plaintiff, some ten (10) months later and through his attorney, emailed Ms. Rigdon's probate attorney in October of 2019 advising that Plaintiff would like to exercise his option to purchase the house. Based upon several communications between the attorneys thereafter, the parties were unable to come to an agreement. The matter remained at an impasse until Plaintiff filed the present lawsuit on April 10, 2020, some fifteen (15) months after vacating the house.

Both parties filed motions for summary judgment. As noted above, pursuant to an Order filed January 27, 2021, the Court granted Rizan Properties' motion, finding that both agreements, the lease and the option, must necessarily be read together and that Plaintiff had breached the agreements by not paying rent, vacating the premises, and causing and/or allowing the damages

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to the house. In an Order filed February 11, 2021, the Court denied Plaintiff's motion to reconsider.

The remaining issues before the Court arise out of Rizan's counterclaim wherein it seeks back rent, damages allegedly caused by Plaintiff, and attorneys' fees.

Plaintiff and a friend moved into the house in 2011. Thereafter, Plaintiff and his friend, Jackie Pearson, entered into a lease and an option that commenced May 1, 2013 and ended May 1, 2021. Plaintiff and Ms. Pearson were consistently late with rent payments. Then, in 2015, the limb fell on the back of the house. Thereafter, things rapidly deteriorated between the parties. Rizan sent an Eviction Notice to Plaintiff and Ms. Pearson dated December 3, 2018. In this Notice, Rizan stated eviction was being pursued based upon, among other things, non-payment of rent and damages to the house. Soon thereafter, Ms. Pearson vacated the premises and moved into a new house. Then, sometime in January 2019, Plaintiff vacated the house involved herein and started paying rent where he was then living with Ms. Pearson. Admittedly, Plaintiff did some amount of yard work at the house for a short time after he vacated. Pursuant to the Eviction Notice, Rizan contended Plaintiff owed back rent in the amount of one thousand four hundred and one ($1,401.00) dollars, and two thousand seven hundred and fifty ($2,750.00) dollars for late fees and for damages to the house. The non-payment of rent was uncontested by Plaintiff. Plaintiff has argued that even with his non-payment, he was entitled to exercise the option to purchase. In the Orders referred to above, the Court ruled against Plaintiff on that issue.

As noted above, Plaintiff undertook some degree of repair to the house following the limb damage. This was done after Mr. Rigdon advised Plaintiff he was responsible for "maintenance of the structure of the house" under Article VII of the Lease Agreement.

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Jason Osteen, a licensed contractor called as a witness by Rizan, testified that he had inspected the premises in May of 2021 and found significant water damage. In his opinion, the water damage came from the area where the limb had damaged the roof back in 2015, and that the roof repairs were done improperly and using improper materials. Mr. Osteen took numerous pictures, which were introduced into evidence. Mr. Osteen noted Plaintiff's deposition testimony that Plaintiff had used multiple five-gallon buckets inside the house to catch rain from the roof damage and that an interior ceiling had collapsed, and that indicated to him that the most significant damage was done while Plaintiff was still living in the house. Mr. Osteen testified the large piece of metal sheeting used by Plaintiff to patch the roof was not for roof use. Mr. Osteen also testified that the blue tarp Plaintiff had placed in the attic, which was placed in order to eliminate water leaking from the roof onto the bedroom where Plaintiff slept, was another improper attempt at a repair. Osteen testified that the repairs would cost thirty-nine thousand nine hundred and fifty ($39,950.00) at minimum. He testified it would likely be more since there were several areas that he was unable to access during his inspections.

Rizan contends that Plaintiff is liable for these damages under Article VII, Article VIII and Article XXII of the Lease Agreement.

Plaintiff initially argues that under 27-40-440 of the South Carolina Residential Landlord and Tenant Act, general responsibility for maintenance of a roof in a residential dwelling is the responsibility of the owner, or in this case, Rizan. Plaintiff further argues that even under 27-40-440(c), which allows contractual delegation of certain responsibilities, the language used was insufficient to place the liability upon Plaintiff.

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Article VII, which is in the Lease Agreement that Plaintiff testified he had never read[1] but yet signed, states that "maintenance of the structure of the house" is the responsibility of the Lessee. And, after Rizan put Plaintiff on notice that the limb damage was his responsibility, Plaintiff never contested or objected to this interpretation of Article VII. Rather, he undertook to make repairs that proved improper and ineffective. Further, he had stopped paying rent and then voluntarily vacated the premises in January of 2019. As such, the Court finds that Article VII, as interpreted by the actions and dealings of the parties, establishes that the duty of the roof repair was undertaken by Plaintiff. Further, the Court finds that Article VII was executed in good faith and not for the purposes of evading any obligations of Rizan. And, in this regard, 27-40-510 sets forth that tenant repairs, as were done in this situation, are not to be done in a negligent manner. Clearly, the repairs done by Plaintiff were done in a negligent manner.

Plaintiff also argues that Rizan did not provide proper notice under Article XII of the Lease Agreement. Thus, Plaintiff argues, Rizan cannot now recover damages. The Court notes that Rizan sent the Eviction Notice dated December 3, 2018 and specifically mentioned past due rent and failure to maintain the premises. This Notice specifically mentions roof damage, water damage and mold damage. While the Notice was not given in strict compliance with Article XII, in that it was not sent registered or certified mail, this was never raised by Plaintiff and Plaintiff was obviously aware of the issues when he vacated the premises in January of 2019. Thus, the Court finds that the Notice sent December 3, 2018 is sufficient.

Plaintiff next argues that the applicable Statute of Limitations bars Rizan's counterclaim. Plaintiff argues that the limb damage was in 2015 and that Rizan's counterclaim was not filed until August 10, 2020. However, the only evidence in the record is that Rizan's first notice of

[1] Plaintiff has poor eyesight and has difficulty reading.

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damages caused by the tree limb was the Eviction Notice dated December 3, 2018. Thus, Rizan's counterclaim was filed within three years of it being made known of the damages. There is no evidence that it was or should have been discovered earlier.

Rizan also seeks attorneys' fees under 27-40-750. Neither the Lease Agreement nor the Option provide any recovery of attorneys' fees for the non-breaching party.

As relates to the attorney fee request, Plaintiff initially argues that Rizan did not effectively raise the issue of attorneys' fees until the time of trial. Plaintiff's First Amended Reply was filed April 13, 2021 and raises as a defense the S.C. Residential Landlord-Tenant Act, alleging that Plaintiff is not responsible for the damages above. Rizan's Response was filed May 11, 2021, and asserts that Rizan is entitled to past due rent, breach of contract damages and attorneys' fees under the Landlord-Tenant Act. Accordingly, the Court finds that the issue was sufficiently raised in Rizan's pleadings.

As relates to damages for rent and late fees, the Court finds that Plaintiff is entitled to four thousand one hundred fifty-one ($4,151.00) dollars. This amount is based upon the delinquent amounts of rent and late fees set out in the Eviction Notice sent December 3, 2018. The Court allows an additional two thousand two hundred ($2,200.00) dollars for four months' rent after Plaintiff vacated the house, for a total of six thousand three hundred fifty-one ($6,351.00) dollars. As relates to the limitation of an additional four months' rent, Rizan had a duty to mitigate its damages, which it chose not to do. In fact, the house remained vacant as of the date of trial. As such, Rizan cannot now claim the full amount of lost rent through the end of the May 1, 2021 lease period. The court finds four months as a reasonable time to re-lease the house.

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As relates to damages caused by the limb and the resulting water damages, the only evidence in the record is that of Mr. Osteen and his estimate of thirty-nine thousand nine hundred and fifty ($39,950.00) dollars. The Court does deduct twenty percent (20%) of that amount as based upon Mr. Osteen's testimony that the damages would have been less had Rizan mitigated its losses and repaired the damages sooner. Thus, the amount of damages totals thirty-one thousand nine hundred sixty ($31,960.00) dollars. While Plaintiff asserts homeless persons periodically lived in the house after he moved out, there is no evidence of any type damages or damage amounts that may have been caused.

As relates to attorneys' fees, Rizan has a right to claim them under 27-40-750. However, other than Ms. Rigdon's testimony that she had been billed thirty-three thousand seven hundred twelve dollars and twenty-two cents ($33,712.22) as of July 26, 2021, none of the requisite factors set forth in Blumberg v. Nealco, Inc. (427 SE2d 659 SC 1993), were presented to the Court. As such, the Court is unable to make an award of attorneys' fees based upon the record presented.

In light of the above, the Court orders, adjudges and decrees as follows:

1. That Rizan Properties is entitled to a judgment against Jerry Powers in the amount of $6,351.00 for past due rent and late payments;
2. That Rizan Properties is entitled to a judgment against Jerry Powers in the amount of $31,960.00 for damages to the house;
3. That based upon the record at this point in the proceedings, there is no award of attorneys' fees to Rizan Properties.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

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Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

ELECTRONICALLY FILED - 2021 Sep 03 10:49 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2302076

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Jerry Powers, PLAINTIFF(S), vs. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, DEFENDANT(S).	))))))))))))	IN THE COURT OF COMMON PLEAS ORDER 2020-CP-23-02076

Following a trial, the Court issued its Order on August 6, 2021. Plaintiff, on August 16, 2021, filed his motion to alter. Defendant Rizan Properties, LLC filed its motion to alter on August 17, 2021.

As relates to Plaintiff's motion, Plaintiff raises four separate issues in his motion. After hearing oral arguments on the matter, the Court denies Plaintiff's motion. Notwithstanding this, and as relates to Plaintiff's argument that a reversal by our Appellate Courts could cause conflict between the parties' contractual dealings and the Court's Order awarding damages that was filed August 6, 2021, the Court notes that Plaintiff may properly raise that issue, to the extent it may become relevant, in future proceedings.

As relates to Rizan Properties' motion, at the outset, the Court finds that Rizan's motion was timely filed under Rule 59, SCRCP. Notwithstanding this, the Court denies Rizan Properties' motion as relates to the Court's ruling finding lack of evidence to support an award of attorneys' fees.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

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Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 **CONSENT ORDER OF REFERENCE**

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, Jerry Powers and Rizan Properties, LLC, consent to refer this case to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, to fully dispose of all issues in the case and to render a final judgment. Defendants Anthony Pearson and Tiesha Dash are in default.

Therefore, upon the motion of Jerry Powers and with the consent of Rizan Properties, LLC,

IT IS HEREBY ORDERED, that this action is referred to the Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, to take testimony, make findings of fact and conclusions of law, to enter a final judgment in this action under Rule 53, SCRCP, and to address all matters arising from or reasonably related to this action. After entry of a final order, the Master in Equity shall retain jurisdiction to perform all necessary acts incident to this action. Any appeal from an order or judgment issued by the Master in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

I SO MOVE:

s/ Mark Fessler
Mark Fessler
S.C. Bar #: 77376
701 S. Main St.
Greenville, SC 29601
Ph: 864-271-2232
Attorney for Jerry Powers

s/Knox L. Haynsworth, III
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Ph: 864-271-7424
Attorney for defendant Rizan Properties, LLC

JUDICIAL SIGNATURE PAGE TO FOLLOW

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Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Order/Referred to Master or Special Referee

It is so Ordered

s/Paul B. Wickensimer, Clerk of Court

ELECTRONICALLY FILED - 2020 Apr 10 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2302076

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-_____ **COMPLAINT**

The Plaintiff Jerry Powers (hereinafter, "Powers" or the "Plaintiff") would respectfully show unto the Court as follows:

1. The Plaintiff brings this action to seek specific performance of an option contract to purchase real property entered into between Jerry Powers and Jackie Pearson and Rizan Properties, LLC as more fully described below.

2. The real property which is the subject of this action (hereinafter, the "Property") is more fully described in **Exhibit A** attached hereto and incorporated herein by reference.

3. Venue of this action properly lies in this Court pursuant to S.C. Code Ann. § 15-7-10 as the Property lies in Greenville County.

4. The Plaintiff is a resident of Laurens County in the State of South Carolina.

5. Jurisdiction lies with the Circuit Court pursuant to S.C. Const. art. V, § 11. Plaintiff originally filed this action in the Probate Court based on his reading of S.C. Code. § 62-1-302(a)(1) since the case involved an LLC owned by a deceased individual, Lukas Lavette Rigdon and whose estate is being administered in the Greenville County Probate Court (file no. 2019ES2300823).

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The Probate Court found that S.C. Code. § 62-1-302 did not grant it subject matter jurisdiction to hear a contract dispute involving the decedent's LLC and dismissed the action on April 8, 2020.

6. Upon information and belief, Defendant Anthony Pearson, a/k/a Shacko Pearson, is a resident and citizen of the State of South Carolina and is named herein because he is a son of Jackie Pearson according to that obituary filed in Estate no. 2019ES2301630.

7. Upon information and belief, Defendant Tiesha Dash is a resident and citizen of the State of New York and is named herein because she is a daughter of Jackie Pearson according to the obituary filed in Estate no. 2019ES2301630.

FACTUAL ALLEGATIONS

8. On or about May 1, 2013, Plaintiff, Jackie Pearson, and Rizan Properties entered into two contracts with respect to the Property. One was a Lease Agreement, the other an Option to Purchase.

9. Pursuant to the terms of the Lease Agreement, Plaintiff and Ms. Pearson agreed to lease the Property for 8 years and to pay $52,800 as consideration for the lease, paying $550 a month beginning May 1, 2013.

10. In consideration of $550, the Option to Purchase gave Plaintiff and Ms. Pearson the option to purchase the Property for eight years from May 1, 2013. Upon exercising the option Rizan Properties agreed to enter into a purchase agreement for an amount calculated as follows: $52,800 minus $550 minus $550 for each month paid as rent.

11. On or about December 3, 2018, Lukas Rigdon, as member and/or manager of Rizan Properties, sent Plaintiff and Ms. Pearson a letter in which he purports to terminate the "contract to own the home" for alleged past due rent of $1,401. It also claimed late fees totaling $2750, and it directed Plaintiff and Ms. Pearson to vacate the property.

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12. Nothing in either the Lease Agreement or the Option Contract says that the Option Contract will end if the Lease Agreement is breached or terminated.

13. Attached to the December 3rd letter was a payment history prepared by Mr. Rigdon purporting to show payments from May 1, 2013 to November 1, 2018. That history shows, at minimum, payments totaling $35,449.

14. Ms. Pearson signed the December 3rd letter saying she would vacate the Property. Mr. Powers did not. Mr. Powers made another payment to Mr. Rigdon in January 2019, which Mr. Rigdon accepted.

15. On January 3, 2019, the undersigned attorney for Mr. Powers spoke with Mr. Rigdon during which phone call he stated Mr. Powers' position that (1) the Lease was not terminated and (2) even if it was, that nothing in the Option Contract says that it can be terminated due to a breach of the Lease Agreement and he stated Mr. Powers' position the Option Contract remained valid and enforceable. Mr. Rigdon said he would look at the contracts and get back to Plaintiff's attorney.

16. A tragic sequence of events played out next. Between December 2018 and April 2019, Mr. Powers was hospitalized several times. Mr. Powers is no longer occupying the Property, but he had been taking steps to maintain the Property.

17. On March 21, 2019, Mr. Rigdon passed away according to his obituary. Mr. Powers was unaware of this until he found out about this from Mr. Rigdon's mother in or about July 2019.

18. Furthermore, on July 1, 2019, Ms. Pearson passed away. Mr. Powers and Ms. Pearson had been in a relationship for twelve years.

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19. On October 15, 2019, well within the eight-year period provided for in the Option Contract, Mr. Powers, through counsel, formally notified the Estate's counsel in writing of his intent to exercise the Option.

20. At that time the Estate of Lukas Lavette Rigdon was the sole member and/or manager of Rizan Properties, LLC.

21. On October 28, 2019, counsel for the Estate responded stating that Mr. Powers has no interest in the Property and informed him that it had contacted the Greenville County Sheriff's Department to put Mr. Powers on trespass. The response did not address Mr. Powers's election to exercise the Option Contract.

22. On November 1st, Mr. Powers, again through counsel, sent another letter asking the Estate to specifically comply with the Option Contract.

23. On November 7th Estate's counsel asked Plaintiff's counsel for proof of payment via an emailed letter.

24. On November 12th, Plaintiff's counsel emailed Estate's counsel a copy of the payment history that Mr. Rigdon had created and attached to his December 3rd letter.

25. On December 2nd, Plaintiff's counsel emailed Estate's counsel asking for the Estate's position on whether it will consummate the Option Contract. To date, Plaintiff's counsel has received no response.

26. On December 20th, Plaintiff filed an action with the Greenville County Probate Court seeking specific performance of the Option Contract. Defendant Rizan Properties LLC moved to dismiss that action on multiple grounds. On April 8, 2020, the Probate Court dismissed the action finding that it had no subject matter jurisdiction over the dispute.

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CAUSES OF ACTION
Breach of Contract

27. Plaintiff incorporates each of the foregoing paragraphs as if fully realleged herein.

28. Plaintiff had a contract with Rizan Properties as described above, specifically the Option Contract.

29. Plaintiff elected to exercise the option in writing as required by the Option Contract and the Rizan Properties has refused to comply with its obligation to enter into a purchase contract.

30. Plaintiff has joined Anthony Pearson and Tiesha Dash as defendants because they are the children of Jackie Pearson and may have some interest in the Option Contract. Plaintiff has communicated with Ms. Dash and confirmed that she gives up any right to exercise the Option jointly with Mr. Powers.

31. Paragraph 4 of the Option provides for exercising the Option in writing, and it states that this provision is binding upon the heirs, successors, and assigns of the parties. Upon information and belief, neither Ms. Dash nor Mr. Pearson have provided written notice to Rizan Properties of any intent to exercise the Option. Therefore, Plaintiff believes that he should be able to exercise the Option as the only person who has elected to do so pursuant to the terms of the Option and take full title to the Property.

32. In the event that Mr. Pearson or Ms. Dash elect to exercise the Option in writing as required by the Option Contract, Plaintiff requests that they, or either of them so electing, be required to bring their/his/her portion of the payoff owed under the Option or their/his/her interest be barred and Plaintiff be permitted to payoff the remaining balance and take title in his own name.

33. Plaintiff stands ready, willing, and able to complete the payoff of the Option Contract.

34. Plaintiff also has been damaged by having to pay rent elsewhere to live after Rizan refused to consummate the Option and he seeks recovery for these special damages in addition to specific performance under *White v. Felkel*, 225 S.C. 453 (1954).

WHEREFORE, Plaintiff prays that the Court:

A. Require the Estate as the sole member manager of Rizan Properties, LLC, fully comply with the terms of the Option Contract;

B. Award Plaintiff special damages as contemplated by *White v. Felkel*, 225 S.C. 453 (1954) for rent he has had to pay after Rizan refused to consummate the Option;

C. If the Court refuses to award specific performance, then award Plaintiff legal damages;

D. Order the Estate to pay any costs Mr. Powers incurs as a result of this action,

E. Find that Ms. Dash has given up any interest in or right to exercise the Option Contract;

F. Find that since Mr. Powers is the only person to have exercised the Option, he is entitled to pay off the Option and take full title to the Property;

G. Alternatively, require Mr. Pearson and/or Ms. Dash to pay their/his/her portion of the payoff as a condition to jointly exercising the Option with Plaintiff or be barred from exercising it; and

H. For such other and further relief as may be just and proper.

April 10, 2020
Greenville, South Carolina

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler

Mark Fessler (SC Bar # 77376)
E-mail: markfessler@sclegal.org
701 South Main St.
Greenville, SC 29601
Telephone: 864.679.3254
Fax: 864.679.3260
Attorney for Plaintiff

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, Rizan Properties, LLC, Anthony Pearson and Tiesha Dash Defendants.	)	C.A. No.: 2020-CP-23-02076 AMENDED ANSWER

Defendant Rizan Properties, LLC amending its answer to the allegations of plaintiff's complaint, would allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. All allegations of the complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. Answering the allegations of paragraph 1 of the complaint, defendant admits plaintiff brings an action seeking specific performance of an option contract to purchase real property, however, defendant denies plaintiff is entitled to specific performance or any performance of the alleged contract at issue.
3. Defendant admits, upon information and belief, the allegations of paragraphs 2 and 3 of the complaint.
4. Answering the allegations of paragraph 4 of the complaint, this defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore the same are denied and strict proof demanded.

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5. Answering the allegations of paragraph 5 of the complaint, this defendant admits that plaintiff originally filed an action in probate court and that the probate court denied subject matter jurisdiction and dismissed plaintiff's action.
6. Defendant is without sufficient information with which to admit or deny the truth or falsity of allegations of paragraphs 6 and 7 of the complaint, therefore, the same are denied and strict proof demanded.
7. Answering the allegations of 8, 9 and 10 of the complaint, this defendant denies such allegations as stated. Further answering, this defendant would crave reference to the actual agreements executed between the parties for all of their specific terms, conditions and limitations.
8. Answering the allegations of paragraph 11 of the complaint, defendant admits upon information and belief, that on or about December 3, 2018 Lukas Rigdon sent plaintiff and Jackie Pearson a letter. Defendant denies the remaining allegations of paragraph 11 as stated. Further answering, defendant would crave reference to the actual letter for all of its specific terms, conditions and limitations.
9. Defendant denies the allegations of paragraph 12 of the complaint as stated. Further answering, defendant would crave reference to the actual agreements and contracts for all of their specific terms, conditions and limitations.
10. Answering the allegations of paragraph 13 of the complaint, defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore, the same are denied and strict proof demanded.
11. Answering the allegations of paragraph 14 of the complaint, this defendant admits that Ms. Pearson signed the December 3rd letter saying she would vacate the property and that Mr.

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Powers did not, at least as far as this defendant is aware. With regard to the allegation that Powers made an additional payment to Mr. Rigdon on January 2019, defendant is without sufficient information with which to admit or deny the truth or falsity of such allegation, therefore, the same are denied and strict proof demanded.

12. Answering the allegations of paragraph 15 of the complaint, this defendant is without sufficient information with which to admit or deny what the plaintiff's attorney spoke to Mr. Rigdon about nor what the plaintiff's attorney or Mr. Rigdon discussed during the remainder of their call. Upon information and belief, the only person with knowledge of this communication would be the plaintiff's attorney Mr. Mark Fessler.
13. Answering the allegations of paragraph 16 of the complaint, this defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations as to Mr. Powers being hospilitalized, therefore, the same are denied and strict proof demanded. Further answering, this defendant admits Mr. Powers is no longer occupying the property and has not occupied the property since he vacated the same. Defendant denies Mr. Powers has taken steps to maintain the property.
14. Answering the allegations of paragraph 17 of the complaint, this defendant admits that Mr. Rigdon passed away on or about March 21, 2019. This defendant is without sufficient information with which to admit or deny the truth or falsity of the remaining allegations of paragraph 17, therefore, the same are denied and strict proof demanded.
15. Answering the allegations of paragraph 18 of the complaint, this defendant is without sufficient information with which to admit or deny such allegations, therefore, the same are denied and strict proof demanded.

16. Answering the allegations of paragraph 19 of the complaint, defendant denies the allegations as stated. Further answering, this defendant would crave reference to the underlying correspondence referenced in paragraph 19 for all of its specific terms and conditions.
17. Answering the allegations of paragraph 20 of the complaint, such allegations appear to be legal conclusions to which no response would be required of this defendant. To the extent such allegations are factual, the same are denied and strict proof demanded.
18. Answering the allegations of paragraphs 21, 22, 23, 24 and 25 of the complaint, this defendant denies the allegations as stated. Further answering, defendant would crave reference to the specifically denoted letters in the foregoing paragraphs for all of the specific representations, terms and conditions of such letters.
19. Defendant admits the allegations of paragraph 26 of the complaint.
20. Answering the allegations of paragraph 27 of the complaint, defendant restates and incorporates by reference the contents of paragraphs 1 through 19 above, as fully as if repeated herein.
21. Defendant denies the allegations of paragraphs 28 and 29 of the complaint.
22. Answering the allegations of paragraph 30 of the complaint, this defendant is without sufficient information with which to admit or deny the reason that plaintiff joined additional defendants to this action, therefore, the same are denied and strict proof demanded. Further answering, this defendant is without sufficient information with which to admit or deny the allegation that plaintiff has communicated with Ms. Dash, therefore, the same are denied and strict proof demanded.

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23. Answering the allegations of paragraph 31 of the complaint, this defendant denies the allegations as stated. Further answering, defendant would crave reference to the contracts and other writings for all of their specific terms, conditions and limitations. Further answering, this defendant admits that neither Ms. Dash nor Mr. Pearson have provided written notice to Rizan Properties relative to any alleged option. With regard to so much of the allegation of paragraph 31 as to what plaintiff believes, this defendant denies such allegations.

24. Answering the allegations of paragraph 32 of the complaint, this defendant does not understand the allegations asserted and therefore denies the same and demands strict proof thereof.

25. Answering the allegations of paragraph 33 of the complaint, defendant admits that plaintiff alleges that he stands ready, willing and able to undertake certain actions, but deny plaintiff is entitled to the actions he allegedly asserts.

26. Defendant denies the allegations of paragraph 34 of the complaint.

FOR A SECOND DEFENSE

27. Defendant restates and incorporates by reference the contents of paragraphs 1 through 26 above, as if fully repeated herein.

28. Further answering the complaint and as a second defense thereto, defendant would state plaintiff's complaint fails to state facts sufficient to constitute a cause of action against it, therefore, the same should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver)

29. Defendant restates and incorporates by reference the contents of paragraphs 1 through 28

above, as if fully repeated herein.

30. Further answering the complaint and as a third defense thereto, defendant would state that by virtue of his actions and inactions, including vacating the property after his breaches of the lease and having no contact with nor payments to the landlord, plaintiff has waived the claims he asserts in the present action.

FOR A FOURTH DEFENSE
(Estoppel)

31. Defendant restates and incorporates by reference the contents of paragraphs 1 through 30 above, as if fully repeated herein.

32. Further answering the complaint and as a fourth defense thereto, this defendant would state that plaintiff's conduct was completely inconsistent with his current contention that he is in possession of an option to purchase property.

33. By vacating the property, failing to maintain it as required under the Lease, failing to pay rent and other breaches, all of the while never asserting any entitlement to the relief he seeks in this action, this defendant reasonably relied on the conduct of the plaintiff and rightfully assumed that the property was free and clear of any claims so that it could be sold and the proceeds paid, ultimately, to the children of Lukas Rigdon who are without a father.

34. Based on the foregoing, defendant is informed and believes that plaintiff is estopped from asserting the claims in the present action.

FOR A FIFTH DEFENSE
(Unclean Hands)

35. Defendant restates and incorporates by reference the contents of paragraphs 1 through 34 above, as if fully repeated herein.

36. Further answering the complaint and as a fifth defense thereto, this defendant would state

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that plaintiff comes to this court with unclean hands and as such, plaintiff's claims should be barred pursuant to the doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Laches)

37. Defendant restates and incorporates by reference the contents of paragraphs 1 through 36 above, as if fully repeated herein.

38. Further answering the complaint and as a sixth defense thereto, this defendant would state plaintiff was negligent and grossly negligent in failing and refusing to assert any claims that he was entitled to or possessed a valid option concerning the property at issue.

39. Plaintiff's conduct constituted an unreasonable delay in asserting the rights he asserts in this action and such unreasonable delay resulted in this defendant rightfully assuming plaintiff had no claims to the property and this defendant would be materially prejudiced by the assertion, at this late date, of the claims made by the plaintiff.

40. Based on the foregoing, this defendant is informed and believes that the plaintiff's complaint and all relief sought therein are barred by the equitable doctrine of laches.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

41. Defendant restates and incorporates by reference the contents of paragraphs 1 through 40 above, as if fully repeated herein and insofar as the same are not inconsistent with this counterclaim.

42. Further answering the complaint and as a first counterclaim thereto, defendant would state that plaintiff has no claims in nor rights to the property at issue. During the time in which plaintiff was leasing the premises, he failed and refused to timely comply with his lease obligations including, but not limited to, failing to pay rent, paying rent late, and failing to maintain the property.

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43. By virtue of plaintiff's breaches of his lease obligations, plaintiff has caused injury and damages to this defendant and this defendant is informed and believes it is entitled to recover from plaintiff all of its damages so incurred.

44. Further, upon information and belief, plaintiff's actions were willful and wanton in allowing the property to fall into disrepair and/or failing to protect the property from damage by others, thus entitling this plaintiff to the recovery of punitive damages as well.

FOR A SIXTH DEFENSE AND SECOND COUNTERCLAIM
(Fraud)

45. Defendant restates and incorporates by reference the contents of paragraphs 1 through 44 above, as if fully repeated herein and insofar as the same is not inconsistent with this counterclaim.

46. Plaintiff Jerry Powers represented to defendant in his initial rental application that he was married to Jacqueline Pearson.

47. The representations of plaintiff were false and were material to this defendant's decision to engage in business with plaintiff and lease a residence to him and his wife.

48. Plaintiff knew of the falsity of his representations or made such representations with reckless disregard for their truth or falsity.

49. Plaintiff intended that defendant rely upon his representations and this defendant had a right to rely and did in fact rely on such representations to this defendant's detriment. Had defendant been aware of the misrepresentations of plaintiff Jerry Powers, it would not have entered into any agreement with Mr. Powers, including the original rental agreement regarding the property he was renting.

50. Based on the foregoing, this defendant is informed and believes it is entitled to judgment against plaintiff for all of its actual damages, consequential damages, incidental damages

as well as punitive damages.

WHEREFORE, having fully answered plaintiff's complaint and asserted its counterclaims against plaintiff, this defendant prays that the complaint against it be dismissed, that it be awarded the costs of this action and such other and further relief as the court may deem just and proper.

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC

s/Knox L. Haynsworth, III
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
August 10, 2020

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ELECTRONICALLY FILED - 2021 Apr 13 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2302076

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 **FIRST AMENDED REPLY**

Responding to the affirmative defenses and counterclaims asserted by Rizan Properties, LLC ("Defendant"), the Plaintiff Jerry Powers ("Plaintiff") would respectfully show unto the Court as follows:

1. Any allegation of the Amended Answer not expressly admitted, qualified, or denied is denied.

FIRST DEFENSE

2. Paragraphs 1-26 respond to Plaintiff's Complaint and require no response. To the extent one is required, they are denied to the extent they are inconsistent with the allegations of the Complaint.

REPLY TO DEFENDANT'S AFFIRMATIVE DEFENSES

3. Responding to paragraph 27, Plaintiff restates herein all prior allegations in full.

4. Paragraph 28 asserts that Plaintiff has failed to state a claim under Rule 12(b)(6). It is denied.

5. Responding to paragraph 29, Plaintiff restates herein all prior allegations in full.

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6. Paragraph 30 asserts that Plaintiff has waived his claims. To the contrary, Plaintiff has insisted on his contractual rights and has not waived them. The allegations are denied.

7. Responding to paragraph 31, Plaintiff restates herein all prior allegations in full.

8. Paragraphs 32-34 assert that Plaintiff should be estopped from claiming possession of an option to purchase. They are denied.

9. Responding to paragraph 35, Plaintiff restates herein all prior allegations in full.

10. Paragraph 36 asserts that Plaintiff has somehow acted with unclean hands. To the contrary, Defendant is unjustly refusing to consummate a clear contract. The allegations are denied.

11. Responding to paragraph 37, Plaintiff restates herein all prior allegations in full.

12. Paragraphs 38-40 assert that Plaintiff is guilty of laches. Plaintiff has and continues to assert his interest in the real estate and the Option Contract. Plaintiff timely filed a claim in the Probate Court prior to the claims bar date. Laches does not apply to this case. The allegations are denied.

REPLY TO DEFENDANT'S COUNTERCLAIMS

13. Responding to paragraph 41, Plaintiff restates herein all prior allegations in full.

14. Paragraph 42 asserts that Plaintiff breached the lease in various ways. Plaintiff denies the allegations and demands strict proof thereof.

15. Paragraph 43 asserts an unspecified injury from the alleged breach. Plaintiff denies that Defendant has been injured.

16. Paragraph 44 requests punitive damages based on an alleged "willful and wanton" breach. Plaintiff denies the allegations.

17. Responding to paragraph 45, Plaintiff restates herein all prior allegations in full.

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18. Paragraph 46 asserts an alleged statement in a rental application. Plaintiff denies the allegation and furthermore asserts that the alleged document should be examined as to its specific content.

19. Paragraphs 47-50 summarily plead the remaining elements of fraud without stating any facts to support them. The allegations constitute conclusions, are not well-pled, and require no response. To the extent they do, they are denied.

SECOND DEFENSE

20. Defendant fails to state facts sufficient to constitute a cause of action for breach of contract with fraud, for punitive damages for breach of a contract, or for fraud and deceit. A willful breach of a contract cannot support a claim for punitive damages. And fraud must be pled with particularity, which Defendant has failed to do for either the first or second causes of action. These claims should be dismissed pursuant to Rules 9(b) and 12(b)(6), SCRCP and S.C. common law.

THIRD DEFENSE

21. Defendant has waived any of the alleged breaches, actions, or inactions of which it complains to the extent to which it was aware of them yet did nothing.

FOURTH DEFENSE

22. Defendant's claims are barred to the extent the statute of limitations for fraud or breach of contract have run.

FIFTH DEFENSE

23. Defendant's claim for damages for breach of the lease fails to the extent Defendant failed to comply with all conditions precedent for declaring a default.

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SIXTH DEFENSE

24. To the extent Defendant claims damages, under a lease or under any other legal theory, based on Plaintiff's alleged failure to maintain the property, Defendant's claim is barred and unenforceable to the extent any of the alleged repairs or maintenance tasks were the sole and exclusive duty of a landlord to perform under the SC Residential Landlord Tenant Act and could not be transferred to Plaintiff.

WHEREFORE, Plaintiff prays that the Court:

A. Deny the relief Defendant requests in the Amended Answer;
B. Grant the relief Plaintiff requests in his Complaint; and
C. Grant such other and further relief as may be just and proper.

April 13, 2021
Greenville, South Carolina

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler

Mark Fessler (SC Bar # 77376)
E-mail: markfessler@sclegal.org
701 South Main St.
Greenville, SC 29601
Telephone: 864.679.3254
Fax: 864.679.3260
Attorney for Plaintiff

ELECTRONICALLY FILED - 2021 May 11 3:54 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2302076

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 DEFENDANT RIZAN PROPERTIES, LLC'S RESPONSE TO PLAINTIFF'S FIRST AMENDED REPLY

TO: MARK P. FESSLER, ESQUIRE ATTORNEY FOR PLAINTIFF

1. Responding to Plaintiff's First Amended Reply filed on April 13, 2021 to the extent the First Amended Reply asserts as a Sixth Defense that Plaintiff's claims under a lease or any other legal theory are unenforceable pursuant to the S.C. Residential Landlord Tenant Act, Defendant responds that pursuant to the Act this Defendant is entitled to rent as well as actual damages for breach of the rental agreement as well as reasonable attorney's fees.

Wherefore, having fully responded to plaintiff's first amended reply defendant prays that the relief asserted by plaintiff be denied, that it recover judgment pursuant to its claims against plaintiff, cost, attorney's fees and such other and further relief as the court may deem just and proper.

Respectfully submitted.

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC

s/Knox L. Haynsworth, III
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
May 11, 2021

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July 19, 2021

The Honorable Charles B. Simmons, Jr.
305 E North St Ste 313
Greenville, SC 29601-2100

Re: Jerry Powers v. Rizan Properties LLC
2020-CP-23-02076

Dear Judge Simmons:

Please accept this letter as Jerry Powers' ("Mr. Powers" or "Plaintiff") pretrial brief pursuant to that notice from the Court dated June 11, 2021.

FACTS

On or about May 1, 2013, Mr. Powers and his girlfriend Jackie Pearson entered into a Lease Agreement ("Lease") and an Option to Purchase ("Option") with Rizan Properties, LLC ("Defendant"). The two documents state that Mr. Powers and Ms. Pearson were to pay payments of $550 per month under the Lease, and, during the following eight years, he also had the option to buy the 39 2nd Ave. in Greenville, SC (the "Property"). Once exercised, all payments of $550 paid under the Lease plus the $550 paid for the Option would be credited against the purchase price of $52,800.

Article VII of the Lease required Plaintiff to, inter alia, maintain the structure of the house. At some point in 2014 or 2015, a tree limb fell onto the back part of the Property, hitting part of the roof at the back off the house. This caused a water leak in the roof. Mr. Powers informed Mr. Rigdon, the sole member-manager of Rizan Properties LLC, and Mr. Rigdon told Mr. Powers that he was not responsible for repairs, that Mr. Powers was. Plaintiff made repairs to the part of the property affected by the tree limb strike, including tearing out and replacing a wall and re-roofing that part of the property, which included putting what Plaintiff refers to as a tin roof on top.

Around the end of 2018, Mr. Rigdon came to Plaintiff and Ms. Pearson and ordered them to vacate the property claiming unpaid rent and that there was water damage to the roof. His letter asserts the cost to tear down and rebuild as $10,000 to $12,000. Ms. Pearson moved out on or about January 5, 2019. Mr. Powers refused to do so at that time. Later, at the request of Ms. Pearson, Mr. Powers moved out of the Property around the end of January 2019. Defendant did not, in the intervening two and a half years, made any repairs to the property, and it has remained relatively vacant. For a time, Plaintiff made efforts to monitor the property to keep homeless individuals from squatting in it. Defendant's expert inspected the property in April and May 2021. Based on those inspections, he estimates repair costs totaling $39,950.

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THIS ACTION

The only legal claim at issue in this current proceeding is Defendant's Breach of Contract claim set forth in paragraphs 41-44 of its Amended Answer. Defendant alleged that it was seeking damages for the following alleged breaches of the Lease: "failing to pay rent, paying rent late, and failing to maintain the property." (Amended Ans., ¶ 42). Plaintiff also sought punitive damages but later withdrew this request at the summary judgment hearing held January 14, 2021. (Tr., p. 22, lines 12-24).

However, Defendant appears to have abandoned its claim for damages other than for the alleged failure to maintain. In Defendant's response to Plaintiff's Interrogatory asking it to set forth an itemization of all damages, Defendant confined itself solely to repair and/or maintenance damages, stating, "This defendant has not determined, as yet the amount of damages it has sustained due to plaintiff's failure to maintain the property and/or willful destruction of the property during the time he was a tenant there. The damages are illustrated in the photographs referenced in response to interrogatory #4 and when a calculation or itemization of what is [sic] will cost to repair such damages has been prepared, defendant will supplement its answer to the foregoing interrogatory." (Def.'s Ans. to Plaintiff's First Set of Interrogatories, #4). Defendant later provided, through its expert witness, a list of repair estimates. Defendant has provided no further updates or statements related to damages that it claims Plaintiff owes in this matter. So, as far as Plaintiff is aware, Defendant is pursuing only damages for the alleged failure to maintain the property.[1]

As to the failure to maintain issue, Plaintiff's defenses include waiver, a three-year statute of limitations for contracts, and that the maintenance and/or repair issues of which the defendant

---

[1] Should it be the case that Defendant is also pursuing damages for alleged unpaid rent and late fees as alleged in the Amended Answer but that were not disclosed in its discovery responses, Plaintiff would address defenses and arguments to that part of the claim as well, including that Defendant is not ready, willing, and able to perform its part of the contract. *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) ("[O]ne who seeks to recover damages for the breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was at the appropriate time able, ready and willing so to perform it."). Defendant may not, on the one hand, maintain that the Lease and the Option form one dependent contract the purposes of Plaintiff's claim for specific performance such that a breach of one terminates the other while at the same time claim that the Lease is enforceable and damages are recoverable independent of the Option. The Court ruled in granting Defendant's request for summary judgment, "[T[he Court feels compelled to find that the Lease and the Option must necessarily be read together. Without one, the other cannot stand alone." (Order p. 2, Jan. 27, 2021). Based on this ruling adopting the Defendant's position that the Lease and Option form one unitary contract, Defendant may not obtain damages for a contract that it is unwilling to fully perform.

Additionally, Defendant violated the Lease by failing to provide a notice to cure before attempting to terminate the lease thereby failing to comply with a condition precedent to termination of the lease. (Lease, Art. XVI). By breaching the lease and failing to comply with this condition, Defendant is in breach of a lease is not entitled to recover damages. *Parks*, 219 S.C. at 48, 64 S.E.2d at 126.

Finally, if rent damages are recoverable, they should be confined to that period of time prior to when Defendant turned possession back over to Plaintiff. Should future rents be recoverable in this action, the measure of damages "is the amount that [Defendant] would have received as rent for the remainder of the term, had there been no default, less such amount as [Defendant] may receive from the new tenant,--for it was her duty to minimize her damages." *United States Rubber Co. v. White Tire Co.*, 231 S.C. 84, 95, 97 S.E.2d 403, 409 (1956).

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complains could not be shifted onto Plaintiff under the SC Residential Landlord Tenant Act (S.C. Code Ann. §§ 27-40-10 et. seq.).

ISSUES/APPLICABLE LAW

Breach of Contract for failure to maintain the premises

Article VII of the Lease provides as follows

> The Parties hereto do hereby agree that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee, except where the damage is due to the negligence of the Lessor or one of his/her agents. General cleanliness of the yard and the interior of the house shall also be the responsibility of the Lessee.

Plaintiff believes that Defendant will assert that Plaintiff breached this portion of the Lease by failing to repair and/or repairing improperly certain damage that occurred when the tree limb fell onto part of the roof in 2014 or 2015 and that part of the Property needs to be torn down and reconstructed.

Defenses to failure to maintain

1. SC Residential Landlord Tenant Act

In defense, Mr. Powers asserts that pursuant to the SC Residential Landlord Tenant Act (the "Act"),[2] the contract provision upon which Defendant relies to shift responsibility for maintaining the structure of the property onto Plaintiff is unenforceable or ineffective to transfer those duties.[3] Mr. Powers further asserts that he notified Mr. Rigdon of a water leak in the roof, that Mr. Rigdon told Mr. Powers it was his responsibility, and therefore Defendant cannot recover from Mr. Powers damages for maintenance and/or repair issues of which it now complains under this cause of action.

---

[2] South Carolina's Act "amounts to a substantial adoption of the major provisions of the Uniform Residential Landlord and Tenant Act which was first adopted by the State of Hawaii in 1972." *Watson v. Sellers*, 299 S.C. 426, 435, 385 S.E.2d 369, 374 (Ct. App. 1989).

[3] The Act applies to residential leases with options to purchase. *Bowers v. Thomas*, 373 S.C. 240, 242-243, 644 S.E.2d 751, 752 (Ct. App. 2007) (applying the SC RLTA to a residential lease containing an option to purchase).

A. Relevant Framework of the Act

The Act substantially changed the common law rules regarding the maintenance and repairs of residential dwelling units. S.C. Code Ann. § 27-40-20 (noting the dual purposes of the Act as being to "modernize, and revise" residential landlord-tenant law and to "encourage landlords and tenants to maintain and improve the quality of housing."). *Cf. Watson v. Sellers*, 299 S.C. 426, 435-436, 385 S.E.2d 369, 374 (Ct. App. 1989) (noting that the Act abrogated a landlord's common law immunity from tort liability for failing to keep rented residential premises in repair).

The Act establishes a general division of labor between landlords and tenants with respect to maintenance and repair of residential rental property. A landlord must

> (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
>
> (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
>
> (3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;
>
> (4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
>
> (5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

S.C. Code Ann. § 27-40-440(a).

A tenant must

> (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

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> (2) keep the dwelling unit and that part of the premises that he uses reasonably safe and reasonably clean;
>
> (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner;
>
> (4) keep all plumbing fixtures in the dwelling unit or used by the tenant reasonably clean;
>
> (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
>
> (6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who is allowed access to the premises by the tenant;
>
> (7) conduct himself and require other persons on the premises with the tenant's permission or who are allowed access to the premises by the tenant to conduct themselves in a manner that will not disturb other tenant's peaceful enjoyment of the premises;
>
> (8) comply with the lease and rules and regulations which are enforceable pursuant to Section 27-40-520.

S.C. Code Ann. § 27-40-510.

The Act limits a landlord's ability to shift these duties onto a tenant. Section 27-40-310(a) says that a "landlord and a tenant may include in a rental agreement terms and conditions not prohibited" by the Act. The Act also has a strong anti-waiver provision, stating that a "rental agreement may not provide that the tenant (1) agrees to waive or forego rights or remedies under [the Act] . . . or (3) to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith." S.C. Code Ann. § 27-40-330(a)(1) and (3). Any provision in a lease that violates 27-40-330(a) is unenforceable. S.C. Code Ann. § 27-40-330(b). Furthermore, a rental agreement may not "permit the receipt of rent absent the obligation to comply with Section 27-40-440(a)." S.C. Code Ann. § 27-40-340.

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Repair and maintenance tasks may be transferred onto a tenant of a single-family home through a writing only if the tasks are "specified" and "the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord." S.C. Code Ann. § 27-40-440(c).

B. Under the Act, Article VII is unenforceable to the extent it purports to burden Plaintiff with the obligation to maintain the entire structure of the house.

In this case Mr. Powers believes that Defendant will claim that he failed to properly maintain and/or repair parts of the roof and/or walls after a tree fell onto it, that this ultimately led to water damage, that maintenance and repair of the structure was Mr. Powers' responsibility under Article VII of the Lease, and that therefore he is liable for damages.

Structural maintenance falls under the landlord's obligation to provide a fit and habitable dwelling. *Fair v. United States*, 334 S.C. 321, 323, 513 S.E.2d 616, 617 (1999) (holding that the landlord's obligation to provide a "fit and habitable" dwelling under S.C. Code Ann. § 27-40-440(a) means that "the landlord's duty applies to the inherent physical qualities of the premises . . ."). Therefore, the legal question is, assuming a landlord is legally allowed under Section 27-40-440(c) to shift onto a tenant the landlord's obligations under Section 27-40-440(a)(2) (the "Fitness and Habitability" obligations), whether Defendant has accomplished that transfer of its Fitness and Habitability duties in this case where only maintenance, not repairs, was delegated to Plaintiff in Article VII, no repair or maintenance tasks were "specified" in writing, and where Defendant sought not just to avoid some, but rather all, of its Fitness and Habitability obligations under the Act. Mr. Powers asserts that at a minimum the maintenance and/or repair tasks would have to be specified and that a wholesale transference of every maintenance and repair task to a tenant can only be for the unlawful purpose "evading the obligations of the landlord." S.C. Code Ann. § 27-40-440(c).

i. The Lease does not require Mr. Powers to make repairs.

Article VII of the Lease does give Mr. Powers a duty to make repairs. It says that the Lessee will be responsible for the "maintenance of the structure of the house." S.C. Code Ann. § 27-40-440(c) treats repairs and maintenance as separate concepts.

Our Supreme Court has defined repair as meaning

> Generally, . . . "to mend, remedy, restore, renovate . . . to restore to a sound or good state after decay, injury, dilapidation, or partial destruction." Black's Law Dictionary 1298 (6th ed.1990); *see also* Webster's II New College Dictionary 939 (1995) ("repair" means "to restore to sound condition after damage or injury . . ."); Merriam-Webster's Collegiate Dictionary 991 (10th ed.1999) ("repair" means "to restore by replacing a part or putting together what is torn or broken").

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Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 497, 579 S.E.2d 132, 135 (2003). Maintenance has been defined as "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." Black's Law Dictionary 973 (8th ed. 2004).

To the extent that Defendant complains that Mr. Powers failed to repair or made faulty repairs in order to "restore [the property] to sound condition after damage or injury," it cannot recover because the Lease did not transfer to Plaintiff the obligation to make necessary repairs. *Schulmeyer*, 353 S.C. at 497, 579 S.E.2d at 135; *Cf. Nedrow v. Pruitt*, 336 S.C. 668, 675-676, 521 S.E.2d 755, 759 (Ct. App. 1999) (the fit and habitable obligation of the Act created a non-delegable duty for landlords to maintain the property). Therefore, the Lease did not alter the primary division of labor set forth in the Act.

ii. The Lease does not list any "specified repairs or maintenance tasks."

If the Act permits residential landlords to transfer Fitness and Habitability obligations onto a tenant, Defendant has not done so here because the Lease does not specify any repairs or maintenance tasks to be done. Thus, the legal duty to maintain and repair the structure remained with Defendant as laid out in the Act.

The Lease requirement that Mr. Powers and Ms. Pearson maintain "the structure of the house" is not a "specified repair[] [or] maintenance task" as contemplated by S.C. Code Ann. § 27-40-440(c). To hold otherwise would permit a landlord to shift onto a tenant the burden of maintaining the entire structure of a dwelling by using a general statement to that effect. This would violate not only the plain meaning of the words "specified" and "task" but also rules of statutory construction that would be applied in the event the Legislature's intent is ambiguous.

First, resort to interpretation by use of cannons and rules of statutory construction is unnecessary because the plain meaning of the words "specified" and "task" requires that the repairs or maintenance tasks be made specific rather than cast in general terms. Our Supreme Court has summarized application of the plain meaning rule as follows:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Hodges v. Rainey, 341 S.C. 79, 84, 85, 533 S.E.2d 578, 581 (2000) (internal citations omitted). Specified means "to mention or name definitely; state or describe in detail." World Book Dictionary 2008 (1990). Black's Law Dictionary does not contain a definition for "specified" but

defines the related adjective "specific" as "[o]f, relating to, or designating a particular or defined thing; explicit <specific duties>." Black's Law Dictionary 1434 (8th ed. 2004). The word "task" also contemplates a particularized, discreet activity as opposed to a general, all-encompassing duty. A "task" is "a piece of work to be done." Webster's New World Compact Desk Dictionary and Style Guide 440 (1998). Thus, the statute requires a writing to make explicit and definite the particular repairs or maintenance tasks that are to be the tenant's responsibility.

Should the phrase "specified repairs, maintenance tasks" be found ambiguous and not susceptible to a plain meaning analysis, rules of statutory interpretation counsel that it should be interpreted to require a written list of specific repairs and tasks rather than general language.

Interpreting the phrase to permit a wholesale transfer of the landlord's duties by using general terminology would effectively make the words "specified" and "task" surplusage, which is to be avoided. *16 Jade Street, LLC v. R. Design Const. Co., LLC.*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) ("Similarly, we are to construe a statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'"). If the General Assembly had intended to permit a transference of duties by using general language, then it would not have used "specified" to modify "repairs" and "maintenance tasks." Furthermore, it would have been unnecessary to refer to "maintenance *tasks*" instead of just "maintenance." These additions are unnecessary unless the Legislature intended to modify "repairs" and "maintenance" to require an exact specification of a tenant's responsibility under S.C. Code Ann. § 27-40-44(c). Had the Legislature intended for general language to be permissible, it could have just written Section 440(c) to say that the landlord and tenant "may agree in writing that the tenant perform . . . repairs, maintenance, alterations, and remodeling . . ." It did not, and the words "specified" and "tasks" must be given meaning.

The meaning to be given them is that which is consonant with their ordinary meaning discussed above. Specified repairs and maintenance means that any repairs or maintenance tasks must be particularized so that a tenant can fully and specifically apprehend what he is agreeing to do. The requirement for specified maintenance tasks requires a writing that sets out particular pieces of work to be done.

An interpretation of "specified" as used in "specified repairs, maintenance tasks" that gives vitality to Article VII also would be contrary to the manner in which the Legislature has used "specified" in other parts of the Act. Under Section 27-40-610(a), a tenant may "deliver a written notice to the landlord *specifying* the acts and omissions constituting" the landlord's breach as well as a date on which the lease will terminate if not repaired. S.C. Code Ann. § 27-40-610(a) (emphasis added). If the landlord fails to repair, the lease will terminate on "the date *specified* in the notice." S.C. Code Ann. § 27-40-610(a)(1)(i)(emphasis added). A like remedy is given to the landlord in § 27-40-710(A) to terminate a lease early for the tenant's failure to remedy a breach of the lease. But first the landlord must send a notice "*specifying* the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice." S.C. Code Ann. § 27-40-710(A). A general statement to the effect that a lease has been breached is ineffective. If repairs are not made, the rental agreement terminates "the date *specified* in the notice." § 27-40-710(A)(1).

It would be improper under this rule to interpret the phrase "specified repairs, maintenance tasks" to accommodate general statements of intent where other uses of the word clearly require landlords and tenants to particularize the "acts or omissions" of the other constituting a breach and

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the dates upon which a lease will terminate. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 100, 705 S.E.2d 28, 34 (2011) ("As a general rule, 'identical words and phrases within the same statute should normally be given the same meaning.'" (quoting *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232, 127 S. Ct. 2411, 168 L. Ed. 2d 112 (2007)); *id.* at 101, 705 S.E.2d at 34 ("[W]ords in a statute must be construed in context, and their meaning may be ascertained by reference to words associated with them in the statute.").

Furthermore, our Court of Appeals relied on this rule when construing other terms in the Act. In *Prevatte v. Asbury Arms*, that Court examined the word "may" as used in S.C. Code Ann. § 27-40-410(b). 302 S.C. 413, 415, 396 S.E.2d 642, 643 (Ct. App. 1990). Looking to the use of the word "may" in § 27-40-610 and other sections in the Act, it held that the word did not give discretion to a court to award attorney fees or not, but rather it gave discretion to a prevailing tenant to request them or not. *Id.* 302 S.C. at 416, n.2 and n.3, 396 S.E.2d at 644, n.2 and n.3 (citing *Watson v. Sellers*, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989)).

Another reason the phrase "specified repairs [and] maintenance tasks" demands a specific list rather than a general statement is that this understanding accords with the intent of the Act construed as a whole. *See 16 Jade Street, LLC v. R. Design Const. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012)("[T]he statute must also be read as a whole and in harmony with its purpose."). The Act itself says that it "must be liberally construed and applied to promote its underlying purposes and policies." S.C. Code Ann. §27-40-20(a). One such purpose is to "encourage landlords and tenants to maintain and improve the quality of housing." §27-40-20(b)(2). Another is to forbid rental agreements from separating the right of a landlord to receive rent from the landlord's obligation to comply with Section 27-40-440(a). S.C. Code Ann. § 27-40-340. Professor Robert M. Wilcox commented on this aspect of Section 340 in the years immediately after the Act passed on July 8, 1986. Robert M. Wilcox, *A Lawyer's Guide to the South Carolina Residential Landlord and Tenant Act*, 39 South Carolina Law Review (1988). He noted,

> The RLTA makes two fundamental changes to the obligations arising out of the landlord and tenant relationship. First, it imposes statutory duties of maintenance upon both the landlord and tenant. . . .Second, the RLTA statutorily links the tenant's obligation to pay rent to the landlord's continued compliance with contractual and statutory obligations, thereby eliminating the fundamental distinction that exists at common law between the property and contractual relationships.

Id. at 511-512.

Even if the General Assembly had intended S.C. Code Ann. § 27-40-440(c) to be a limited exception to the general allocation of duties under Section 27-40-440(a), to permit a landlord to overthrow the entirety of Section 440 with a general phrase such as "the maintenance of the structure of the house . . .shall be the responsibility of the Lessee . . ." would defeat two of the

central purposes of the Act in less than a sentence. A tenant with limited financial means may not be able to finance potentially significant structural repairs or maintenance. Additionally, the Act "forbids" terms that permit a landlord to continue receiving rent without an obligation to comply with Section 440(a). Surely the Legislature could not have intended the purposes of the Act to be so easily overthrown. *Cf. Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989)("strongly disagree[ing]" with landlord's contention that the Act did not "embark on a course totally divergent from existing precedent in this area as to the duty of the landlord to the tenant to repair the leased premises.").

Finally, although cases from other jurisdictions on this question are few, some are instructive. *Prevatte v. Asbury Arms*, 302 S.C. 413, 416, 396 S.E.2d 642, 644 (Ct. App. 1990) (noting that decisions from other Uniform Residential Landlord Tenant Act jurisdictions construing "a uniform provision of the Act, . . . are authoritative in construing the South Carolina statute.").

One Connecticut trial court decision dealt with an issue nearly identical to that found in the present case. *Raynor v. Lucisano*, 1985 Conn. Super. LEXIS 275 (Conn. Super. Ct. July 17, 1985).[4] There, the lease made the tenant responsible for "homeowner upkeep repairs." *Id.* at 12. The Raynor court found that the tenant was not liable for failing to repair the roof because the lease did not meet the specificity requirement of Connecticut's version[5] of S.C. Code Ann. § 27-40-440(c).

Other cases implicitly comprehend the requirement of "specified repairs" or "maintenance tasks" to require a list or a detailed writing. In *De Stefano v. Apts. Downtown, Inc.*, Iowa's Supreme Court, considering the same "specified repairs" language as is found in § 27-40-440(c), was concerned that the landlord's Fitness and Habitability obligations could "be undermined by a stock laundry list of specified repairs." 879 N.W.2d 155, 182 (2016).

In *Eddie v. Gray*, Montana's Supreme Court was called on to decide whether a landlord or a tenant had a duty to repair a broken light. 328 Mont. 354, 356, 121 P.3d 516, 518 (2005). Concluding that the landlord retained this duty, that Court said, "Under § 70-24-303(4)(a), MCA,[6] of the RLTA, Gray could have avoided liability for her failure to do so only if she could produce a separate written document signed by all the parties in which the Edies specifically agreed to repair the light/light switch." *Id.* 328 Mont. At 358-359, 121 P.3d at 520.

In short, the Lease in the present case does not lay out any "specified repairs [or] maintenance tasks" for Mr. Powers to undertake but rather attempts to transfer all of Defendant's

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[4] A copy of *Raynor* is attached to this Memo for the Court's reference.

[5] Connecticut's Gen. Stat. 47a-7(c), is identical to S.C.'s § 27-40-440(c) and states, "The landlord and tenant of a single-family residence may agree in writing that the tenant perform . . . specified repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord."

[6] Montana's version of S.C.'s § 27-40-440(c) reads in relevant part, "A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:
(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;"

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Fitness and Habitability obligations onto him. This it cannot do in general terms, if it can do so at all, and therefore Article VII is ineffective to place such a duty on Mr. Powers.

iii. The only purpose for Article VII of the Lease is to avoid the landlord's obligations

An agreement for a tenant to take on a landlord's maintenance obligations also is unenforceable if the purpose of the agreement is to avoid the landlord's obligations under the Act. The Act is very sensitive to the notion that a landlord may, by adding provisions to a lease, evade all obligations under thereunder. *See, e.g.,* S.C. Code Ann. § 27-40-330(a)(1) (rental agreement may not permit tenant to waive or forgo rights under the Act); § 27-40-310(a) (rental agreement include "terms and conditions not prohibited" by the Act). Recognizing that a landlord may simply attempt to contract away all it repair and maintenance obligations, § 27-40-440(c) says that a written list of specified repairs or maintenance tasks is not enforceable if the purpose is to evade the landlord's obligations. To similar effect is § 27-40-520, which allows a landlord to adopt rules and regulations in addition to the lease as long as "they are not for the purpose of evading the obligations of the landlord." § 27-40-520(a)(5).

Here, the Lease purports to allow a landlord to avoid *all* its repair and maintenance obligations. Such a provision could have no other purpose but to enable to landlord avoid the landlord's obligations. Once repair and maintenance of the structure and the central systems of the house are shifted onto the tenant, there are no obligations would remain with the landlord.

Defendant was aware of the repair and maintenance obligations imposed by a landlord under the Act. The 2011 lease that the parties entered into placed these obligations on Defendant. Thus, by saying in the 2013 Lease that Mr. Powers now had the obligation to maintain the structure of the property as well as all the basic systems, Defendant was intentionally evading all its legal Fitness and Habitability responsibilities under the Act. For this additional reason Article VII is unenforceable.

2. Waiver

In this case Plaintiff informed Defendant about the tree that fell onto the roof requiring repairs. He told Mr. Powers to make the repairs himself, which he did. If the damages of which Defendant claims arose from damage to the house occurring when the tree limb fell onto it or from the repairs that Defendant required Mr. Powers to undertake, it cannot now come back and complain about them when Defendant was or should have been aware of the state of the property back when the damage occurred and said and did nothing for years.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right. . . . In order for a party to waive a right, the party must have known of the right and known that

the right was being abandoned.". *King v. James*, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010).

3. Statute of Limitations

Defendant may not recover damages for an alleged failure to maintain or make repairs to the extent that the statute of limitations has expired. The alleged damage from the falling tree limb occurred in 2014 or 2015. Generally, an action for damages based on a contract must be brought within three years. S.C. Code Ann. § 15-3-530(1). "Under the discovery rule, 'the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.'" *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115, 124, 781 S.E.2d 126, 131 (Ct. App. 2015)(citation omitted). Plaintiff believes Defendant was aware of or should have been aware of the need for repairs at the time the tree limb fell onto the roof, or in any event more than three years before Defendant asserted its counterclaim on August 10, 2020.

WITNESSES

At this time, Jerry Powers intends to call only himself.

Should you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

Mark Fessler
Staff Attorney
Ph: 864-679-3254
markfessler@sclegal.org

Cited
As of: May 12, 2021 3:21 AM Z

Raynor v. Lucisano

Superior Court of Connecticut, Judicial District of Waterbury, At Waterbury, Housing Session

July 17, 1985, Decided ; July 31, 1985, Filed

SPWA 841202010, NH320

Reporter
1985 Conn. Super. LEXIS 275 *

William Raynor v. Robert Lucisano, et al.

Notice: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Disposition: Judgment rendered for the defendants.

Core Terms

lease, landlord, repairs, rent, premises, electrical, obligations, habitable, chimney, tenant, defendants', homeowner, notice, stove

Case Summary

Procedural Posture
Before the court was an action by plaintiff landlord against defendants tenants, and the landlord sought to evict the tenants.

Overview

In the summary process action, the landlord sought to evict the tenants for nonpayment of rent and for material noncompliance with the terms of the lease. The tenants contended that they were justified in withholding rent because of the landlord's failure to comply with a landlord's obligations under *Conn. Gen. Stat. §§ 47a-7(a)* and *(b)*, 47a-4a. Further, the tenants claimed that whatever breaches of the lease may have occurred were due to the fault of the landlord. The court found that the electrical system and the chimney were conditions that were complained of and affected the livability of the premises in vital respects. There conditions existed before the current lease and were known to and acknowledged by the landlord. The consequences were a loss or impairment of the important facilities of light, heat and cooking and the probable consequence was the danger of a conflagration. The court concluded that the premises were not in a fit and habitable condition. Pursuant to statutory law and contractual obligation, as well, the withholding of rent was justified under *Conn. Gen. Stat. § 47a-4a*. The tenants could not be evicted for nonpayment of rent.

Outcome
The court rendered a judgment for the tenants.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Covenants

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Real Property Law > Landlord & Tenant > Lease Agreements > Lease Provisions

Real Property Law > ... > Landlord's Remedies & Rights > Eviction Actions > General Overview

Real Property Law > Landlord & Tenant > Tenant's Remedies & Rights > Warranty of Habitability

HN1 **Types of Contracts, Covenants**

The fact that the code qua code is unenforceable does not relieve a residential landlord from his statutory duty to provide fit and habitable premises. The structure of Conn. Gen. Stat. § 47a-7(a) is such that landlord is required to comply with all applicable codes materially affecting health and safety and to make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. It is well-established that a violation of § 47a-7(a) is a successful defense under § 47a-4a, to an eviction based on nonpayment of rent. The common law theory of independence of covenants in a lease has been modified by statute with respect to residential property.

Real Property Law > ... > Landlord's Remedies & Rights > Eviction Actions > General Overview

Torts > ... > Negligence > Duty to Repair > General Overview

HN2 **Landlord's Remedies & Rights, Eviction Actions**

Not every failure of the landlord to repair justifies a withholding of rent.

Real Property Law > ... > Landlord's Remedies & Rights > Eviction Actions > General Overview

Torts > ... > Negligence > Duty to Repair > General Overview

HN3 **Landlord's Remedies & Rights, Eviction Actions**

Conn. Gen. Stat. § 47a-7, which governs a landlord's responsibilities, allows considerable latitude to the parties where the rented premises consists of a one-family or two-family dwelling. In pertinent part, subsection (c) provides that the landlord and tenant of a single-family residence may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord. Also subsection (d) provides, in pertinent part, that the landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tacks, alterations or remodeling if the agreement of the parties is entered into in good faith, the agreement is in writing, and the work is not necessary to cure noncompliance with other subdivisions of the subsection.

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Real Property Law > Landlord & Tenant > General Overview

HN4 **Types of Contracts, Lease Agreements**

Conn. Gen. Stat. § 47a-7(a)(1) requires the landlord to comply with applicable codes. Conn. Gen. Stat. § 47a-7(a)(2) obligates the landlord to put and keep the premises in a fit and habitable condition.

Judges: Barnett, J.

Opinion by: Barnett

Opinion

MEMORANDUM OF DECISION

In this summary process action, the plaintiff seeks to evict

the defendants for nonpayment of rent and for material noncompliance with the terms of the lease. Gen. Stat. 47a-15, 47a-15a. The defendants, in turn, contend that they were justified in withholding rent because of the plaintiff's failure to comply with a landlord's obligations. Gen. Stat. 47a-7(a) & (b), 47a-4a. Further, the defendants claim that whatever breaches of the lease may have occurred were due to the fault of the plaintiff.

I.

On June 1, 1984, the parties entered into a written lease for a stated term of one year. By virtue of an addendum to the lease which was also executed on June 1, 1984, the term of the lease was extended at least through October, 1985. The rent reserved in the lease is $ 250.00 per month and a security deposit of $ 250.00 is also required. The defendants' occupancy antedates the current lease. In order to liquidate **[*2]** an arrearage of $ 1,000.00 and to provide for payment of the security deposit, the addendum increased the monthly rent to $ 325.00 for the period from June 1, 1984 through September 1, 1985 and to $ 300.00 for October 1985.

The premises are located at 151 Cheshire Road, Prospeet. In the lease, the description is "Apartment # 1 and Land." This description is misleading. Actually, the defendants have leased a self-contained portion of an old house. One part of the house is 150 years old and vacant. The newer part, where the defendants reside was built 100 years ago and was remodeled in 1973 or 1974. One issue posed by this case is the extent of a landlord's duties with respect to the habitability of a one-family or at most, a two-family house.

The lease provides for a general apportionment of obligations in a manner similar to that provided by 47a-7 (landlord's responsibilities) and 47a-11 (tenant's responsibilities). There are, however, some interesting departures from the statutory scheme which are discussed subsequently.

II.

In the notice to quit, the plaintiff set forth a general statement of "nonpayment of rent." In the complaint, the plaintiff alleged that a **[*3]** rent of $ 250.00 was due and payable on the first day of each month. At trial, the plaintiff testified that the last rent received was for the month of August, 1984; that only $ 225.00 had been paid on the security deposit; and that nothing had been paid on the arrearage as required by the addendum to the lease.

The defendants' contentions that the premises are not in a fit and habitable condition had several aspects. To support these contentions, the Prospect Building Inspector and Fire Marshall and the court's Housing Specialists were called as witnesses.

The Building Inspector and Fire Marshall had inspected the premises in response to a call from the defendant, Cheryl Lucisano concerning an electrical problem. Shortly thereafter, the Prospect Electrical Inspector made a complete inspection. The report of the Electrical Inspector noted many violations [1] among the more serious of which are a lack of grounding and covering of exposed wires [2] in a highly over-taxed system and defective and exposed fuse and circuit breaker boxes or panels, Both the Building Inspector and the Fire Marshall testified that, from their observations and from the Electrical Inspector's report, **[*4]** the present condition of the electrical system violated the National Electric Code, as incorporated into the Connecticut Fire Safety Code, [3] and presented a definite fire hazard.

Another item described as a fire hazard is the central chimney which has no inner liner and deteriorating mortar. The Building Inspector, Fire Marshall and Housing Specialist who made the most recent examination expressed opinions that the chimney was unsafe for any heating appliance. One consequence of the defective **[*5]** chimney is that the gas stove which is the primary source of heat as well as cooking cannot be used. To compensate for the nonfunctioning gas stove, the defendants installed a wood-burning stove and two or three kerosene heaters. [4] The metal pipe used as a chimney for the wood burning stove is, in and of itself, a fire hazard due to inadequate elevation.

Further, the defendants stopped using the woodburning

[1] Other defects noted by the Electrical Inspector and not discussed specifically in this memorandum are inoperable light fixtures and missing switchplates and outlet covers. These defects were also included in the report of one of the housing specialists dated January 28, 1985.

[2] The Electrical Inspector's report and the testimonies of the Building Inspector and Fire Marshall were that in the basement the wires were all exposed and were "hanging all over."

[3] See Connecticut Fire Safety Code, Appendix B.

[4] There was no testimony as to whether the kerosene heaters were prohibited space heaters as defined in Gen. Stat. 29-318 or whether they were permissible as room heaters if properly vented. Gen. Stat. 29-318a, 29-318b.

stove at the plaintiff's insistence. [5] While this action eliminated one of the fire hazards, it also meant that the defendants' ability to heat their portion of the house was nonexistent or severely diminished.

[*6] There is no doubt that the conditions of the electrical system and the chimney were present at the start of the current lease. One of the housing specialists had observed the deteriorating chimney when she inspected the premises in the late winter or early spring of 1984 during an earlier summary process action involving the same parties. [6] In the present action, the plaintiff admitted that the chimney was not the defendants' responsibility. With respect to the electrical system, the plaintiff's only claim was that the system had been approved when it was installed in 1974.

III.

The house, because of its age and number of dwelling units is exempted from the requirements of the Connecticut Fire Safety Code. *Gen. Stat. 29-292*. But ***HN1***[⬆] the fact that the code qua code is **[*7]** unenforceable does not relieve a residential landlord from his statutory duty to provide fit and habitable premises. The structure of *Gen. Stat 47a-7(a)* is such that landlord is required to comply with all applicable codes materially affecting health and safety and to make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. It is well-established that a violation of 47a-7(a) is a successful defense under 47a-4a, to an eviction based on nonpayment of rent. *Steinegger v. Rosario, 35 Conn. Supp. 151, 153-54,402 A.2d 1 (1979)*; *A.H. Realty Corp. v. Terri* SPNH-8503-8706 N.H. (1985) (N.H. H.D. # 313). The common law theory of independence of covenants in a lease has been modified by statute with respect to residential property. *S.H.V.C., Inc. v. Roy, 37 Conn. Supp. 579, 585, 428 A.2d 806 (1981)*, affirmed *188 Conn. 503, 450 A.2d 351 (1982)*.

Of course, ***HN2***[⬆] not every failure of the landlord to repair justified a withholding of rent. In *Evergreen v. Brown, 35 Conn. Supp. 549, 552, 396 A.2d 146 (1978)*, the court held that where code provisions are concerned, the violation had to be of a material nature so that, in a normal **[*8]** course of events, enforcement agencies would be notified. The same analogy is appropriate for a landlord's more generalized obligations. Materiality, in this sense, is a factual conclusion depending upon aspects such as the nature of the condition, the length of time that the condition existed, the consequences or probable consequences of the condition and whether the landlord had knowledge or notice of the condition. *A.H. Realty Corp. v. Terri*, *supra*.

Materiality has been established in this case. The electrical system and the chimney are conditions that affect the livability of the premises in vital respects. There conditions have existed before the current lease and were known to and acknowledged by the plaintiff. The consequences are a loss or impairment of the important facilities of light, heat and cooking and the probable consequence is the danger of a conflagration. Although the Fire Safety Code is not enforceable for the leased premises, it is noteworthy that the code is an embodiment of "reasonable minimum requirements." *Gen. Stat. 29-293*.

The provisions of what is now 47a-7(a) have been described as the landlord's statutory warranty or covenant of habitability. **[*9]** *LeClair v. Woodward, 6 Conn. Cir. 727, 730, 316 A.2d 791 (1970)*. Moreover, in this case, there is also a contractual warranty that has been breached. Paragraph 6(b) of the lease obligates the plaintiff to "put the House in a fit and habit habitable condition."

The court concludes that the premises are not in a fit and habitable condition. Pursuant to statutory law and contractual obligation, as well, the withholding of rent is justified. *Gen. Stat. 47a-4a*. The defendants, therefore, cannot be evicted for nonpayment of rent.

IV.

Unusual features of this lease are paragraphs 6(c) and 7(e). Paragraph 6(c) obligates the landlord to "provide the materials for the homeowner repairs as stated in Section 7(e) below. Paragraph 7(e) provides that the tenant will "perform all labor for homeowner upkeep repairs. Should I [Tenant] need to contact an outside contractor to perform repairs, I will notify you (Landlord) prior thereto." One difficulty with these provisions is that nowhere in the lease is the term "homeowner upkeep repair" defined.

[5] Paragraph 7(i) of the lease prohibited the defendants from heating with wood without the plaintiffs' prior consent.

[6] Ida Dvorak & William Raynor v. Robert & Cheryl Lucisano, No. SPWA 8403-01270. In the present action, the plaintiff, William Raynor, has established that he is the duly authorized agent for the landlord, Ida Dvorak who is his mother.

Prior to the service of the notice to quit, the plaintiff sent the defendants a letter in purported compliance with Gen. Stat. **[*10]** 47a-15. Included in this letter is the following paragraph:

I am now serving notice that we have to have the roof repaired over the bedroom and the water diverted from going underneath the rear of the house. Upon your call I will deliver whatever materials are needed for the water diversion. I have the drain gaskets for the kitchen and bathroom and will also deliver these at that time. You have had all the materials for the repair of the roof in your possession since June of this year, and this is the major repair needed most.

A major item at the trial was the condition of the roof and the failure of the defendants to repair it. In accord with his letter, the plaintiff testified that he had brought all necessary materials to the site. The defendants claimed that the plaintiff had forgotten to supply plywood which was essential for the job.

HN3[↑] Gen. Stat. 47a-7, which governs a landlord's responsibilities, allows considerable latitude to the parties where the rented premises consists of a one-family or two-family dwelling. In pertinent part, subsection (c) provides that:

The landlord and tenant of a single-family residence may agree in writing that the tenant perform **[*11]** . . . *specified* repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(Emphasis added.) Also, subsection (d) provides, in pertinent part, that:

The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform *specified* repairs, maintenance tacks, alterations or remodeling if (1) the agreement of the parties is entered into in good faith; (2) the agreement is in writing; [and] (3) the work is not necessary to cure noncompliance with subdivisions (1) and (2) of subsection (a) of this section. [7]

(Emphasis added.)

From the evidence presented, the repair of the roof seems to be a major undertaking. In the absence of a long-term lease, **[*12]** the court would be reluctant to hold that it is an item which 47a-7(c) or (d) permits to be cast upon a tenant. As written, however, paragraphs 6(c) and 7(2) of the lease exhibit a more serious defect. By not enumerating what are "homeowner upkeep repairs," these paragraphs fail to satisfy the specificity requirements of 47a-7(c) and (d). The definition of "homeowner upkeep repairs" is something left to the landlord's whim and a vehicle for evading the landlord's obligations. The court concludes that the attempts in paragraphs 6(c) and 7(e) of the lease to place additional obligations upon the defendants, as tenants, are ineffective.

Another major item at trial concerned the defendants' slovenly housekeeping procedures. Photographs showed an inordinate amount of trash that ultimately was removed by the plaintiff. The defendants were notified by a letter dated January 7, 1985, from the Chesprocott Health District [8] **[*13]** that the accumulation of trash and garbage violated 19-13B21 [9] of the Public Health Code.

The accumulation of trash was a violation of a tenant's duty under Gen. Stat. 47a-11 as well as under paragraph 7 of the lease. The plaintiff, however, is unable to use this breach as a basis for the eviction since it was not mentioned in the letter which he offered as his "pretermination notice." Gen. Stat. 47a-15; Kapa Associates v. Flores, 35 Conn. Supp. 274, 277-78, 408 A.2d 22 (1979).

VI.

The court concludes that judgment must be rendered for the defendants.

Barnett, J.

End of Document

[7] HN4[↑] Gen. Stat. 47a-7(a)(1) requires the landlord to comply with applicable codes; 47a-7(a)(2) obligates the landlord to put and keep the premises in a fit and habitable condition.

[8] The regional health district serving the Towns of Cheshire, Prospect, Wolcott and Watertown.

[9] Section 19-13 B21 is directed to the owner of the premises.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 DEFENDANT RIZAN PROPERTIES, LLC'S PRE-TRIAL BRIEF

1) Factual Background

In April of 2013 Plaintiff Jerry Powers and Defendant Rizan Properties, LLC entered into a lease agreement regarding the rental of a house owned by Rizan Properties located at 39 2nd Avenue Greenville, South Carolina 29609. Previously filed with the Court[1] is a copy of the Lease at issue. A copy is also attached hereto as Exhibit 1. The Court has previously considered and addressed portions of the Lease as noted in this Court's Order filed January 27, 2021. In that Order, with regard to rent, the Court noted at Footnote 1 "there may be some disagreement as to whether Plaintiff made his last rent payment in November 2018 or January 2019. In light of the many months of default and the other factors noted herein, the actual date does not alter the Court's ruling". In light of the foregoing language, Defendant respectfully submits that the Court has already determined that Plaintiff was in default concerning his rent. As such, the only factual issue necessary for resolution relative to the default rent is whether the last payment was made in November of 2018 or January 2019. In this regard, although the granting of summary judgment

[1] Attached as Exhibit 4 to "Plaintiff's Exhibits" filed January 12, 2021.

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on the issue of the option contract rendered previously by this Court was appealed, no appeal was taken from this Court's decision that Mr. Powers was in breach of his Lease. (See Statement of Issues on Appeal contained within Page 1 of Appellant's Final Brief filed with the South Carolina Court of Appeals and attached hereto as Exhibit 2) As such, Powers' breach of the lease is the law of the case.

2) The facts and controversy concern the amount of unpaid rent and the amount of damages caused by Mr. Powers' default on his Lease and the damages which occurred during his occupancy.

A. Unpaid Rent

As noted above, the question of unpaid rent and the timeliness of that unpaid rent is no longer an issue. Perhaps the amount is. In this regard, Rizan submits that due and owing from Mr. Powers would be late fees in the amount of $2,750.00 which is the 55 late fees in the amount of $50.00.

With regard to the rent itself, the Lease began on May 1, 2013 and was to run until May 1, 2021. It is undisputed that after being presented with the "Eviction Notice", Ms. Pearson left the property and agreed to be out by January 5, 2019. According to Mr. Powers, he followed several weeks later. As such, for purposes of simplifying the factual issues in dispute in this case, clearly no rent was paid from February 2019 through May 2021 resulting in unpaid rent in the total amount of $14,850.00.

B. Damage to Property

The Lease, Ex 1, provided that rent was payable at the rate of $550.00 per month, in advance. Rent not received by the 5th of each month was considered late and a late fee of $50.00 would be charged. The Lease also required a security deposit of $550.00. The Lease provided at Article VII that the maintenance of the structure of the house and the major systems (electrical,

plumbing, heating and air) shall be the responsibility of the Lessee and general cleanliness of the yard and interior of the house shall also be the responsibility of the Lessee. The Lease provided at Article VIII, that at expiration or termination of the Lease, Lessee shall remove all property belonging to them and repair all damage caused by such removal and restore the premises to the condition they were in prior to the removal of said property. The Lease specifically noted that the premises were in good repair at the time of signing.

The Lease provided via Article XVI that if Lessee continued in default the payment of any rent for a period of ten days following notice of such default or if Lessee defaulted in the performance of any other terms, conditions or covenants of the Lease which were not remedied within ten days, or in the event the premises were vacated before the expiration of the lease, then in such event the Lessor shall have the right to terminate the Lease. The Lease provided at Article XVIII that time was of the essence for each provision and covenant contained within it. The Lease provided at Article XXII that Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred **or in any way growing out of the negligent use, misuse or willful abuse of the premises.** (Emphasis added)

Over the course of their rental, Mr. Powers and Ms. Pearson were late with their rental payments 55 times (See "Eviction Notice") and during the lease term, while Mr. Powers and Ms. Pearson were occupying the premises, they allowed extensive mold and water damage to occur, thus further breaching their obligations pursuant to the Lease.

With regard to the water damage, in 2015 a tree hit the roof of the house knocking a hole in it which caused the roof to leak and allowed water to enter the house. (Powers Depo P. 160 L. 14-24) The hole allowed enough water to enter the house that it caused the ceiling to collapse. (Powers Depo P. 164 L. 4-7) Mr. Powers did not undertake any efforts to repair the hole in the

roof until three to four months after rain began entering and after the ceiling had actually collapsed. (Powers Depo P. 165 L. 22 through P. 166 L. 4) In fact, Mr. Powers described having four five gallon buckets in different places to catch water coming into the interior of the house. (Powers Depo P. 168 L. 9-17)

All of the damage discussed by Mr. Powers in his deposition took place before Mr. Powers and Ms. Pearson vacated the property. As such, based upon Article XXII of the Lease, they are indebted to Rizan for all losses, liability or expenses that may be incurred in any way growing out of the negligent use, misuse or willful abuse of the premises.

C. Attorney's Fees

In addition to being entitled to recover all damages, losses, liability or expenses from Mr. Powers, Rizan also submits it is entitled to the recovery of its attorney's fees in this matter. On April 13, 2021 this Court issued its Order allowing Plaintiff to amend his Reply to assert application of the S.C. Residential Landlord Tenant Act. On April 13, 2021 a First Amended Reply was filed adding as a Sixth Defense that Rizan's claims for damages were barred and unenforceable pursuant to the S.C. Residential Landlord Tenant Act. On May 1, 2021 Rizan Properties filed its Response to Plaintiff's First Amended Reply responding that pursuant to the S.C. Residential Landlord Tenant Act, Rizan was entitled to rent, actual damages for breach of the rental agreement as well as reasonable attorney's fees as provided for pursuant to the Act.

Mr. Powers' position is that, presumably, by statute even though he agreed to specific lease terms and operated under those terms for years, his destruction of the rental dwelling is now excused. As an initial matter, it would seem that any argument that the provisions under which Mr. Powers has operated for years are unenforceable should have been raised when this Court was determining whether Mr. Powers breached his Lease. Again, it is Rizan's position that by not

appealing the affirmative findings of breach of the lease, that is the law of the case and the only question is the amount of damages due by virtue of the breach.

Under the statute, specially §27-40-440, a landlord is to maintain the premises. Pursuant to S.C. Code Ann. §27-40-440(c) "the landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in Paragraph (5) of subsection (a) and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into good faith and not for the purposes of evading the obligations of the landlord."

It is undisputed in this case that Mr. Powers operated under lease terms assigning him certain responsibilities for repair and maintenance. From the time Mr. Powers began leasing from Rizan until the filing of his Amended Reply on April 13, 2021, Mr. Powers had never, ever taken the position that any of the provisions of his Lease were not entered into in good faith but were for the purpose of evading the obligations of his landlord. Beyond equitable principals of waiver and estoppel, by not appealing this Court's findings of default under the lease, Rizan submits that Mr. Powers cannot now argue his lease terms were not valid and binding upon him.

Given Mr. Powers' assertion that the Act applies, the Act provides certain obligations upon Mr. Powers. Specifically, S.C. Code Ann. §27-40-510, relates to the "tenant's obligations" to maintain the dwelling. Subsection (6) provides that the tenant shall "not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who is allowed to access the premises by the tenant." Clearly Mr. Powers negligently destroyed portions of the premises. In fact, Mr. Powers confirmed he did not hire a roofing contractor (Powers Depo P. 42 L. 19) nor did he ever have anyone inspect the repairs to determine whether they had been done properly.

(Powers Depo P. 44 L. 14) According to Mr. Powers "some white guy helped me. He was living up the street from me, he kind of help. He knew a little bit of stuff." (Powers Depo P. 113 L 15-17)

Pursuant to S.C. Code §27-40-750 "If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees." In this case it is clear the rental agreement was terminated by Mr. Powers abandoning the dwelling, turning in his keys and never returning. Mr. Powers has never argued before this Court that his rental agreement was not terminated. Rather, Mr. Powers has only argued that his Option was not governed by nor related to the rental agreement. As such Rizan submits other than the amount of attorney's fees and damages, the issue of liability of Mr. Powers is clear, unequivocal, and has already been decided.

3) Applicable law/Legal issues

A. This case involves general principals of negligence, damages, breach of contract and the South Carolina Residential Landlord and Tenant Act.

4) Exhibits and witnesses

a) Rizan Properties, LLC anticipates it may call the following witnesses:

1. Ms. Meredith Rigdon – Ms. Rigdon is the widow of Mr. Lukas Rigdon, the Personal Representative of his Estate which is the sole member of Rizan Properties, LLC. Ms. Rigdon is familiar with the condition of the house before Mr. Powers began leasing it, and familiar with damages to the house which occurred during his occupancy. Ms. Rigdon will introduce photographs of the dwelling to illustrate the damages. Ms. Rigdon will also offer testimony concerning the attorney's fees and other costs and expenses she has incurred as well as the need for repairs to the dwelling.

2. Jerry Powers – Mr. Powers may offer testimony concerning his obligations under the Lease with Rizan, his breach of those obligations and damages he observed/caused while he was occupying the dwelling. Alternatively, as Mr. Powers is a party, Rizan may offer his testimony by deposition.

3. Mr. Jason Osteen of Jason Osteen Kitchen and Bath, LLC 302 Kilburn Lane Travelers Rest, South Carolina 29690 - Mr. Osteen will offer testimony concerning his inspection of the premises and the damages caused by Mr. Powers, the need to and cost of replacement/repair of those damages and identify photos and damages shown.

b) Rizan Properties, LLC intends to submit the following exhibits:

1. Exhibit 1 – Lease Agreement
2. Exhibit 2- Final Brief of Appellant, Statement of Issues on Appeal
3. Exhibit 3 – photographs provided by Meredith Rigdon
4. Exhibit 4 – photographs taken by Jason Osteen on 5/10/2021
5. Exhibit 5 – photographs taken by Knox L. Haynsworth, III on 5/10/2021
6. Deposition of Jerry Powers

5) There are no unusual questions to be brought to the attention of the court.

6) Settlement negotiations were attempted regarding the overall dispute as to the dwelling. On January 15, 2021 Mr. Powers offered to waive his claim for special damages and pay Rizan Properties $25,000.00 in exchange for title to the property located at 39 2nd Avenue Greenville, South Carolina. No response was provided to the foregoing settlement demand before the Court granted summary judgment on the issue of ownership. Subsequently, as best as counsel recalls, Rizan offered to drop any continuing claims for damages to the property, past due rent, late fees, attorney's fees, etc. in exchange for Powers dismissing his appeal relative to the

Option and hence end any continuing clouding of title to the property. Counsel recalls that settlement offer was rejected and does not believe any counter was made.

7) Conclusion

From Rizan's perspective, this case is fairly uncomplicated. Jerry Powers agreed to maintain and keep repaired the house he was leasing, to refrain from damaging that house and to indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises. Mr. Powers breached those obligations as well as other terms of the Lease along with corresponding obligations imposed by law, causing damages to Rizan. In addition to the damages incurred by Rizan relative to the property itself, Mr. Powers' breaches have also caused it to incur litigation costs and attorney's fees.

By law and in equity and fairness, judgment should be entered against Mr. Powers in favor of Rizan. At the present time Rizan has expended tens of thousands of dollars litigating with Mr. Powers. Upon information and belief, Mr. Powers has spent no money on the litigation. Absent a judgment against Mr. Powers, Rizan will have no reasonable means to salvage its interest in the dwelling. Absent a judgment against Mr. Powers the damages he had caused to Rizan, Rizan and Meredith Rigdon will run out of money to continue to litigate with Mr. Powers. Mr. Powers has no motivation whatsoever, given his apparent absence of costs and attorney's fees, to drop his appeal. However, although arguably totally uncollectable, a judgment against Mr. Powers in favor of Rizan will not only compensate Rizan on paper for the damages Mr. Powers has caused it, but will more importantly give it a means by which to negotiate with Mr. Powers so that his appeal can be dismissed and Rizan will be able to salvage some of its damages by leasing or selling the property once it is unencumbered by Mr. Powers' appeal.

Respectfully Submitted,

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC

Knox L. Haynsworth, III
S.C. Bar #: 010275
106 Williams Street
Greenville, South Carolina 29601
Telephone: (864) 271-7424 ext. 105
Facsimile: (864) 271-3192
knoxhaynsworth@bmemhlaw.com
Attorney for Defendant Rizan Properties, LLC

Greenville, South Carolina

July 19, 2021

EXHIBIT
1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

LEASE AGREEMENT

THIS AGREEMENT entered into by and between Rizan Properties, LLC, hereinafter referred to as Lessor, and Jerry Powers and Jackie Pearson, hereinafter referred to as Lessee.

WITNESSETH

FOR AND IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE I.
DESCRIPTION OF PREMISES

Lessor, for and in consideration of the rents, covenants and agreements hereinafter specified to be paid, kept and performed by the Lessee, leases the premises consisting of a house and lot designated as 39 2nd Ave., Greenville, SC 29609 (the "Demised Premises").

ARTICLE II.
RENT, LATE FEE & SECURITY DEPOSIT

Lessee shall pay to Lessor as rent for the Demised Premises the amount of Fifty two Thousand Eight Hundred and No/100s ($52,800.00) Dollars. Rent shall be payable at the rate of Five Hundred Fifty and No/100s ($550.00) Dollars per month in advance. Rent not received by the Lessee by the fifth (5th) day of each month shall be deemed late and the Lessee shall be charged a $50.00 late fee. A Security Deposit of Five Hundred Fifty and No/100s ($550.00) shall be paid from Lessee to the Lessor.

ARTICLE III.
BEGINNING DATE OF LEASE TERM

The beginning date of this Lease shall be May 1, 2013. The term of this Lease will begin at that date and will continue until eight years from the beginning date herein.

ARTICLE IV.
RENTER'S INSURANCE

Lessee covenants and agrees that it will at all times during the term of this Lease or any extension thereof at its own expense, maintain and keep in force comprehensive renter's insurance for damage to the Lessee's personal property. Lessor shall not be liable for damage to, or theft of Lessee's personal property.

DEFENDANT'S EXHIBIT 4

ARTICLE V.
INSURANCE AND TAXES

Lessor shall maintain all expenses for taxes and insurance on this property for and during the term of this lease; if the Lessee, by reason of its use of the Leased Premises or any other use, causes an increase in the insurance rates of the Lessor, Lessee will compensate the Lessor by paying additional rent to equal the amount of the increase in the rate caused by the Lessee's use. This amount shall be due and payable to the Lessor on the first day of the month immediately following any such increase.

ARTICLE VI.
UTILITY CHARGES

The Lessee shall pay all charges for all utilities, including but not limited to, water, gas and electricity during the term of this lease.

ARTICLE VII.
MAINTENANCE AND REPAIRS

The Parties hereto do hereby agree that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee, except where the damage is due to the negligence of the Lessor or one of his/her agents. General cleanliness of the yard and the interior of the house shall also be the responsibility of the Lessee.

ARTICLE VIII.
REMOVAL OF IMPROVEMENTS BY LESSEE UPON TERMINATION OF LEASE

Upon expiration of the term of this Lease, or sooner termination if applicable, Lessee, at Lessee's expense, shall remove all property belonging to Lessee. Lessee shall repair all damage to the Premises caused by such removal, and restore the Premises to the condition they were in prior to removal of said property, normal wear and tear excepted. It is further expressly understood and agreed that the Premises are in good repair at the time of signing this Lease.

ARTICLE IX.
ASSIGNMENT AND SUBLEASE

It is expressly understood by the Parties hereto that the Demised Premises shall not be sublet, or this lease assigned to any corporation, person or persons without the express written consent of the Lessor herein. It is further agreed by the Parties that the Premises shall be used as single family residential only, and shall be used for no other purpose without the written consent of the Lessor herein.

ARTICLE X.
EFFECT OF DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES

If the Demised Premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this Lease, Lessor, with due diligence, shall repair, restore, rebuild or replace the Premises or such portions that are destroyed or damaged so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall be more than 50% of the insurance value of the Premises, Lessor, at Lessor's option, may cancel and terminate the Lease by giving written notice to Lessee within 30 days after the date such damage or destruction has occurred. In such event this Lease shall terminate on the date specified in such notice, and Lessor shall not be obligated to repair or rebuild. In the event repair of the building is required or elected by Lessor, rent shall be abated for the time during which the Demised Premises may not be used by Lessee. Lessee shall be entitled to receive a pro-rata refund out of any advancement paid by it for the period the Premises were unusable by reason of destruction or damage.

ARTICLE XI.
LESSOR'S RIGHT TO INSPECT

Lessee shall permit Lessor, its agents, or other representatives, to enter the Demised Premises, or any part thereof, upon receipt of 24 hours written or oral notice, to examine said Premises. Lessor shall be reasonable in its inspection requests and Lessee shall not withhold such permission unreasonably.

ARTICLE XII.
MANNER OF GIVING NOTICES

Any notice from either party to the other, pursuant to the provisions of this Lease or of any law, shall be given by Registered or Certified Mail, addressed to the party for whom it is intended at the address of the respective party as set forth on the signature page. The date of delivery as indicated on the Return Receipt shall be deemed to be the effective date of Notice for purposes of determining questions hereunder.

ARTICLE XIII.
LEASE SUBORDINATE TO EMCUMBRANCES

This Lease is subject and subordinate to any Mortgages now on or hereafter may be placed against the premises, and to all advances made or that may be made on account of the encumbrances, to the full extent of the principal sums secured thereby and interest thereon.

ARTICLE XIV.
LESSOR'S WRITTEN APPROVAL REQUIRED FOR ALTERATION

Except as expressly provided herein, Lessee shall not make any alterations, improvements or additions to the Premises without prior written consent of Lessor.

ARTICLE XV.
RIGHTS OF PAYMENT UPON DEFAULT

Lessee shall pay as rental, in addition to the rental herein reserved, any and all sums that may become due by reason of the failure of Lessee to comply with all of the covenants of this Lease, including any and all damages, costs and expenses the Lessor may suffer or incur by reason of any default or Lessee; or failure on Lessee's part to comply with the covenants of this Lease, and also, any and all damages to the Demised Premises cause by any act or neglect of the Lessee, its agents, employees, or invitees.

ARTICLE XVI.
DEFAULT

If Lessee shall continue in default for payment of any rent reserved hereunder for a period often (10) days after notice of such default has been given to Lessee, or if the Lessee shall default in the performance of any of the other terms, conditions or covenants in this Lease to be observed or performed by it, and Lessee does not remedy such default within ten (10) days after notice, or in the event that the Premises are vacated before the expiration of the Lease, or should the Lessee go into bankruptcy, voluntary or involuntary, or be placed in the hands of a receiver or make a general assignment of the property for the benefit of a creditor or file any petition involving the insolvency of the Lessee, then and in such event or events, the Lessor shall have the right to terminate this Lease. Lessor shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse, or elsewhere, at Lessee's expense, all without resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. If Lessor should elect to re-enter as herein provided or take possession pursuant to legal proceedings, Lessor may either terminate this Lease, or from time to time without terminating this Lease may make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises for such term and at such rentals and upon such other terms and conditions as Lessor may deem advisable. In the event of such reletting, all rentals received by Lessor shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; Second, to the payment of any costs and expenses of such reletting, including the expenses of alterations and repairs; and

Third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent due and unpaid hereunder. If such reletting shall yield rentals insufficient for any month to pay the rent due by the Lessee hereunder for that month, the Lessee shall be liable to Lessor for any deficiency and same shall be paid monthly. No such re-entry or taking possession of the leased building by the Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention is given by the Lessor to Lessee at the time of such re-entry. Notwithstanding any such re-entry and reletting without termination, the lessor may at any time thereafter elect to terminate this Lease for such previous breach, including the cost of recovering the Demised Premises and the difference in value between the rent reserved hereunder for the remainder of the term and the reasonable rental value of the property for the remainder of the term.

ARTICLE XVII.
QUIET ENJOYMENT

Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the Demised Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Lessee.

ARTICLE XVIII.
TIME OF THE ESSENCE

Time is of the essence for each provision, covenant, and condition herein contained, and on the part of Lessee or Lessor to be done and performed.

ARTICLE XIX.
LEASE BINDING ON SUCCESSORS AND ASSIGNS

The within covenants and agreements shall be binding on the parties hereto, their respective successors, heirs, executors, administrators and assigns.

ARTICLE XX.
HAZARDOUS MATERIAL

Lessee shall not use or permit to be brought into the Demised Premises or the real estate, any inflammatory or explosive substance or other article deemed hazardous to person or property, nor shall Lessee do or permit to be done any act or thing which will invalidate or be in conflict with fire or other insurance policies covering the Demised Premises, or any part thereof. Lessee shall not do or permit to be done anything in or upon the Demised Premises or bring to keep anything therein which shall not comply with all rules, orders, regulations or requirements

of the Board of Fire Underwriters or any similar organization (Lessee shall at all times comply with all such rules, orders, regulations or requirements), or which shall increase the insurance premiums or the rate of insurance on the Demised Premises, its appurtenances or contents. If by reason of the failure of Lessee to comply with the provisions of this Lease, or by reason of Lessee's use or occupancy of the Demised Premises, any insurance premium shall at any time be increased, Lessee shall reimburse Lessor for all such increase in premium; provided, however, that receipt of such reimbursement from Lessee shall not be deemed a waiver of Lessee's default under this paragraph, and Lessor shall not be estopped from enforcing his/her other remedies against Lessee on account of such default.

ARTICLE XXI
APPLICABLE LAW

This Lease shall be governed and construed under the Laws of the State of South Carolina.

ARTICLE XXII.
MISCELLANEOUS

The Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse, or willful abuse of the premises hereby leased.

Other conditions/covenants:

_____

_____

_____

_____

IN WITNESS WHEREOF, the parties hereunto set their hands and seals as of this ___ day of April, 2013.

LESSOR:

WITNESS

WITNESS

RIZAN PROPERTIES, LLC - MEMBER

LESSEE:

WITNESS

JERRY POWERS

WITNESS

JACKIE PEARSON

EXHIBIT

2

STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT FORFEITED ALL RIGHTS UNDER THE OPTION CONTRACT BY BREACHING THE LEASE WHERE COMPLIANCE WITH THE LEASE WAS NOT A CONDITION PRECEDENT?**

2. **SHOULD THE TRIAL COURT HAVE FOUND INSTEAD THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT UNDER THE PLAIN LANGUAGE OF THE LEASE AND OPTION APPELLANT HAD THE RIGHT TO EXERCISE THE OPTION CONTRACT WHEN HE DID?**

3. **DID THE TRIAL COURT ERR BY FINDING AS A MATTER OF LAW THAT APPELLANT WAIVED ANY RIGHT HE DID HAVE TO THE OPTION CONTRACT WHERE THE FACTS SHOW AS A MATTER OF LAW THAT HE DID NOT WAIVE HIS RIGHT TO THE OPTION?**

STATEMENT OF THE CASE

On April 10, 2020, Jerry Powers ("Appellant") filed suit against Rizan Properties, LLC ("Rizan") seeking specific enforcement of an option contract to purchase real estate. (R. p. 11). Rizan answered denying the material allegations of the complaint and asserting, inter alia, that Appellant waived his right to purchase the real estate. (R. p. 18). The parties referred the case to the Master-in-Equity for Greenville County by a consent Order of Reference filed November 4, 2020. (R. p. 9).

After discovery, the parties filed cross motions for summary judgment and briefed the issues. (R. pp. 31, 33, 35, 57). Rizan filed its motion on December 17, 2020, and Appellant filed the following day. After holding a hearing on January 14, 2021, the Master-in-Equity, in an order filed January 27, 2021, denied Appellant's motion in its entirety and granted Rizan's motion, finding that Appellant and the other defendants had no further rights to the real estate at issue. (R. p. 2). Appellant filed a Rule 59 motion on February 4, 2021. (R. p. 72). By order entered February 11, 2021, the Court denied the motion. (R. p. 6). On

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 **MOTION TO ALTER, AMEND AND/OR RECONSIDER UNDER RULE 59(e)**

To: Rizan Properties, LLC, through its attorney Knox L. Haynsworth, III, Esq.

Plaintiff Jerry Powers (hereinafter "Plaintiff" or "Mr. Powers"), by and through the undersigned counsel and pursuant to the Rule 59(e), SCRCP, moves this Court to reconsider, alter, and/or amend that Order ("Order") entered August 6, 2021.

The bases for the motion are (1) that Article VII did not place onto Plaintiff the legal duty to repair the roof based on the parties' actions and dealings because the Plaintiff did question whether he had this duty and furthermore a lease provision that does not comply with the requirements of S.C. Code Ann. §27-40-440(c) is unenforceable and may not require a tenant to waive rights under the S.C. Residential Landlord Tenant Act ("RLTA"); (2) that Plaintiff did not receive a notice to cure in compliance with the lease before Rizan served the Eviction Notice and therefore Rizan did not fully comply with its obligations under the lease and is not entitled to damages; (3) that Rizan did not properly plead a claim for attorney fees or damages under the RLTA and therefore the finding that Rizan is entitled to them should be reconsidered; and (4) Plaintiff asks the Court to put into the Order a provision stating that the judgment is of no force or effect should Plaintiff end up finally prevailing on his claim that he is entitled to enforce the Option contract, which is currently on appeal before the S.C. Court of Appeals (Case no: 2021-000218).

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The Court found that Mr. Powers had the duty to make the roof repair because he did not contest or object to Rizan's statement that he was responsible for the repair. Therefore Article VII, as interpreted by the parties' actions and dealings, placed this duty on Mr. Powers. (Order p. 5). Plaintiff asks the Court to reconsider this ruling for a few reasons. First, Plaintiff did not act as if he had the duty to repair but rather was forced to make the roof repair out of necessity. Mr. Powers testified that he informed Mr. Rigdon about the water spots on the ceiling and then did not make the repairs himself, which indicates that he did not understand that he had the duty to repair. Mr. Rigdon refused to make the repair, and once water was leaking through the ceiling, Mr. Powers was forced to make the repair or lose the use of his only bathroom and the laundry room. Thus, he did not, simply agree with Rizan that it was his duty to make the roof repair, but he rather was forced into making the repair by Rizan's refusal to do so.

Next, it appears that the Court found Article VII ambiguous because the Court did not ground its finding that Mr. Powers had the duty to repair on the four corners of the lease but rather upon the parties' actions and dealings. Ambiguity in Article VII proves that it does not comply with S.C. Code Ann. § 27-40-440(c) in that it fails to specify the repairs or maintenance tasks Plaintiff allegedly agreed to undertake. While the RLTA permits the transference of some duties onto a tenant, it is very specific about what the written lease must say to make that happen. S.C. Code Ann. §27-40-440(c) (parties "may agree in writing"). The agreement that must be set forth in writing as relevant to this case are the "specified repairs, maintenance tasks." *Id*. *See also De Stefano v. Apts. Downtown, Inc*., 879 N.W.2d 155, 182 (2016) (considering the same "specified repairs" language as is found in § 27-40-440(c), and expressing concern that the landlord's fitness and habitability obligations could "be undermined by a stock laundry list of specified repairs."). If the written agreement fails to specify these items, then it fails to comply with the statute. Thus,

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an ambiguous provision on this issue must necessarily fail to comply with the statute because the ambiguity, at least as it exists in this case, does not specify any repair or maintenance tasks to be performed. And it does not appear in any part of the RLTA that Rizan cure that defect by putting Plaintiff between a rock and a hard place of either him making the repair or losing the use of his only bathroom and laundry room.

Because Article VII of the lease in ineffective to place the roof repair obligation onto Plaintiff, that should end the analysis because S.C. Code Ann. §27-40-330 makes unenforceable any lease provision whereby the tenant agrees to waive rights or remedies under the RLTA. The RLTA does not give room for the landlord to escape responsibility for his obligations by relying on the tenant's failure to object. The RLTA says plainly that such a provision is "unenforceable." *Id.*

Putting a tenant between a rock and a hard place, as Rizan did to Plaintiff, is what the S.C. Residential Landlord Tenant Act seeks to avoid by clarifying that the landlord is generally responsible for the roof repair at issue in this case. Plaintiff's pre-trial brief details the strong anti-waiver provision in the RLTA and its forbidding of separating rent from the landlord's §27-40-440 obligations, so there is no need to repeat that here. If a landlord could avoid his obligations under the RLTA because a tenant who, ignorant of the RLTA or his rights thereunder, follows his landlord's interpretation of an blanket lease provision regarding maintenance under threat not having use of his bathroom or laundry room, then the strong public policies behind the RLTA would be easily upended. This cannot have been the Legislature's intent. *See also Restatement (Second) of Property* § 5.6 (2021) (noting that lease provisions that decrease what would otherwise be the landlord's obligation with respect to the condition of rental property are not enforceable if "significantly against public policy.").

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Because Article VII was not effective to transfer the duty to repair the roof to Plaintiff, Rizan is not entitled to damages for any negligent repair that it had a duty to make. To hold otherwise would protect and encourage the use of vague, general, and invalid lease provisions under §27-40-440(c). It further would be contrary to a principle the Court of Appeals established in cases involving a landlord's tort liability for the negligent acts of independent contractors.[1] These cases state that where a landlord has a fitness or habitability duty it is absolute and may not be avoided by hiring an independent contractor. *Durkin v. Hansen*, 313 S.C. 343, 349, 437 S.E.2d 550, 554 (Ct. App. 1993) ("Respondents cannot insulate themselves from liability which has been assumed by agreement and, additionally, imposed by statute, by the mere employment of an independent contractor.") and *Nedrow v. Pruitt*, 336 S.C. 668, 521 S.E.2d 755 (Ct. App. 1999). It would be inconsistent with the principle stated in these cases to find that a landlord who otherwise has a duty to repair can avoid that duty, or avoid the consequences of a negligent repair, by forcing his tenant to make the repair. In this case, Plaintiff is akin to the third-party contractors at issue in *Nedrow* and *Durkin*. And Rizan cannot complaint that Plaintiff was negligent when it was Rizan that instructed Mr. Powers to make the repair at issue.

As to Plaintiff's second basis for this motion, Plaintiff believes the Court may have misapprehended his argument regarding Rizan's own breach of the lease. The Court found that the Eviction Notice dated December 3, 2018, was sufficient to satisfy Rizan's lease obligation to send a notice to cure. (Order p. 5). Article XVI requires a ten-day notice to cure prior to termination of the lease. It says, "If Lessee shall continue in default for payment of any rent reserved here under for a period often [sic] (10) days after notice of such default has been given to Lessee . . ." Notices, under the lease, must be written because that is the only way they can be

[1] There appear to be no cases on point involving the question of a tenant's liability for agreeing to make a repair that he did not have the duty to make.

given by "Registered or Certified Mail" as required by Article XII. The Eviction Notice was not a notice to cure, it was an eviction notice. Its first sentence is, "This notice is to serve as the immediate eviction requirement of lessees Jerry Powers and Jackie Pearson . . ." It further instructs Mr. Powers and Ms. Pearson to leave, not to cure. It does not include any notice to cure. Mr. Powers testified that he had received no written notice prior to receiving the Eviction Notice. Thus, the lease violation was Rizan's failure to give a prior written notice to cure as it was required to do. Because it failed to live up to its obligations under the lease, it is not entitled to damages. *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) ("[O]ne who seeks to recover damages for the breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was at the appropriate time able, ready and willing so to perform it.").

The Court further found that Rizan was entitled to attorney fees but did not award any due to a lack of evidence. (Order p. 7). Rizan brought up the issue of attorney fees in its reply to Plaintiff's Sixth Affirmative defense. A reply to an affirmative defense is not a proper procedural vehicle for asserting a claim for attorney fees. Rizan pled its claim under the lease, which does not provide for the recovery of attorney fees. Rizan did not request attorney fees in its counterclaim. A request for attorneys' fees is a claim. *Porter Bros., Inc. v. Specialty Welding Co.*, 286 S.C. 39, 331 S.E.2d 783 (Ct. App. 1985) (noting that a proposed amendment "added a *claim* for attorneys' fees" (emphasis added)). Furthermore, the remedy given under S.C. Code Ann. §27-40-750 is a claim, not merely a right to attorney fees. ("[T]he landlord has . . .a separate *claim* . . ." (emphasis added)). A claim for relief should be included in a an "original claim, counter-claim, cross-claim, or third-party claim . . ." Rule 8(a), SCRCP (designating how claims for relief must be pled). Rule 8(c) permits a party to "file a reply to any of the foregoing affirmative defenses."

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Rizan's "Response to Plaintiff's First Amended Reply" did not reply to Plaintiff's affirmative defense by admitting, denying or qualifying it. Rather Rizan's reponse attempted to plead an additional claim against Plaintiff under the S.C. Residential Landlord Tenant Act. Had Rizan wanted to add an additional claim for relief, it must have done so under Rule 15, SCRCP by moving to amend its counterclaim, not through a reply to an affirmative defense, which is limited by rule only to replying to an affirmative defense. See also Rule 13(a) and (b), SCRCP (noting that a party must assert a claim that it has against an opposing party through a counterclaim).

Finally, Plaintiff asks the Court to put into the August 6th Order a provision stating that the judgment is of no force or effect should Plaintiff end up finally prevailing on his claim that he is entitled to enforce the Option contract. The damages at issue in this case consist of unpaid rent and late fees. If Plaintiff is ultimately successful, then he will be required to pay the balance of the rent that the Court ordered him to pay and then some. Additionally, as to the damages judgment, if Plaintiff prevails in the long run, then Rizan would have no damages. Rizan's damages stem from the notion that Rizan would have to expend money to repair the house. However, if the house is not Rizan's then it would have to expend no money to repair the house, Plaintiff would. Therefore, it would make no sense, should Plaintiff ultimately prevail, for him to remain bound by the damages awarded. If a party pays full price for an item he broke, the counterparty is not damaged. Plaintiff simply asks the Court for a statement acknowledging that circumstance in the August 6th Order.

WHEREFORE, Plaintiff respectfully asks the Court to reconsider, alter and/or amend its Order of August 6, 2021 for the reasons given above.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

August 16, 2021
Greenville, SC

_s/ Mark Fessler_____
Mark Fessler (Bar #77376)
701 S. Main Street
Greenville, SC 28601
(864) 679-3252
(864) 679-3260
Attorney for Plaintiff

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STATE OF SOUTH CAROLINA	)	
		IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2020-CP-23-02076
Jerry Powers,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**TRANSCRIPT OF TRIAL**
	)	
Rizan Properties, LLC and Anthony Pearson and Tiesha Dash,	)	
	)	
Defendants.	)	
_____	)	

July 28, 2021
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Mark Fessler, Esquire
Attorney for the Plaintiff

Knox Haynsworth, Esquire
Attorney for the Defendants

Danette P. Hanks, CCR
Court Reporter

I N D E X				
WITNESSES	**DIRECT**	**CROSS**	**REDIRECT**	**RECROSS**
Meredith Moorhead Rigdon Direct - Haynsworth Cross - Fessler	8	18		
Jason Lee Osteen Direct - Haynsworth Cross - Fessler	27	39	60	63
Jerry L. Powers Direct - Fessler Cross - Haynsworth	65	93		

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Tax map photograph of property	4	4
P-2	Four photographs taken around beginning of December 2020	4	4
P-3	Correspondence between Mark Fessler and Jacqueline Patterson	4	4
P-4	Option to purchase	4	4
P-5	Original Lease of 2011	67	67

DEFENDANT'S/EXHIBITS

D-1	Lease	4	4
D-2	Eviction notice	4	4
D-3	Photographs - taken by property management May of 2019	4	4
D-4	Photographs - taken by Jason Osteen on May 10, 2021	4	4
D-5	Photographs - taken by Knox Haynsworth on May 10, 2021	4	4
D-6	Repair estimate	4	4
D-7	Breakdown of estimate	4	4

(WHEREUPON, Plaintiff Exhibit Numbers 1 through 4 were marked and admitted into evidence.)

(WHEREUPON, Defendant Exhibit Numbers 1 through 7 were marked and admitted into evidence.)

THE COURT: For the record, this is 2020-02076; matter of Powers versus Rizan Properties. A little bit of an unusual procedural status. The Court previously issued an Order that was filed January 27, 2021 granting Rizan Properties' Motion for Summary Judgment. There was also an Order that was filed February 11, 2021 denying Plaintiff's Motion to Reconsider and also clarifying the fact that Rizan's breach of contract counterclaim would be proceeding. And Plaintiff has filed Notice of Appeal to the Orders that I just referenced. The Summary Judgment Orders are on appeal, but we're here today for a trial on the merits on the Counterclaim that I referenced.

So is there anything for the record before we move into testimony?

MR. FESSLER: Yes, Your Honor. Following up on the pretrial conference that counsel and the Court had on Monday, one concern that the Defendant -- or that the Plaintiff in this case has about proceeding with the breach of contract matter at this time is that the issue of whether the option is enforceable is, as the Court mentioned, on appeal. And the Defendant is concerned that if the Court were to enter

a damages judgment against Mr. Powers under this other part of the proceeding, that that may -- if the Court of Appeals were to send the option issue back to be litigated, that may influence the Court's decision against Mr. Powers in subsequent proceedings under the theory that it might create more trouble because you would have to undo potentially a judgment Order. I don't think, because it is a separate issue, that it goes to a jurisdictional matter; however, you know, I would ask the Court to be aware of that concern and to, if the Court does enter judgment, maybe provide a mechanism by which it could be undone, you know, if the other part of this case is returned and litigated at that point, just to allay, you know, any concern about ---

THE COURT: Certainly.

MR. FESSLER: --- the Court's consideration on that.

THE COURT: Mr. Haynsworth, do you wish to briefly have anything on the record about that?

MR. HAYNSWORTH: I would, Your Honor, briefly. Whether or not Mr. Powers has an option to purchase this property at a given price upon his attempt to exercise the option has absolutely nothing to do with the damages incurred by the Lessor when he was leasing that property. If Your Honor is wrong and if he has an option and if there was a trial that resulted in the decision that he has the right to

buy that house, it changes nothing as far as what this trial is about, which is the damages under the lease that occurred while he was still a tenant. It's completely separate issues. So from our perspective, I think it has nothing to do with what we're here about today. And whatever decision may be rendered is not going to affect the case that's on appeal, whether it comes back down or not.

THE COURT: All right. So both of y'all are protected on the record now. So we can move into testimony.

MR. FESSLER: Your Honor, may I just briefly respond to that argument?

THE COURT: Again, I just wanted y'all to have enough to where y'all can argue in Columbia if necessary. We're going to try it. No Motion to Stay has been filed at this level. So if you want a very brief position on that I'll be glad to allow that.

MR. FESSLER: Yes, Your Honor. These are not separate issues. If Mr. Powers does have the option to purchase, the damages that the opposing party is seeking are rent and repair damages. As far as rent goes, he would be required to tender to Rizan Properties the amount of unpaid rent plus late fees, which he has already done. That covers their damages as far as that's concerned.

He also would be acquiring or would have a contract to acquire property. They're claiming that he damaged property.

He can't damage his own property, Your Honor. So if the option is she does get reversed, then Mr. Powers has no damages flowing to Rizan Properties.

THE COURT: All right. Then y'all are protected on the record. Let's move into testimony.

MR. HAYNSWORTH: Your Honor, for my first witness, I'm going to publish excerpts from Mr. Powers' deposition, as he is a party. And I'm going to have my secretary, Laura Lauder, play the role of Mr. Powers.

THE COURT: I appreciate it. I'm pretty good at ---

MR. HAYNSWORTH: You want to skip over all of that since we're non-jury?

THE COURT: I'm pretty good at reading. So I think I can handle that. Although I'm sure your wonderful assistant is a wonderful reader, as well.

MR. HAYNSWORTH: She's going to be traumatized that she's practiced so much last night; she's going to miss her moment in the -- but we'll deal with it when we get back to the office. I understand, Judge. That thought occurred to me. It's not a jury trial. You can read as well as we can ---

THE COURT: In fact, I have read most of it other than what was resubmitted late yesterday.

MR. HAYNSWORTH: Okay. Well, the re-submission

-- if you've already read what I was going to -- what I designated, then the only thing left would be what Mr. Fessler designated yesterday afternoon. I'll let him deal with -- I mean you can read that or I can put Laura up and she can read his designations.

THE COURT: I expect I'll read them on both sides.

MR. HAYNSWORTH: All right. Well, in that case, Your Honor, I'll move on to witness number two, which will be Ms. Meredith Rigdon.

THE COURT: All right, ma'am, if you'll come around to the witness stand, please. If you'll place your left hand on the bible and raise your right hand for me. Do you swear to tell the truth, whole truth and nothing but the truth?

MS. RIGDON: Yes, sir.

THE COURT: Thank you. You can come around and have a seat, please. State your full name.

MS. RIGDON: Meredith Moorhead Rigdon.

THE COURT: All right. Your witness.

MEREDITH MOORHEAD RIGDON,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. HAYNSWORTH:

Q. Meredith, I will tell you, the Judge probably knows as

much about this case as I can educate him on. But just briefly what's your connection to Rizan Properties?

A. Rizan was started by my late husband, Lukas Rigdon, when we were married in order to purchase and rent out properties to save for our children's education. When he died I was made sole member, owner of the LLC.

Q. Okay. And we're here -- did Lukas -- excuse me. Did Rizan own some rental houses?

A. Yes, it did.

Q. Okay. And is one of those rental houses what we're here about today?

A. Yes.

Q. Okay. And I'd like to show you what we've pre-marked as Rizan Exhibit 1 and ask if you can identify it for me?

A. That is the lease between Rizan and Jerry Powers.

Q. All right. On the last page of the lease, do you recognize any of the signatures? Excuse me, the second to last page?

A. Yes.

Q. And what signature do you recognize?

A. Lukas's signature.

Q. For Rizan Properties?

A. Yep.

Q. So this is the lease between Jerry Powers and Rizan?

A. Yes.

MR. HAYNSWORTH: Your Honor, it's been pre-marked. It may already be in evidence, frankly, but I'd ask that it be admitted.

THE COURT: All right. And I'm -- for both sides I'm going to assume unless there's an objection there is no objection, so that'll allow us to expedite things even more.

MR. HAYNSWORTH: Good enough.

Q. Well, in that case -- I'll save that. While we're doing it, Exhibit 2, Ms. Rigdon, is a document that I think was provided by Mr. Powers or his counsel before you and I met. Do you know what Exhibit -- what we marked as Rizan Exhibit 2 is?

A. Yes.

Q. And what is that?

A. It is the document Lukas delivered to serve eviction notice on the property.

Q. Okay. And it's got a couple of pages attached that has a total on the last page, do you know what those two attached pages are?

A. Yes. That's Lukas's Excel sheet where he kept track of rent and late fees.

Q. Okay. So tell me, you and Mr. Rigdon had two children. He had these rental houses. He tragically passes away by suicide. Sort of walk us from his suicide forward as to how

you came to be connected with this house and discovered who Jerry Powers was?

A. After Lukas passed and I began the probate process, my probate lawyer advised me to go to the house, check it out, find a property management company to rent it out, because my reaction at the time was to continue what Lukas had intended for the house, was to continue -- both of the children are in private school -- and to continue to save for their education.

Q. Okay. Did you have -- as best you recall, when is the first time you went inside the house?

A. Was May of 2019.

Q. All right. And we've pre-marked some photographs, and there's a set that I believe were taken the day before you were at the house.

A. Uh-huh (affirmative).

Q. Are you familiar with any photos that were taken ---

A. Yes.

Q. --- in that time period? I'm going to give you what we pre-marked as Rizan Exhibit 3. And just thumb through those. They're 3-A, B, C, D, E?

A. Yeah.

Q. Just thumb through those and identify them for us if you would.

A. Yeah. This is exactly what the house looked like when I got in it.

Q. Okay. Speaking of, what was the house like before Jerry Powers started renting?
A. It was fully renovated. It was a nice house. Lukas took out a construction loan, had a new roof, kitchen appliances, walls, floors, all of it. It was fully renovated. He was very proud of it when he rented it.
Q. And the condition you saw it in when you were there -- when was it ---
A. May 2019.
Q. --- of May '19, I assume it had not looked like that when you had seen it before Mr. Powers?
A. No. Absolutely not.
Q. Okay. Mr. Powers wound up bringing a lawsuit against you?
A. Uh-huh (affirmative).
THE COURT: Ma'am, if you could answer yes or no because an uh-huh and uh-uh, for the court reporter if she has to transcribe this, it's very difficult to discern the ---
MS. RIGDON: Yes, sir.
THE COURT: Okay. Thank you.
Q. Gosh, I forgot what I asked. I'm sorry. Okay. So the house was in much worse shape when you saw it when these photos were taken than when you had seen it before Mr. Powers rented it?
A. Yes.

Q. Okay. To your knowledge after Mr. Powers signed the lease, are you aware of any complaints he made to you or to Lukas or to anyone about obligations under the lease that he didn't think were fair or that he suddenly decided he shouldn't have to follow?

A. No.

Q. So after you were sued, you obviously hired me or I wouldn't be here today, and we countersued Mr. Powers which is the trial we're here today on. I will represent to you that under one of the statutes that's been thrown out, I have asked the Court to award you for costs and attorneys' fees. Do you know how much you have incurred in costs and attorneys' fees?

MR. FESSLER: Your Honor, I would object to the attorney fee issue at this point. They have not pled or requested attorneys' fees. The contract that they're suing on does not provide for recovery of attorneys' fees, so it's irrelevant to the proceeding.

THE COURT: Mr. Haynsworth.

MR. HAYNSWORTH: In the reply to his addition of the Landlord and Tenant Act as an affirmative defense, I raised in my pleadings the fact that the statute provides for the recovery of attorneys' fees on behalf ---

THE COURT: I was thinking that was in there, Mr. Fessler. But at the same time you're such a fine lawyer, I want you to take a moment to ---

MR. FESSLER: Certainly, Your Honor.

THE COURT: --- look and see if you can see that.

MR. FESSLER: I don't believe, if Mr. Haynsworth is referring to a response to my affirmative defense, I don't believe it is a response, but rather an attempt to add an additional cause of action or additional request for remedy to the case. He did not move under Rule 15 to make that request like the Plaintiff did to add an affirmative defense, and it's not before the Court.

Just because there is a statute that might provide for the recovery of attorneys' fees, they have sued specifically on a contract. The Answer -- the Amended Answer, which states the counterclaim, cites breach of contract. There is no allegation in any affirmative pleading that says that he violated the Residential Landlord and Tenant Act, thereby allowing the recovery of attorneys' fees.

THE COURT: Let me suggest this, Mr. Haynsworth, at this point I'll allow you to proffer it until I've had a chance to look at the pleadings and address Mr. Fessler's objection.

MR. FESSLER: Okay, Your Honor.

MR. HAYNSWORTH: And to the extent, Judge ---

THE COURT: Hold on just a minute.

MR. FESSLER: Just one more argument for the

record, Your Honor. The rule that allows a reply to an affirmative defense, the reply has to be to the affirmative defense. So if the affirmative defense which in this case is that the Residential Landlord and Tenant Act does not allow a landlord to shift onto a tenant the obligation to maintain the structure of the property. That's the affirmative defense. A reply to that might be something like the Landlord and Tenant Act does not apply or there's an exception there that allows that in this case. Simply saying, well, there's another statute in the Residential Landlord Tenant Act that allows me to recover attorneys' fees. Even though I haven't pled it, I'm going to slip that into the reply. That is not appropriate.

THE COURT: Noted for the record.

MR. FESSLER: Thank you, Your Honor.

MR. HAYNSWORTH: While we're doing such things, Your Honor, I would like to move -- to the extent it's not clear, I would like to move to amend my pleadings to assert under the Landlord Tenant Act the recovery of attorneys' fees.

MR. FESSLER: Your Honor, I would oppose that motion.

THE COURT: I'm going to sustain the motion -- I'm going to agree with Mr. Fessler. If it's not pled, it's too late to plead it at this point. I don't know. I'll have

to look back through the voluminous pleadings. But I agree with Mr. Fessler as far as the timing, if it's not previously pled.

MR. HAYNSWORTH: Okay.

Q. Let's see, where were we? How much have you incurred in costs and attorneys' fees?

THE COURT: Again, this is for a proffer.

A. Thirty-three thousand seven hundred and twelve dollars and twenty-two cents.

Q. As of what date?

A. Tuesday. This past Tuesday.

Q. June 24th?

A. 26th.

Q. 26th? All right.

THE COURT: And that would be July.

MR. HAYNSWORTH: I'm sorry. July. My bad.

Q. And those costs and attorneys' fees are continuing?

A. Yes.

Q. Ms. Rigdon, have you had to pay to maintain the property while this litigation has been going on?

A. Yes. And I'm paying property taxes, as well.

Q. And did the county issue you or Rizan any sort of citations about the maintenance of the property?

A. Yeah. I'm having to maintain the property. My landscaper maintains the property.

Q. Have you got any idea what those costs have amounted to over the course of this fight?
A. I don't, right off the top of my head.
Q. You don't? All right. Fair enough. Fair enough. Other than that eviction notice, do you have any records of Rizan?
A. I do not.
Q. What happened to Rizan's records to the extent there were records?
A. Lukas's mother stole them.
MR. FESSLER: I would object to speculation, Your Honor. I understand there's an allegation that she believes that's what happened. I would ask that there be foundation that she has personal knowledge of this matter.
MR. HAYNSWORTH: I think there's an Order to that effect.
THE COURT: Go ahead. She testified, and so you can go into that on cross. Go ahead.
Q. In Probate Court, you and your attorney Jackie Patterson are litigating against Lukas's mother for taking Rizan's stuff?
A. Correct.
Q. Has that been decided over in Probate Court, whether she did or did not take his stuff? Has that decision been made?

A. It has not.
Q. So is it fair to say the only records you have seen regarding Rizan are essentially what I've laid in front of you, the eviction notice and the lease?
A. Yes.
Q. Okay. Did you ever talk to Mr. Powers?
A. No.
Q. Did you ever see any correspondence Mr. Powers sent to Rizan Properties or your husband?
A. No.
Q. Okay. Ms. Rigdon, I think that's all the questions I've got. Please answer any questions of Mr. Fessler.
THE COURT: Your witness.
MR. FESSLER: Yes, Your Honor.

CROSS EXAMINATION

BY MR. FESSLER:

Q. Ms. Rigdon, the lease agreement that Mr. Haynsworth provided to you, that wasn't the sole contract involved in this arrangement between Rizan Properties and Mr. Powers; was it?
MR. HAYNSWORTH: Your Honor, I'd like to note an objection if we're going into the option on the grounds of relevance.
THE COURT: Well, let's see where we're going.
Q. Well, there was an option that was executed at the same

time as the lease agreement; was there not?
A. Yes.
Q. Okay.
MR. FESSLER: May I see Powers Exhibit Number 4?
COURT REPORTER: Plaintiff's number 4?
MR. FESSLER: Yes, Plaintiff's number 4.
Q. Ms. Rigdon, I'm showing you these two pages. Do you recognize these two, Plaintiff's number 4?
A. Yes.
Q. And that's the option that was signed on the same day as that lease agreement?
A. Let me see the date.
Q. I assume you've reviewed this ---
A. Yes.
Q. --- before today with your ---
A. I said yes.
Q. Okay. So this wasn't just a standard lease situation; was it?
A. This was a lease with an option.
Q. Right. So it ---
MR. HAYNSWORTH: I would again just like to note an objection. I think the lease and the option, their interplay is in Columbia and is ---
THE COURT: But it seems to me that the argument that you made in the summary judgment motion which the Court

held was that the two were intertwined and interdependent, which would be read together. So to that extent, I think Mr. Fessler is allowed to plow this ground. But you're protected on the record.

MR. HAYNSWORTH: Thank you.

MR. FESSLER: Yes, Your Honor.

Q. And are you aware of letters that I sent to Jacqueline Patterson back in October of 2019 attempting to exercise that option on behalf of Mr. Powers?

A. Yes.

Q. And did you refuse to consent to that request at that time?

A. Yes.

Q. And do you still refuse to do that?

A. Yes.

Q. Okay. Now, you say that the pictures that were introduced as Rizan Exhibit Number 2, I believe, were photographs that you had taken -- or that a property manager had taken?

MR. HAYNSWORTH: That's 3.

Q. 3; excuse me.

A. Yes.

Q. Has the condition of the property changes since those photographs were taken?

A. It has not.

Q. It has not? It's exactly the same condition as it was when these photographs were taken?
A. Correct. It is unlivable.
Q. Okay. I'm going to show you what was introduced as Plaintiff's Exhibit 3M. This is a photograph of the laundry room that was taken; is it not?
A. Yes.
Q. Okay. Is the -- that door that's opened, that's fully opened; correct?
A. Correct.
Q. And that provides access from the laundry room out to the back yard?
A. Uh-huh (affirmative).
Q. Is that a yes?
THE COURT: Please answer yes or no.
A. Yes. Sorry.
THE COURT: Thank you.
Q. All right. And you don't see any water damage on the floor in that photograph; do you?
A. That's hard to tell. There's a lot of spots and dirt. There's all kinds of stuff up the walls. I can't give you an affirmative yes or no on that. I'm not a home inspector.
Q. Okay. When you say the property was unlivable back in -- was this May of 2019?
A. Correct.

Q. What steps has Rizan Properties taken since that date to repair any of the issues that you claim you noted on May of 2019?

A. The property management company that inspected the home for me advised me to find a contractor who could make the home livable. And Lukas died with debt. I do not have the funds to hire a contractor to put the money in to make this house livable. And as it is under litigation, it would not be smart on my part to spend money that I don't have clear title on a home for. So I have taken steps to monitor the property as much as possible.

Q. All right. And you're aware that Mr. Powers is also taken steps to monitor the property? You're aware that Mr. Powers is also taking steps to monitor the property?

A. In what way?

Q. Well, in October of 2019 you called the police on an individual who was present at the property; didn't you?

A. On a gentleman who was present on the property that I own.

Q. Right. That you own. And that person, you understand the explanation he was there was because he was maintaining the property -- or at least the exterior of the property on behalf of Mr. Powers?

A. That was what he told the sheriff's deputy. I did not engage with him.

Q. Okay. How much did Mr. Rigdon talk to you about the operation of 31 2nd Avenue and what was going on there?
A. A lot.
Q. A lot. Did Mr. Rigdon share with you that there had been significant water damage in the laundry room area at some point in time?
A. He did.
Q. Do you remember when that was?
A. It would have been during our separation.
Q. And approximately when do you think that was?
A. That would have been late 2018.
Q. Late 2018. Prior to that had he shared with you any information about water damage or alleged water damage at 39 2nd Avenue?
A. He only spoke with me about it in late 2018.
Q. So he never spoke with you about it before then?
A. No.
Q. Okay. Now, do you know how the water damage -- do you have any opinion about how the water damage that's in the house came to be?
A. What I know has been from Mr. Powers' testimony, what Lukas told me and what we've had our expert inspector say.
Q. So you don't have any personal observations ---
A. I wasn't there to see the holes put in the roof. No, sir.

Q. Okay. And you've never seen Mr. Powers before?
A. Never in my life.
Q. So you don't know what kind of repairs he undertook?
A. I only know what Lukas discussed with me, and what Mr. Powers testified that he had attempted to do.
Q. In your experience with Mr. Rigdon, did he pay attention to what was going on at his properties?
A. Yes, he did.
Q. And how would he do that?
A. He was constantly monitoring them. Those properties were for the benefit of our children who he loved very much.
Q. Of course. Do you know whether Mr. Rigdon ever had anybody inspect 39 2nd Avenue before -- I guess after Mr. Powers moved out?
A. That I do not know.
Q. All right. So Mr. Haynsworth showed you a document that is titled eviction notice. This would have been Rizan Exhibit Number 2. I don't know if you still have it in front of you.
A. Yes.
Q. You do? Okay. Besides this written notice, are you aware of any other notices that Rizan Properties sent to Mr. Powers?
A. I am not.
Q. You're not? And do you know how Mr. Rigdon stored his

records? Like would you have had access to those at the time ---

A. He stored them on a personal laptop computer that was his.

Q. Okay. And you haven't come across any written notices in additional to what has been introduced into evidence?

A. I do not have any of Rizan's records.

Q. All right. Do you know how Mr. Rigdon collected rent from Mr. Powers?

A. My understanding from when we were married was that he paid him in cash. And that Lukas provided documentation on his Excel sheet, which we have here.

Q. Would Mr. Rigdon stop by the property to make ---

A. Yes.

Q. --- that transaction? All right. And reverting back to the payment history attached to Rizan Exhibit Number 2, did you observe Mr. Rigdon make this payment history?

A. Did I see him working on his computer?

Q. Did you see him working on this particular Excel spreadsheet?

A. I would have witnessed him working on his computer. Did I stand over him to see? No. No, I can't say ...

Q. Okay. Are you aware of any assumptions that went into creating this spreadsheet?

A. Absolutely not.

Q. Do you know what the information is that he relied on to create this?
A. I'm not sure I understand the question.
Q. Well, it appears that he's drawing numbers from somewhere. Do you have personal knowledge of the underlying information that he allegedly pulled those numbers from?
A. He was keeping track of whether or not he was being paid rent on time. And I remember during our marriage that Mr. Powers was late quite often.
Q. In what form?
A. Late to pay rent.
Q. No. In what form was he keeping records?
A. Here.
Q. Did he keep them in any other format?
A. This was it.
Q. Just this spreadsheet?
A. This is all I have knowledge of.
Q. Okay.
MR. FESSLER: I don't have any other questions for Ms. Rigdon.
THE COURT: Any other brief questions?
MR. HAYNSWORTH: No, sir, Your Honor.
THE COURT: All right, ma'am, you can step down. Call your next witness.
MR. HAYNSWORTH: Okay. Thank you, Judge. At

this time, Your Honor, I'd like to call Mr. Jason Osteen.

THE COURT: If you'd place your left hand on the bible and raise your right hand for me. Do you swear to tell the truth, whole truth and nothing but the truth?

MR. OSTEEN: Yes, sir, I do.

THE COURT: Come around and have a seat, please, sir. And if you would state your full name.

MR. OSTEEN: Jason Lee Osteen.

THE COURT: Spell Lee, if you will.

MR. OSTEEN: L-e-e.

THE COURT: All right. Thank you.

Your witness.

MR. HAYNSWORTH: Thank you, Your Honor.

JASON LEE OSTEEN,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. HAYNSWORTH:

Q. Jason, what do you do for a living?

A. I'm a general contractor.

Q. Okay. And have you -- were you hired by Meredith Rigdon to go out and look at this house we're talking about?

A. I was.

Q. Okay. And did you go out there on around May 10th?

A. I did. I accompanied you on May 10th, I believe.

THE COURT: Of what year?

MR. HAYNSWORTH: This year.

THE COURT: 2021?

MR. HAYNSWORTH: 2021. Yes, sir. I'm sorry.

Q. So we were both out there May 10th, 2021 taking some photographs. We have pre-marked a set as Rizan Exhibit 4A through Z3. Would you just thumb through those pictures and satisfy yourself that you know what they are of?

A. Yes, sir.

Q. All right. Were those pictures you took when we were out there on May 10th of this year?

A. They are. Yes, sir.

Q. All right. Just go through, Jason, for the Judge's edification and tell us what we're looking at. Exhibit 4A ---

MR. HAYNSWORTH: Do you have a set?

THE COURT: Yes, sir.

Q. 4A is -- what are we looking at?

A. This is the attic.

Q. Okay. And this here is the roof deck?

A. This is the roof deck with the shingles. The exterior being on the other side of this.

Q. Okay. And then 4B, again, that's attic?

A. It is. Very similar to 4A.

Q. Okay. 4C, that's a close-up of the blue tarp that we saw in the two prior photos?

A. It was a blue tarp laying on top of the ceiling.

Q. Up in the attic?
A. It is; yes, sir.
Q. Okay. 4D is another. 4E. That's all the same tarp that we saw?
A. They are.
Q. Now, what is 4F?
A. 4F is a picture of a moisture meter that I used to measure the moisture content in the roof framing.
Q. Okay. And how about 4G?
A. That's the same picture. Same with the moisture meter.
Q. Okay. Well, one we've got twenty-two six ---
A. Oh, yes, sir.
Q. --- and the other we've got twenty-two four.
A. They're showing different levels. They were taken of different parts of the framing.
Q. Okay. So the picture in 4F, you've got your moisture meter touching part of the ---
A. Yes, sir.
Q. --- underside of the roof in the attic. 4G is a different part ---
A. I may have moved over two foot to get another reading.
Q. Okay. And 4H, same thing. That's another reading in the attic?
A. It is. I cannot see the moisture content, but I can see the red light indicating a high reading.

Q. Okay. So that red light doesn't cut on unless moisture is over ---
A. Correct. I believe on that certain meter it's seventeen percent.
Q. Okay. And is over seventeen percent moisture a bad thing when it comes to your roof deck?
A. Yes, sir.
Q. 4I, same thing, that's moisture meter reading from a different spot in the attic?
A. It is.
Q. Same thing, 4J?
A. Yes, sir.
Q. And all of these are over what they should be as far as moisture?
A. They are.
Q. Same thing, 4K?
A. (No verbal response.)
Q. What is 4L if you can tell?
A. It's up in the attic. There's a section that leads above the bathroom and the laundry room. There's a small opening to access that. I could not access that small opening. I could not get above the bathroom or the laundry area.
Q. Okay. So if we were looking in the interior of the house at the bathroom and the laundry, you couldn't get up

above that ceiling in the attic?
A. That's right. I could only get above the ceiling in the back right bedroom where it connects to the bathroom.
Q. Okay.
A. That's as far as I could go because of the entryway.
Q. Okay. And 4M, is that the same thing?
A. It's a very similar picture; yes, sir.
Q. Okay. What is 4N?
A. 4N is what I believe to be termite damage located in the kitchen behind some paneling.
Q. Okay. And is that a picture of the paneling being pulled back so you can see what's behind it?
A. It is.
Q. All right. And 4O, what is that a picture of?
A. 4O is a picture of the bathroom ceiling, the drywall ceiling here.
Q. Okay. So if -- that light is shining on the top of the ceiling?
A. That light is shining straight up.
Q. Okay. And what are we seeing -- what is this illustrating for us?
A. The water damage here to the right of the light, the drywall.
Q. And then it looks like there's a hole in a vent fan or something? That may be in a subsequent picture?

A. It is. It's an exhaust fan that the fan grate and the light has fallen out of.
Q. Okay. What's 4P?
A. 4P is the ceiling of the laundry room.
Q. Okay. And although you couldn't get in the attic, what are we seeing there in the ceiling on either side of the light fixture?
A. We're seeing the drywall sagging tremendously from what appears to be water damage. So much so that the rear door will not open.
Q. So this picture we're looking at, 4P, if you try to open that door it's going to catch on the ceiling because the ceiling is sagging?
A. It is. And I believe I may have another picture illustrating that.
Q. Okay. What is 4G?
A. 4G is the back right bedroom.
Q. Uh-huh (affirmative).
A. This wall separates the bedroom from the bathroom. The tub would be located behind here to give you where it's at. And this shows water damage coming down the wall from the ceiling from the attic area.
Q. Okay. And that may be the picture you referenced earlier, 4R. Is 4R -- are we also seeing anything as far as the ceiling is concerned vis-a-vis the vent housing?

A. Yes. It looks like the ceiling has dropped in that room, as well.
Q. Okay. So when we look at 4R and we see what -- the housing where the fan used to be and we see how it's laying against the sheetrock, that is showing ceiling damage?
A. It is. The ceiling has fallen down.
Q. Okay. 4S, what is that?
A. That looks like water damage. The picture is not -- there's nothing to reference. I believe that is in the ceiling.
Q. Okay. And 4T?
A. That is water stains down the wall. There's a light switch there showing that it's a wall.
Q. Okay. And then 4U?
A. 4U I believe comes from the laundry area.
Q. Okay. And is that ---
A. It is a wall or a ceiling. It represents water damage.
Q. Okay. And 4V?
A. I believe that is also the laundry room showing separation of what appears to be the ceiling and the wall.
Q. Okay. And is 4W the ---
A. 4W is a closeup of the previous one.
Q. 4X looks like the termites in the kitchen wall again. And 4Y, that's the kitchen wall; is that right?
A. 4X is ---

Q. Was pulling back of the panel of 4Y?
A. Correct.
Q. Okay. And then 4Z1?
A. 4Z1 was taken from the kitchen. This is the, this is the wall that intersects the laundry area, a piece of cabinetry that backs up to that bedroom, and it's showing water leaking in.
Q. Okay. And 4Z?
A. 4Z shows some missing fascia board up near the roof.
Q. Okay. And 4Z3?
A. 4Z3 shows some type of metal roof that's been installed on the back half of the home.
Q. To your knowledge did a contractor install that?
A. Not to my knowledge; no, sir.
Q. And in your experience what you have seen out there on that roof, that's not tin roofing deck; is it?
A. No, sir. I believe that is a material called B-decking, a corrugated metal. And that's typically used for front porches, and concrete is laid over the corrugated metal. It keeps contractors and builders from having to build four foot of concrete. That material holds up that concrete.
Q. Okay.
A. It's B-decking, B as in boy.
Q. All right.
MR. HAYNSWORTH: And Judge, I'm not going to

beat a dead horse with it because we've all got the pictures.
Q. But 5A through M were pictures taken the same day you were out there?
A. Yes, sir.
Q. Of the exterior of the house?
A. Yes, sir.
Q. Some of the interior, some more closeups of that roof deck?
A. Uh-huh (affirmative).
Q. Okay. 5H, what is that?
A. 5H is a flooring that's in the living area and the ends are curled up on the flooring from what I believe is moisture related.
Q. Okay. And then 5G?
A. 5G shows carpet in the front right bedroom. And I believe that is moisture related, is why the carpet is starting to curl up or whatever you want to call it.
Q. Now, you're familiar with certain portions of Jerry Powers' deposition testimony?
A. I am. I did read over it.
Q. Okay. Now, for purposes of my question I want you to assume that the tenant of this house -- that a tree hit the roof and knocked a whole in the roof and that over the course of three or four months it's raining, water is coming in, it's discoloring the ceiling. And I want you to assume that the --

that nothing is done until that discoloration and that wetness in the ceiling is causing the ceiling to actually collapse.

A. Okay.

Q. And I want you to further assume that enough water was coming into the interior of that house where the tenant had to have four or five different buckets to catch all the water coming into the interior of the house. And then I want you to assume that without getting any one profession to be involved or assist that the tenant and perhaps a friend put on that decking material, that B-deck that you saw. Given those assumptions, is what you saw and took pictures of and what you've talked about consistent with water intrusion caused by a tree hitting the roof and that not being tended to and not being repaired properly?

A. Yes, sir, it is.

Q. Okay. And have you come up with an estimate for what it might cost to repair the damages that you've been telling us about?

A. I did.

MR. HAYNSWORTH: Your Honor, do you have all the pre-marked exhibits?

THE COURT: As far as I know.

MR. HAYNSWORTH: Can I borrow from you for a second Rizan 6 and 7.

THE COURT: The estimate?

MR. HAYNSWORTH: The estimate. And then there's a breakdown of the estimate that's the next document. I just want to get him to ID them.

THE COURT: Certainly.

Q. Let me hand you, Jason, what we've marked as Rizan Exhibit 6 and then Rizan Exhibit 7 and just get you to tell us what those are?

A. So Exhibit 6 is an estimate to repair the damage caused by a leaking ceiling, leaking roof, to repair the water damage.

Q. And what is Exhibit 7?

A. I was asked to break that down into individual items. And these numbers present that.

Q. Mr. Fessler had asked with what we were doing with the Court, that there be a breakdown. I asked you. And 7 is the breakdown?

A. Correct.

MR. HAYNSWORTH: Thank you, Judge.

And Your Honor, I think you told us earlier, admitted, unless we object that I would ask that his estimates be admitted into evidence, Your Honor.

THE COURT: All right.

MR. HAYNSWORTH: And the photos.

Q. So ---

MR. FESSLER: Your Honor, I would just make a

minor objection to entry of mold remediation. I don't think there's been any foundation laid that that has been diagnosed -- that Mr. Osteen is able to diagnose such. So I would object to that part of Exhibit 7.

THE COURT: All right. Overruled. You can go into ---

MR. FESSLER: Yes, Your Honor.

THE COURT: --- his degree of experience on cross.

Q. So you came up with an estimate as to what it might cost. But there are areas that you couldn't inspect completely, like that hole -- the area in the attic above the bathroom and the laundry room?

A. Correct. Yes, sir. And more importantly maybe what's under the floor. I cannot do that.

Q. Okay. So would you expect that once you get in and start ripping things out and getting access to new areas, based on your understanding of what went on with the water and all that, would you expect that it might actually cost more than your estimate to fix the damage once you're able to see the extent of it?

A. With the amount of water that appeared to come into the home, yes, sir. I would think there's areas that water may have penetrated that we cannot see. And therefore would probably require more work.

Q. Okay. Did it appear to you, knowing that a tree had hit the roof and there had been some attempt to patch the hole, that the repairs to the roof damage had been done properly?

A. They were not. No, sir.

Q. And obviously given -- well, okay. Thank you, Mr. Osteen. That's all the questions I have. Please answer any questions Mr. Fessler may have.

THE COURT: Your witness.

MR. FESSLER: Yes, Your Honor.

CROSS EXAMINATION

BY MR. FESSLER:

Q. I'm going to try to be organized here because I know when we did our deposition we labeled the pictures in one manner and now that we're in Court, they've been labeled in a different manner.

A. Okay.

Q. So I'm going to try my best to match up what we talked about at your deposition with what's identified here today in Court. But I'd first like to start off, so, Ms. Rigdon, you know, retained you in what month of 2021?

A. I believe April is the first time that I looked about the damages. Yes, sir.

Q. And that's when she first approached you to actually inspect the property?

A. Correct.
Q. All right. And did you expect that if -- that you would get this job from Ms. Rigdon to make these repairs?
A. Yes. It was quoted in a way that I did -- yes, sir.
Q. All right. Now, Mr. Haynsworth described a hypothetical scenario where water was running into the house. But in actual fact, the water event that's described in Mr. Powers' Affidavit, that was only -- that was isolated to the back two rooms of the house; is that right?
A. I'm sorry. Can you ask me that question again?
Q. So do you remember when Mr. Haynsworth said, now imagine there's water just pouring into the house?
A. Yes, sir.
Q. And how that might affect your opinion. The part of the deposition that Mr. Haynsworth was referring to, it wasn't the whole house; was it?
A. It was not the whole house. No, sir. It was the back section of the house.
Q. Right. And just so the Court has an understanding of kind of the layout of the property, you know, the front of the house faces 39 2nd Avenue. And I believe this is detailed on this tax map. But the front of the house faces 39 2nd Avenue; right?
A. Yes, sir.
Q. When you walk into the house you step into the living

room?
A. Correct.
Q. To the right is a bedroom?
A. Yes, sir.
Q. Directly in front of the living room is the kitchen?
A. Yes, sir.
Q. And there's an opening where you can see from the living room into the kitchen; is there not?
A. I believe there is.
Q. Okay. And then behind the kitchen there's a door?
A. (Affirmative nod.)
Q. That's a yes?
A. Yes, sir, it is.
Q. And that door doesn't actually have an actual door; it's more of just a doorway, right?
A. I do not know.
Q. Okay. And behind that is the laundry room?
A. It is.
Q. So do you know whether you can see from the living room through to the laundry room?
A. Sir, I do not know if there's a door that can be closed in the laundry room.
Q. If the door were open ---
A. If the door were open ---
Q. Let's assume there was a door and it was open. You

could see from the living room through to the laundry room; could you not?

A. Yes, sir, you could.

Q. All right. Now, when you walk into the kitchen and you turn to the right there's another bedroom?

A. Correct.

Q. And those are the only two bedrooms?

A. Correct.

Q. And then if you walked into that bedroom and you took an immediate left you would walk into the bathroom?

A. Yes, sir.

Q. And now we've described the whole house?

A. We have.

Q. Okay. So the water event that Mr. Haynsworth was referring to was only to those back two rooms; right?

A. From what it looks like to me, the water event would have been where those two rooms met the bedroom and the kitchen. So therefore, I believe water would get also -- I mean I didn't see the water come in that day. I was not there. I believe water may have came in, I mean it's possible through the bedroom as well.

Q. But from what you read in Mr. Powers' Affidavit, the buckets Mr. Haynsworth was referring to were only in the laundry ---

THE COURT: I apologize. Is it Affidavit or

deposition?

MR. FESSLER: I'm sorry, Your Honor. Deposition.

THE COURT: I just wanted to make sure. Some of the attorneys down there may be like where's this Affidavit. So it's the deposition you're referring to?

MR. FESSLER: Yeah. That's not the first time I've made that mistake.

THE COURT: That's fine. Thank you.

Q. Excuse me. The deposition. That the buckets were only in the back two rooms, the laundry room and the bathroom?

A. Sir, I don't remember that specific part in Mr. Powers' deposition stating that.

Q. Okay. Let's talk about sort of water issues. That's what you inspected and that's what you rendered your opinion on?

A. That's right.

Q. And your first opinion is that the rear section of the house, the laundry room and the bathroom, has major water damage and will need to be removed and rebuilt. You don't believe that any other sections of the house need to be removed or rebuilt?

A. I do not believe they need to be totally demo'ed; correct. I believe that could be repaired.

Q. All right. And the rate at which water can decay

would, or other similar substance, depends? There's no uniform way to determine if this amount of water is present, then this amount of decay will occur?

A. I'm no scientist. I cannot predict that to give an exact time -- amount of time.

Q. But you would agree that the number of water events could affect the rate of decay; right? If more rain happens then something might decay more quickly? Would you agree with that?

A. If it's not allowed to dry out, yes, sir, I do.

Q. All right. And additionally, the amount of water in each particular water event might affect the rate of decay?

A. I believe it would.

Q. All right. And of course, if water damage is not addressed when it occurs, it can worsen over time?

A. Yes, sir.

Q. And when you observed the conditions of the house in May -- and I believe you may have had another inspection of the house -- you're not able to actually date when those issues began to happen; are you?

A. If you're asking for a calendar day, no, sir. I don't believe I can differentiate between 2017 or '18. I can tell it's long term damage. But I cannot give a date.

Q. Well, you can say for certain it was 2018 or '17 or ---

A. I cannot. I cannot give you a time period. I can tell

you it's long term damage.
Q. It could have been then in 2019?
A. Could have been.
Q. And it could have been -- it could have started in 2020 at some point?
A. Could have.
Q. Because water, if there's a sufficient amount of it, can create problems fairly quickly?
A. It can.
Q. You don't know what the condition of the property was, the house was, in November of 2018; do you?
A. I do not. I did not inspect the house at that time.
Q. And you -- during your inspections you never actually observed water running and where it was going; right?
A. It was not raining that day, but I did observe water in the attic that had accumulated on top of a blue tarp.
Q. Right. But you didn't see it come in, where it came from?
A. No, sir. I was never there when it was raining outside.
Q. And that tarp, that just covers the back bedroom; is that right?
A. That's correct. Back bedroom leading towards the bathroom.
Q. All right. Now, the laundry room -- you reviewed the

pictures that Rizan Properties placed into evidence, I believe. And if you would like me to ---

A. Is that 3?

Q. Yes. That's Exhibit 3.

A. Yes.

Q. And you reviewed those; right?

A. Yes, sir. I have seen these pictures.

Q. Okay. If you would pull out picture number -- if you would pull out picture number -- I apologize -- picture Exhibit 3M?

A. I'm sorry, 3 ...

Q. 3M. It's a photograph of the laundry room.

A. 3M. Yes, sir.

Q. All right. And would you also pull out picture number 4P and picture number 5F. Do you have 5 up there?

A. I do.

Q. All right. Looking at these pictures, 3M was taken, according to Ms. Rigdon's testimony in 2019. And 4P and 5F were taken in 2021. Is that right?

A. To my knowledge, yes, sir.

Q. Okay. The door is open in picture 3M?

A. The door is open.

Q. The door cannot be opened, based on what's shown in Exhibits 5F and 4P, can it? The back door?

A. The door cannot be opened without pushing the ceiling

up into the air.
Q. So the laundry room has gotten worse since picture 3M was taken in 2019?
A. I could not confirm that.
Q. Well, the door is open in 3M; is it not?
A. It is.
Q. And that's better than a door not being able to open; is it not?
A. Whoever opened the door in 3M could have physically pushed the ceiling up in the air to open the door and then let the ceiling go again. I don't know how they opened it.
Q. You have no idea how that happened?
A. I'm sorry?
Q. You have no idea whether that happened?
A. I do not. I was not there.
Q. And do you think if somebody were taking pictures to document the condition of property they would go to the trouble of pushing up a ceiling in order to open a door, or would they rather just take a picture of that door being unable to open, as you and Mr. Haynsworth did in Exhibits 5F and 4P?
A. I can't assume what they were doing. Just the same I can't assume that they did not take another picture of that not being able to open. I don't know how many pictures they took that day and if one of those pictures represented that.

Q. Well, let's assume that all the pictures taken that day were contained in Exhibit 3, the ones you looked at?
A. Uh-huh (affirmative).
Q. Is that correct?
A. Could you ask the question again?
Q. All the pictures that were taken in May of 2019 as Ms. Rigdon testified are contained in Exhibit 3?
A. To my knowledge.
Q. So we don't have another photograph of the laundry room?
A. Not that I know of.
Q. That you're aware of. Let's talk about the front bedroom. If I recall correctly you testified that you observed wrinkled carpet?
A. Yes, sir.
Q. And that you believe that is evidence of water damage and moisture damage?
A. I believe it's moisture related.
Q. Okay. And the photograph that that references would be, for example, Exhibit 5G?
A. Yes, sir, it would.
Q. You didn't take any moisture readings in that bedroom; did you?
A. I did not.
Q. And you didn't take any moisture readings in -- and

that's the front bedroom; right?
A. That's correct. I do not believe my moisture meter will read through carpet.
Q. Okay. And you didn't take any moisture readings in the back bedroom either?
A. Not any interior ---
Q. You're ---
A. --- that I'm aware of.
Q. --- talking about the ones you did in the attic?
A. Yeah.
Q. But you didn't take them in the actual bedroom?
A. Correct.
Q. You didn't test that flooring?
A. I did not.
Q. And there was carpet in the back bedroom?
A. Not to my knowledge; no, sir.
Q. You didn't touch the carpet to determine whether it was wet?
A. I did not. I never believed that the carpet was wet. I believe it had -- that it was filled with moisture, not necessarily from direct contact with water, but from water being in the home.
Q. And you never pulled back this carpet to check the floor underneath it?
A. No, sir, I do not know what type of flooring was

underneath. Well, the carpet is pulled back in 5G.
Q. Right. But you didn't do that?
A. Sir, I don't believe so.
Q. Do you have -- if I can refresh your recollection, I believe you testified in your deposition that you had not pulled it back?
A. Okay.
Q. Would you agree with that?
A. If it's in the deposition; yes, sir.
Q. Okay. Now, as far as the back bedroom is concerned, you didn't actually see any water damage on the flooring of that bedroom when you observed ---
A. I did see evidence of water damage.
Q. But you didn't directly see -- if you look at page 5B, picture 5B, ---
A. Yes, sir.
Q. --- looking just at the flooring, you don't see any evidence of water damage in that photograph; do you?
A. I see what I believe is previous water damage. I see a floor that has been cut out and a new piece -- or a piece of OSB or what some people might refer to as plywood put in its place.
Q. But you don't know why that was put there; do you?
A. I do not know.
Q. And you don't know who put that there?

A. I do not.
Q. And looking at that, looking at that floor, there's no water damage to that particular floor?
A. Correct.
Q. Okay. And I'm showing you Exhibits -- excuse me -- look at Exhibits 3H and 3I. These are also photographs taken by the Plaintiff's agent apparently in 2019 ---
A. Yes, sir.
Q. --- and they also show the back bedroom?
A. They do.
Q. And you don't see -- and you reviewed these?
A. I did.
Q. And you don't see in these photographs any direct evidence -- any direct water damage in that room on these floors?
A. Sir, I see what I believe is water damage that's been repaired. I don't see any damage to the boards or flooring that's in the room at this time.
Q. Okay. And then the water damage you believe has been repaired, are you referring to, in Exhibit 3H, that square that looks like plywood?
A. Yes, sir, I am.
Q. Okay. And it's your opinion that there had been previous water damage so somebody removed that subfloor and installed this what you call an OSB?

A. Correct.
Q. But you, again, don't know who installed that?
A. I do not.
Q. Or why? You don't know why it was installed?
A. No, sir, I do not.
Q. Now when you inspected the laundry room, you talked about water seeping down, you know, into the subflooring, but you didn't actually inspect the subflooring in the laundry room or the bathroom; did you?
A. Correct. The subflooring is located under the floor tiles in the bathroom or what I believe is linoleum flooring, and in the laundry room. So I could not see the subfloor.
Q. And so you didn't take that up to examine it?
A. No, sir.
Q. And you didn't see any direct water damage to the flooring in the laundry room; did you?
A. Those floor coverings in the bathroom, which I believe is tile, and then linoleum in the laundry room -- no, sir, it's discolored from what I assumed was water getting to the floor.
Q. You assumed, but you don't know that that is what caused what you observed?
A. Correct.
Q. If you would look back to Exhibit 4P, which is the photo of the chandelier in the laundry room?

A. Yes, sir.
Q. You can't say, based on your inspection, when this condition started to occur?
A. No, sir. Are you asking for a month or a date?
Q. As specific as you can get.
A. I cannot.
Q. You can't say. All right. If you would also look at Exhibit 5C.
A. Yes, sir.
Q. And this shows what you believe to be water damage in the back bedroom?
A. It is.
Q. And that would be based on this line that seems to be running from the fan across to the edge of the wall?
A. Yes, sir.
Q. You can't say when that condition started to develop; can you?
A. I cannot.
Q. You also took a look at the bathroom which would be Exhibit -- if you would look at Exhibit 3K.
A. Okay.
Q. And if you take a look at the floor next to the vent and you see that kind of black spotting stuff?
A. I do.
Q. You can't say exactly what that substance or those

substances are; can you?
A. I cannot.
Q. You mentioned the laminate flooring in the living room and other evidence of water damage. I believe it was Exhibit 5H.
A. Okay.
Q. And you referred to those I guess edges of the planks kind of turning up. There could be other causes for that; could there not?
A. I do believe that it's moisture related.
Q. But there could be other causes for that?
A. (No verbal response.)
Q. Could there not?
A. I guess there could.
Q. Okay. And you can't rule out other causes; correct?
A. Can't rule them out. No, sir.
Q. All right. You can't explain how moisture is entering the living room or the front bedroom in your opinion based on what you observed; can you?
A. I can say that if water was entering the home and being collected in five-gallon buckets, that is proof that moisture was entering the home and therefore moisture is going to spread -- eventually going to spread through the home.
Q. Well, I'm talking about the photograph that was taken in the living room -- well, let's focus on the living room.

5H, in May of 2021, you can't explain how moisture is entering the house to cause that effect?

A. I didn't observe the moisture. I do know that moisture -- we know a hundred percent that water entered the home, that moisture entered the home.

Q. Years ago?

A. Started years ago; yes, sir. But I do not know -- we know moisture entered the home, and I believe this is moisture damage.

Q. But you can't connect what happened let's say in 2014 and 2015 with the photograph taken in 2021? You can't to a reasonable degree of certainty do that?

A. Sir, I guess I'm just not understanding the question. We know that moisture entered the home. We know that it was present in large quantities. Five gallon buckets. I believe that the laminate flooring and the carpet was caused by moisture, high moisture levels.

Q. But my question is, you can't explain how moisture was entering the home to cause that particular effect; can you? I can refresh your memory from your deposition.

A. If you're asking can I prove that this damage was related to the water getting in from the roof leak beyond a shadow of a doubt, then no. But I do feel that the laminate flooring and the carpet damage was caused by high moisture content levels in the home. And we know that water entered

the home.
Q. Okay. You didn't feel the floor; did you?
A. Don't reckon -- I don't believe so; no, sir.
Q. You didn't touch it to determine whether it was wet?
A. I don't recall doing that; no, sir.
Q. And you didn't take any moisture reading of the wood floor in the living room?
A. Correct.
Q. Also in the kitchen you didn't notice any specific water damage in the kitchen area; did you? I think the kitchen ---
A. I think it was noted in ...
Q. If you look at picture 3F.
A. Okay.
Q. Looking at this picture, which we, again, looked at during your deposition, there's no evidence of water damage sitting on the floor or, you know, affecting this floor based on this picture; is there?
A. I believe in our previous conservation in the deposition, I noted that there was a spot in the floor roughly a foot in front of the open door that I did not have a close-up picture of.
Q. Correct.
A. So that could have been damage in that area. I think we do have a picture of water damage in the kitchen. Maybe

not specifically related to the floor.
Q. Well, I'm talking about the picture that was taken in 2019.
A. Uh-huh (affirmative).
Q. Not the ones that were taken in 2021. But that spot you're referring to, to attempt to describe it, I believe it's positioned approximately between these two black spots and somewhat offset in the middle of those ---
A. Correct.
Q. --- from the black spots. Now, that is just a raised board; right?
A. Yes.
Q. Or what appears ---
A. What appears to be a raised board.
Q. And that could have been caused by improper installation; right?
A. It could have.
Q. So that in and of itself does not prove that there's water damage in the kitchen based on this picture ---
A. Based on this picture; no, sir, it does not.
Q. All right. If you would take a look at Exhibit 5B.
A. Yes, sir.
Q. And instead of looking at the floor, now if you'd look at that sort of bunching effect that's running along the edge of the doorway leading to the bathroom. Do you see that?

A. I do.
Q. You believe that that's evidence of water coming into the wall?
A. I do.
Q. You can't say when that started to occur? When that effect started to take place?
A. I cannot give you a date; no, sir.
Q. Okay. And it's possible that these kind of effects can happen quickly, depending on how much water is coming into a place?
A. Yes, sir.
Q. From reading Mr. Powers' Affidavit, you're aware that he ---
MR. HAYNSWORTH: Deposition.
MR. FESSLER: Thank you. Sorry.
Q. --- deposition, you're aware that he put some effort in, put some work in to repair the laundry room and bathroom area? Are you familiar with that?
A. Yes, sir.
Q. You're not aware of what the property looked like after he completed his repair efforts?
A. I am not.
Q. Also, you didn't get up on the roof when you were there to look at the place where that metal roofing meets the shingle roof to see whether there was a hole there or ---

A. Correct. After seeing the condition of the roof decking from the attic, I did not feel it was safe to get on top of the roof.
Q. Okay. What would your -- so Mr. Haynsworth posed you a hypothetical. I'm going to pose you a hypothetical. Let's say there were, you know, water coming in, there were gallon buckets catching said water in the laundry room and bathroom area at the time. What would have been the appropriate steps to take upon that event to, you know, ---
A. The first thing would have been to stop the roof leak and have it repaired.
Q. Okay. And what would you have recommended -- how would you recommend that be done?
A. Calling a licensed roofer.
Q. All right. In your opinion do you believe that the water is coming in at the point -- coming into the house at the point where that metal roof meets the shingle roof?
A. In that area; yes, sir.
Q. Do you believe water is coming in at other locations?
A. I believe that all water coming in is in the area of the laundry room/bathroom.
Q. And then it's spreading out?
A. I do believe so.
Q. Okay. So you presented a cost estimate after the deposition that we had, and I believe, isn't it true, that if

the repairs had been started or done say about two years prior to now -- this is 2021, let's say 2019 -- you expect the cost would have been less?

A. I do.

Q. And I believe the estimate you gave was between ten to twenty percent?

A. That figure seems correct.

Q. All right.

MR. FESSLER: I don't have any other questions for Mr. Osteen.

THE COURT: Any other questions?

MR. HAYNSWORTH: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MR. HAYNSWORTH:

Q. Jason, I think Mr. Fessler just asked you a question about water spreading out from there?

A. Yes, sir.

Q. I think it was where the leak is. Now, Mr. Powers never testified that he just put buckets in the area of the laundry room and the kitchen; did he?

A. I do not recall from his deposition.

Q. You recall from his deposition that he said he didn't even attempt ---

MR. FESSLER: Your Honor, I object. The witness just said he doesn't recall. If Mr. Haynsworth would like to

refer to ---

THE COURT: Abstain the objection.

MR. HAYNSWORTH: I wasn't trying to get him to recall anything he said he didn't recall.

Q. At any rate, do you recall where Mr. Powers discussed in his deposition watching the ceiling turn brown over a period of time until it collapsed?

A. I do. I recall in the deposition stating that I believe four separate five gallon buckets were being used to collect water. I don't recall the location -- the exact location they were placed. And I don't recall how many times they were emptied to collect more water.

Q. And in your experience typically, if you're dealing with a water leak, is it not true that water can spread very far from the original source of where it entered the building?

A. It can. It can defy gravity.

Q. Okay. For instance, when you were up in the roof and we've got the tin on a certain section and presumably in that general area is where the hole was because the tin was put over it to fix it. You went over pictures with moisture readings, not just in one spot of the roof deck but multiple spots. Were your moisture readings taken in roof decking beyond just immediately above where that tin was?

A. They were.

Q. Okay. Did you actually -- you said you were afraid to

go up on the roof itself. Why? What made you fearful?
A. When I pushed up on the roof decking, it would actually move ---
Q. Really?
A. --- a few inches up into the air. I could move the decking, and therefore the shingles on top. It's completely rotten.
Q. Okay. And you were asked some questions about, well, couldn't it have started at this date or started at that date. Are you aware of any water intrusion events beyond those testified to by Mr. Powers in his deposition?
A. I'm not.
Q. Okay. Mr. Fessler just asked you some questions about some efforts Mr. Powers made to repair the damage. To the extent that you observed the remnants of moisture and problems that moisture causes when you were at that house, is all the damage you saw to a reasonable degree of certainty consistent with the rain event -- or excuse me -- the water intrusion event or events that Mr. Powers testified to in his deposition?
A. They are.
Q. Okay. And if Mr. Powers had endeavored to repair that damage but repaired it incorrectly, didn't fix the leak, could that be responsible for some of the damage that exists today?
A. Correct.

Q. Because if he did not fix it properly by ---

MR. FESSLER: Your Honor, I object. Mr. Haynsworth is leading the witness at this point.

THE COURT: No leading.

MR. HAYNSWORTH: Okay. Sorry, Your Honor.

Q. Every bit of the damage that you observed in that house based on photos taken before you and I were out there a couple of weeks ago, and what you saw and testified about today, all of that would be consistent damage, would it not, of the initial water event which you're aware of, and an incorrect repair following that?

A. It would.

Q. Thank you, sir. I have no further questions.

MR. FESSLER: Just one brief question, Your Honor.

RECROSS EXAMINATION

BY MR. FESSLER:

Q. So you testified that you're not aware of any other water events like the ones described in Mr. Powers' Affidavit, but you don't have any knowledge what water events ---

MR. HAYNSWORTH: Deposition.

THE COURT: It's the deposition you're referring to?

Q. Deposition, excuse me. You testified that you haven't heard of any other water events. But you don't actually know

what water events occurred between when the buckets were placed and then when you inspected years later in 2021; do you?

A. I do know that water had accumulated on top of a blue tarp. So I know that water continued to come into the home after the repair was made.

Q. But you don't know ---

A. I don't know those specific events; no, sir.

Q. Okay. No further questions.

THE COURT: All right. May this gentleman be excused?

MR. HAYNSWORTH: He may.

MR. FESSLER: Yes. Nothing further.

THE COURT: Thank you so much for joining us. Mr. Haynsworth, how many other witnesses do you have?

MR. HAYNSWORTH: Your Honor, that completes my case in chief.

THE COURT: All right. Mr. Fessler, how many witnesses do you have?

MR. FESSLER: Just Mr. Powers, Your Honor.

THE COURT: Okay. Why don't we take about a -- do you want ten or fifteen minutes?

MR. FESSLER: Ten is fine with us, Judge.

MR. HAYNSWORTH: Whatever the Court ---

THE COURT: Start back in ten minutes.

BREAK

THE COURT: Call your next witness, please.

MR. FESSLER: Yes. Mr. Jerry Powers.

THE COURT: If you'd place your left hand on the bible and raise your right hand, please, sir. Do you swear to tell the truth, whole truth and nothing but the truth?

MR. POWERS: Yes, sir.

THE COURT: Thank you, sir. If you'll come around and have a seat, please, sir. And if you'll state your full name, please.

MR. POWERS: Jerry L. Powers.

THE COURT: All right. Thank you.

JERRY L. POWERS,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. FESSLER:

Q. Mr. Powers, how did you come to rent 39 2nd Avenue from Rizan Properties?

A. Well, I was living on 109 Jackson Street in Laurens, South Carolina.

Q. And how did you first come across Mr. Rigdon?

A. I was walking around the street and Lukas had a house down there. He was working on it. So I spoke to him, how you doing? And then we got into a conversation about a house. I said, Jackie work in Mauldin. We're looking for a house in

Greenville to rent. He said I have one I'm working on.

Q. And Jackie is who?

A. My friend, fiancé. She's deceased now.

Q. And she passed away when?

A. Two years ago, July 1st.

Q. 2019?

A. Yeah.

Q. All right. So we've talked about a lease agreement and an option agreement that were signed in 2013. Did you have a previous contractual relationship with -- was there a previous contract with Rizan Properties?

A. We started -- first, we started renting it in '11, 2011, for the first ---

MR. FESSLER: I should have pre-marked this. But this is the 2011 lease agreement that I would like to enter into evidence.

MR. HAYNSWORTH: Your Honor, I have a relevancy objection since we're here suing and ---

THE COURT: What is the relevance of the 2011 agreement?

MR. FESSLER: Your Honor, the relevance is to, first of all, explain how the relationship started and then how it changed such that -- I mean the lease agreements are different.

Second of all because the Residential Landlord Tenant Act

is at issue, this particular lease agreement refers to the Residential Landlord Tenant Act and a landlord's obligations under said Act. And this a lease that Mr. Rigdon himself provided, thereby indicating that he was aware of those obligations.

THE COURT: Go ahead. Objection overruled.

MR. FESSLER: And so you want to stipulate that this is the ---

MR. HAYNSWORTH: I'd just like a copy. You got an extra copy? I did not bring the entire file.

MR. FESSLER: Actually I do. And I guess I'll enter this as Plaintiff's Exhibit 5.

(WHEREUPON, Plaintiff Exhibit Number 5 was marked and admitted into evidence.)

THE COURT: Subject to, of course, Mr. Haynsworth's objection.

MR. FESSLER: Yes, Your Honor.

Q. So, Mr. Powers, how did that initial leasing arrangement change in 2013?

A. Well, he came to me and Jackie one day and said I've got a question for y'all. I'd like to give you an option to buy. We can't afford that. He said I can work something out with you. So me and Lukas and Jackie went to the bank to try to purchase the house. My credit wasn't good enough. Nor was hers. So he said I'll work something out with you. Okay. He

said we'll get together. And he took us to a lawyer over by Cleveland Park, an attorney. I don't know his name exactly. But he took us to an attorney and we did paperwork. I signed, Jackie signed, the attorney signed as witness. And we would purchase the house in eight years. After eight years we would own the house at five fifty a month. We would own the house. It would have been 2021.

Q. The eight years would have expired in 2021?

A. We would own the house.

Q. Yeah. Was the issue of maintaining the house or maintenance to the structure of the house, was that discussed at the closing, let's call it?

A. No. None of that was discussed.

Q. All right. I'm going to show you -- and I know you're mostly blind, but I believe you brought a magnifying glass?

A. Yeah, I've got a magnifying glass.

Q. I'm going to show you an article in that lease agreement that is titled Article VII, Maintenance and Repairs. It's on the second page. And it says the parties -- that would be you, Ms. Pearson and Rizan Properties -- do hereby agree that the maintenance of the structure of the house and the major systems, electrical, plumbing, heating and air, shall be the responsibility of the Lessee, which would, in this case, refer to you and Ms. Pearson. Was this provision reviewed or discussed with you at the closing?

A. No.
Q. All right. When is the first time that the issue of who was supposed to maintain the structure of the house, when is the first time that came up?
A. The first time it come up, I was sitting in the house and I heard the wind and I heard something go boom. So I kind of eased up, thinking somebody was breaking in the house. I'm in a bad area anyway. The house is in a bad area. So I eased out the back door and looked. A limb had fallen across the top of the house. It hit the top of the house and was laying on it, which was a big old limb. Probably ten foot long.
Q. And about what year did this happen?
A. Between '14 and '15.
Q. All right. Can you describe how the limb was situated on the roof?
A. It was situated more like laying across -- you know the laundry room, across to the top where the chimney sits. All the way across.
Q. All right. Let me show you Exhibit 5L and -- I don't know a great way to do this, but could you take a pen and place it ---
A. Yeah.
Q. --- on 5L approximately how the tree ---
A. See this tree right here? There was another tree that size right here where all this stuff done grown. Huge tree.

Q. Okay.
A. So the limb came off just like that and sort of crossed -- come across here, across this and come to the top where that chimney like that. So something like this coming across here, it was laying on top of the house.
Q. Was it hanging off of the tree?
A. It was laying off the tree onto the house like down on it.
Q. So the limb had ---
A. It had landed on the house, laying on it, hanging over from the top of the house, on the top like that.
MR. FESSLER: Has the Court been able to sort of see how Mr. Powers ---
THE COURT: Yes, sir.
MR. FESSLER: I was trying to figure out a better way to do that. That was the best I could come up with.
Q. Mr. Powers, so after this tree fell on the house or the tree limb -- excuse me -- describe what the limb looked like?
A. It was big, big around the inside of a car tire. But it was like from me -- just say from me to you all the way across there.
Q. All right. So it was -- and I don't know how much -- one, two, three ---
A. It was way out.

Q. -- four, five, six, seven, eight, nine, ten, eleven. Almost eleven heel to toe steps from me to the witness box. And at that point did it fall during a rain storm or what was going on?

A. Well, the wind was just blowing at the time then. Had a wind just blowing, heavy wind.

Q. There was no rain?

A. Not that day. Just wind blowing.

Q. How did the limb come off the house?

A. I called Lukas. I called him and told him a limb had fallen on the house. He said I'm at work but I'll be by there and take a look at it. So he came, you know, came up the driveway -- up my driveway -- come up the road and the driveway is like this. He come over there and looked at it. And I told him -- he said he couldn't afford it. But I told him I'd do it for -- you gotta take the whole tree out. I said twelve hundred dollars. He said okay. I'll take it off the rent. Because I had to get Darlington Bridge and Stevie, those are the two guys that came and helped me get the tree down. We cut the tree down and took the limb and put everything beside the road and cut the wood up.

Q. All right. So let me just make sure for purposes of clarity, tell the names of the people that you got to help you take the tree down?

A. Darlington Bridge, he died last week, and Stevie.

Q. Stevie. Okay. And what was your occupation?
A. Stevie and Darlington?
Q. No. What was your occupation at that time?
A. You mean like -- what you mean?
Q. Like what do you do for -- what did you do for a living at that point?
A. Cut trees.
Q. You cut trees?
A. Yeah.
Q. In addition -- so tell what happened to the limb? Did you take it off?
A. Yeah, we took it off. Yeah.
Q. And I think you testified that you also cut down the tree?
A. Cut the tree about ten foot down, but it was bigger -- the one you see there, it was that size of a tree. It took us all day to do that tree. It was huge. And pieces from that tree is still there. Pieces of the trunk of the tree. It came off.
Q. I want to show you Exhibit 5M, if you'll pull out your magnifying glass. And if you would look down I n the corner, there are some stumps down there beside the tree. Do you recognize ---
A. Yeah, those are pieces from that tree. Because it was a big tree. Got pieces -- another piece should be right

beside that, beside the house.
Q. All right. So you believe that these stumps are from the tree that you took down there?
A. Yeah, from there.
Q. Did Mr. Rigdon actually get up on the roof when he came to look at the tree?
A. No. He didn't get on the roof.
Q. After you took down the tree did Mr. Rigdon inspect the roof for any kind of damage?
A. No, he didn't inspect it. No.
Q. All right. So did water problems ever develop with any parts of the house after that limb fell?
A. It began later on and started turning brown. You know, like a spot would turn brown.
Q. Where?
A. Inside -- in the laundry room.
Q. In the laundry room?
A. Yeah, little brown spots started beginning.
Q. All right. Were there other parts of the house where you noticed brown spotting?
A. No. Only that spot in there at the time of that.
Q. Okay. And what did you do in response to seeing that?
A. What did I do with that? I talked to Lukas about it. I told him that, you know, that thing was turning brown. He made a statement to me, I'm not responsible for nothing but

the air conditioning. Eight years anything happen to the air conditioning, I'm responsible. Anything happen to the house, you're responsible because you are purchasing the house.

Q. What was that last part?

A. We was buying it. So I had to fix it.

Q. I got you.

A. That's why I was, you know, doing what I was doing.

Q. So did you make repairs to the house at that time?

A. Not at the time right then.

Q. And why not?

A. Because I didn't have the money to buy the stuff at the moment then. Once I got the money up I started buying the wood to go there, ten foot top, I had to replace it. The wall, all the wall, had to cut it all out.

Q. Well, let's talk about that.

A. Okay.

Q. What prompted you to make these repairs?

A. We had rain storm for a whole week, just rain, rain, rain. And that water started gushing in. That's when it started. I took the five gallon buckets, I had to put them in the laundry room and then my bathroom, because the water was coming so much. And I didn't sleep that night because I kept getting up throwing the water into the bathtub because it was running so bad.

Q. All right. And where was the water coming into the

house? What rooms?
A. In the laundry room and the bathroom.
Q. Any other rooms?
A. I didn't see no other water. No other water was coming in at that time.
Q. Okay. So what happened to the ceiling of the laundry room during that event?
A. It pushed it down. It made it come down, so I cut it out later on and replaced all the top. And I replaced all the walls. It even was coming in the hot water heater. So I had to replace the pipes on the hot water heater.
Q. Okay. When you say you replaced the wall of the laundry room, what does that specifically mean?
A. I had to tear the whole wall down. I had to push it out. If I push it out, you could see the streak. I had to replace all that.
Q. All right. So was -- the laundry room wall was entirely see-through?
A. Yeah. Well, once I pushed it out -- it had started bucking so bad I had to just tear it out because it had -- swelling up, started swelling.
Q. How long -- okay. So what did you do with the ceiling? How did you do that?
A. I tore it all the way out. And then I ran joists down where it had -- I ran some new joists down so I could get that

board back over where I could screw it back up. I screwed it back up.

Q. All right. And what about in the bathroom, was there any damage in the bathroom?

A. Yeah, bathroom was the same way. Pushed it down in the bathroom. The wall on the side where you could -- she said -- we had to replace all that. Had to cut all that out.

Q. All right. I'm going to show you Exhibit 4P. And this just -- if you'll look there. Do you notice a light fixture there?

A. Yeah. That's in the laundry room.

Q. Who put that light fixture ---

A. I put that. That's a new one. All that is new right there.

Q. And was that when you were repairing the roof?

A. Yeah. See, the roof up here, all this is new. Because I had to replace that with all new boards. You can see the door here, that's all new. That's new. That's new. All this is new.

Q. When you made those repairs ---

A. Yes.

Q. --- it was new? All right. The floors, did you notice any water damage to the flooring in the laundry room or the bathroom when this event occurred?

A. No. It didn't hurt the floor. But I did put some

linoleum down because she wanted to change it to another color. She wanted to change the one in the laundry room and one in the bathroom. So I went and bought the boxes of the linoleum -- it's the peel type -- and put it down.

Q. I'm going to show you a picture, Exhibit 3K and Exhibit 3M. Now, these are photographs of the floors that I guess somebody on Ms. Rigdon's behalf took in 2019. Are these the ---

A. That's the new floor that I put down, the peel I put down there.

Q. Okay.

A. I put that all down the ---

Q. And that's just peel and stick flooring?

A. Peel and stick.

Q. All right. How much have you spent in costs to make the repairs that you performed?

A. All that, talking like thirty-five hundred dollars, to buy all that stuff that we placed.

Q. And how much time did it take for that ---

A. About a month because I had to keep working on it, working on it, working on it.

Q. All right. So when the water event happened, when the ceiling started leaking badly and you had to put down gallon buckets, did you notify Mr. Rigdon?

A. Yes. I called him.

Q. Okay. What was that conversation?
A. He is not responsible. He only responsible for the air conditioning. Said what can I do?
Q. I'm sorry. Say that again.
A. He's only responsible for the air conditioning. He's not responsible for fixing nothing at the house.
Q. All right. And over the course of your month or so to make these repairs do you know whether Mr. Rigdon observed you in the process of making the repairs?
A. He came to collect the rent money like one night between five and six because when you come in, you come straight right here. You come in here and look straight back right here as I'm working. He came in ---
Q. When you say he came in, where did he come in?
A. In the living room.
Q. In the living room?
A. And my living room is straight to look through. You've got your living room, kitchen and your laundry room. And that's an open door. You have no other choice but to see what I'm doing.
Q. So you can see directly from the living room all the way back through ---
A. Just like I'm looking at you.
Q. Now, what about so that that back side of the house where the -- where you were working -- let me just show you

Exhibit 5A for reference. All right. So you had completely taken down the walls ---

A. All this press board wood. See back here? Can you see that right there? I took all of it out and put new press board wood all back here because all that had messed up so bad from here to here. I put all new press board wood back here.

Q. Okay. And is this street that we can see in that photograph, is that Shaw Street?

A. No. That's not Shaw Street. Shaw Street is the front part, but all the traffic got to come down this way. Then you turn right onto Shaw Street.

Q. Are you sure about that?

A. I'm positive.

Q. Well, let me show you a different photograph. This is the -- you may be mistaken about that. This is ---

A. My eyesight is kind of bad.

Q. This is a photograph from the Greenville County Tax Office. The area marked in red is your house?

A. Yeah, right here.

Q. Right. We can agree to that. So the house -- the front of the house is on 2nd Avenue?

A. Yeah, 39 2nd Avenue.

Q. When you walk out that front door, you're looking at 2nd Avenue?

A. That's 39 2nd Avenue.

Q. And when you look to the side, if you were to walk out the front door and turn left or walk out the back door and turn right, you would be looking at Shaw Street?

A. Yeah, all that.

MR. HAYNSWORTH: Your Honor, just goose for the gander, if we wouldn't lead, please.

THE COURT: Don't lead.

MR. FESSLER: Yes, Your Honor.

Q. So in any event, back to the point, the back side of this house is visible from the side street? From this side street in Exhibit 5A; right?

A. Right.

Q. I'm going to also show you another photograph that Ms. Rigdon's agent took. It's Exhibit 3J. Would you look at this light fixture at the top of the ceiling there?

A. Yes.

Q. What is this a photograph of?

A. The top of the ceiling of the bathroom.

Q. And who installed that light fixture?

A. I did.

Q. You did?

A. I installed that.

Q. All right. After you made these repairs to the bathroom and the laundry room, did you notice any additional leaking in those rooms during the rest of the time you were

residing ---

A. No more leaking in the laundry room or the bathroom.

Q. All right. I'd also like to show you -- because the Plaintiff's witnesses talked about flooring issues. So I would like to show you -- all right. This is a photograph, Exhibit 3H. Do you recognize this room?

A. Yes.

Q. Okay. What room is that?

A. That's my bedroom.

Q. All right. Do you notice a different color flooring in the bottom of 3H versus in the top of 3H?

A. This right here is where I was putting down -- I was putting down hardwood myself.

Q. All right. Explain to the Court what this picture -- what was going on in this picture?

A. Okay. In this picture right here there was carpet in here. So I took the carpet up and I was going to start replacing it with hardwood through here all the way back to the bedroom. I was going to do it with hardwood. Now this spot right here, when I pulled the carpet up, apparently whenever Lukas and them was working on the house, they must have did this. This right here.

Q. When you say ---

A. They cut this out and replaced that.

Q. Right. Just so the record is clear, could you give a

visual description of what that looks like?
A. Press board wood.
Q. Okay. And it's different from ---
A. My hardwood.
Q. --- the hardwood?
A. Yeah.
Q. And it's also different from the other wood ---
A. This is the old time hardwood where they had covered with carpet.
Q. Okay. And so who -- did you place that ---
A. No, I didn't do that. That was there when I pulled that carpet up.
Q. That was already there. All right. Now, I'll also show you a picture that was entered as Exhibits 3B and 3C. These are of the same room. Do you recognize this room?
A. That is -- that was my grandboy's bedroom, Messiah.
Q. Messiah lived in that bedroom?
A. He slept in this room here.
Q. All right. And is that the front bedroom?
A. That's the front bedroom.
Q. On the front of the house?
A. Yeah. When you walk straight in, that's your first bedroom to your right.
Q. Now, the Plaintiff has contended that these wrinkling patterns in the carpet indicate a moisture problem?

A. No. This carpet is over seven years old. It was so think and cheap and that's why it did that. And that's what I was taking out and putting the hardwood in. As the years -- none of these rooms was wet. None of this -- no water got in none of these rooms.

Q. All right. Let's fast forward to -- well, actually let me ask a different question. I'm going to show you Exhibit 4Y. I just want you to focus on the wall, the bluish -- I'm bad with colors.

A. Gray.

Q. Grayish wall. Who put that paint up there?

A. They had painted, but I would paint it every year. Every year I would paint my own -- you know, paint it over.

Q. Okay. So this picture was taken in 2021. Who do you believe -- do you believe this is paint that you put up there?

A. Yeah. I think that's paint that I had put up there ---

Q. All right.

A. --- during the time when I started painting.

Q. When you painted the wall -- this would be your bedroom?

A. Right.

Q. Was this bubbling effect ---

A. No. That bubble was not there when I painted it.

Q. Okay. When do you think you would have put the paint in this back bedroom on ---

A. I painted between '14 and '15, painted that back bedroom.

Q. All right. Let's move up to 2018. How did you come to move out of 39 2nd Avenue?

A. Lukas came over one day. He made a statement that I'm going to have to sell this house.

MR. HAYNSWORTH: Your Honor, I've held my tongue, but I'm going to object on two bases. One is hearsay and the other I believe would be under the Dead Man Statute. I may be incorrect on the Dead Man Statute. I'll confess my familiarity with it is limited. But I do not believe he can testify as to what someone else told him under the standard hearsay objection.

THE COURT: Could he testify as to the agent of the LLC at that time?

MR. FESSLER: Your Honor, ---

MR. HAYNSWORTH: Not if the agent is not here, I don't believe.

THE COURT: Mr. Fessler.

MR. FESSLER: That issue occurred to me so I sort of looked at some case law. You know, we are dealing with a LLC. The individual who is having the conversation has to be deceased. A LLC is an entity that is absolutely distinct from its members. That's the same argument that Rizan Properties argued in the Probate Court. We had a

previous case where we filed this matter initially in the Probate Court and they said, no, this doesn't involve Mr. Rigdon's estate. This involves a separate entity. It's got to be kicked up to the Circuit Court because -- and then the Probate Judge, Judge Jennings, agreed that a LLC is an entity distinct from its members, Section 33-44-201. So there's no person that's deceased here for the purposes of activating the Dead Man Statute.

I would also point out that case law -- our Courts have signaled an extreme reluctance to extend the Dead Man Statute beyond its clearly intended language. And I would quote from *Hanahan v. Simpson* where they talk about -- it just says, because the statute is an exception to the general rule of witness competency, it requires a restrictive reading on which the party requesting it, the muzzling effect bears the burden. And they cites some authority for that. Then they say, the Dead Man Statute has been sharply criticized in recent years. Professional McCormick calls it a blind and brainless technique, which in seeking to avoid injustice on the one side, ignores the equal possibility of creating injustice to the other. It has also been disparaged by numerous commentators; and they cite the commentators. And then the Court says, in response to such criticism, the courts of this state have strictly construed the rule and endeavored to limit its applicability to cases which clearly fall within its

intended scope.

THE COURT: I'm going to allow the testimony simply because it's the agent -- it's a presenting agent of Rizan Properties. So subject to Mr. Haynsworth's objection, you may go ahead.

MR. FESSLER: Yes, Your Honor.

Q. So Mr. Powers, explain again how you came to move out 39 2nd Avenue?

A. Lukas came up one day and said I need to talk to you and Jackie, my fiance. She's deceased. He said I've got to sell it. We like, why? He said because I've got -- I'm behind on my alimony, child support, and I owe -- forgive me -- he had been to the psychiatric ward. He said I'm going to have to sell it so I can pay this up.

Q. Had Mr. Rigdon -- before you had this conversation with Mr. Rigdon had he ever given you a previous written notice that you were in violation of the lease?

A. Never.

Q. All right. After this conversation -- I'm going to show you an exhibit that has been entered as Rizan Exhibit Number 2. This is a letter title Eviction Notice dated December 3rd, 2018. And is this a letter that Mr. Rigdon delivered to you and Jackie?

A. Brought it to the house.

Q. Okay. Is this the only written document you've ever

gotten from Mr. Rigdon?
A. Only document ever.
Q. All right. And what happened in response to Mr. Rigdon delivering you and Ms. Pearson this letter?
A. He wanted me to sign it and her to sign it. I told him I wasn't going to sign it.
Q. Okay.
A. Because I don't think that's right.
Q. And did you eventually move out of 39 2nd Avenue?
A. Not at the moment then, till January. She had went and found a house.
Q. All right.
A. And she was wanting to move. The house was a thousand a month, so I said I can't just let her go like that. I know you can't afford that; a thousand dollar a month house, so I've got to try to go with you and help you.
Q. And when was the last month that you made a payment to Lukas Rigdon?
A. January.
Q. And how do you know that?
A. I brought the money to him. Because we wasn't in the house. I brought it to him.
Q. All right.
A. Jackie told me to go ahead and pay it. She said, give it to him.

Q. That was January of what year?
A. Between '14 and '15. I don't remember exactly. It was in ---
Q. Let me refresh your memory.
A. Yeah. I can't remember exactly.
Q. So this letter, the eviction notice is dated in December of 2018?
A. Right.
Q. So when you say you paid him in January ---
A. She told me to go ahead and pay him in January.
Q. What year?
A. I don't exactly remember.
Q. Was it after the eviction notice?
A. Yeah. It was after the eviction notice. It was after that.
Q. Would that have been January of 2019?
A. Yeah. I still paid him anyway.
Q. Okay. So when you moved out of the property, did you notice any observable leaks in the laundry room at that time?
A. Wasn't nothing. Everything was straight.
Q. Did you notice any leaks in the bathroom at that time?
A. No leaks in the bathroom. No leaks in the laundry room.
Q. Were there any leaks in other parts of the house that you noticed at that point?

A. Not at that point. After that now -- you want me to go ahead and say it?
Q. All right.
MR. HAYNSWORTH: I believe he was answering, Your Honor.
Q. Did you finish?
A. The only leak I noticed after I fixed that one was when that water started dripping down in my bathroom -- I mean on my bed.
Q. Okay. When was that?
A. It was in about December.
Q. December of what year?
A. Between '14 and '15.
Q. All right. How did you resolve that?
A. Went to Harbor Freight and bought a tarp.
Q. Okay.
A. And I got it -- because my eyesight was bad, I had surgery on my eye, and I laid the ladder up and put the tarp up in there to keep the water from hitting my bed. Because Jackie was complaining that you're messing up this nice furniture we got. So I put the tarp up because they was working on my eyes because I couldn't go up there. I couldn't even see a dime on the ground.
Q. Do you know where that leak was coming from?
A. It was running from right by the ceiling fan. You

know, just coming down from the ceiling. You know the ceiling fan? That's where the water was coming from. Because my bed was right under the ceiling fan.

Q. In the bedroom. All right. I want to show you show you Exhibit 4O. Would you take a look at this? Do you recognize this ceiling component?

A. Yeah, that's the bathroom.

Q. All right. Do you recognize this thing hanging down by wires?

A. Yes.

Q. Okay. Did the house look like this -- did the bathroom look like this when you moved out?

A. No. No. That was up. Everything was still there.

Q. All right. I'm going to show you Exhibit 4P, which is -- do you recognize this photograph?

A. Yes. That's the laundry room.

Q. All right. Do you see how the ceiling in this photograph is sunk over the door frame?

A. Yeah.

Q. Did the laundry room ceiling look like that ---

A. No. It didn't look like that when I left.

Q. --- when you left?

A. No.

Q. All right. Do you know -- since you moved out in December of 2019, are you aware of whether or not other

individuals have been in and out of that house?
A. I'm aware that there's homeless people been living in there. I've taken pictures of them -- of them in there. And they trashed up the property. Threw stuff all over the yard, and everything.
Q. All right. I'm going to show you four pictures that I guess have been pre-admitted, unless there's any objection. These are identified as Plaintiff's -- well, I've written Powers, but they should be Plaintiff's 2A, 2B, 2C and 2D. These are black and white, but are these pictures that you sent to me?
A. Yeah, with the homeless people living there.
Q. Okay. And when were these pictures taken?
A. These were taken this year. You can go by there at night and people sleeping on the porch at the moment right now.
Q. And what does picture 2A show? What does that picture show?
A. Clothes and stuff they had like on top of the front. On top of the front, you know, like on the front.
Q. Right.
A. All this stuff was all over there.
Q. What does picture 2B show?
A. Trash all over the -- you know, this is the front porch. The front porch is here. Trash here.

Q. What does picture 2C show?
A. Where they tried to get inside the house. That was a deadbolt right there, a lock.
Q. So when you observed the property was that handle missing?
A. No, no. The handle wasn't missing.
Q. Did it look like this picture?
A. No, no.
Q. Did the front door look like ---
A. When I went there and looked ---
Q. When you took this picture ---
A. Yeah, it was like that. That's the way it looked where they broken in, going in.
Q. And 4D -- or 2D, excuse me, what does this show?
A. Trash everything. People had been sleeping on the back, sitting there and everything.
Q. All right. I'm going to show you another photograph that was taken by Ms. Rigdon's, I guess, agent, it's Exhibit 3F. It shows a picture of the kitchen and shows a picture of -- specifically I want to show you the cabinets. Do you know how the cabinets came to be in that condition?
A. No. When I left the cabinet doors were on here, here, here. There was a dishwasher inside of here. Dishwasher here. None of this was like this when I left.
Q. All right. When you left what was your general

impression of the house?
A. You mean when I left?
Q. Right. What was the condition of the house?
A. It was in great -- livable. It was livable when I left.
Q. Did you want to remain living in that home?
A. Yes, I wanted to remain living in it.
MR. FESSLER: I have no further questions for Mr. Powers.
THE COURT: Your witness.
MR. HAYNSWORTH: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HAYNSWORTH:

Q. Hey, Mr. Powers.
A. How you doing, sir?
Q. I'm well. How are you, sir?
A. I'm fine, sir.
Q. One of the initial exhibits that your lawyer asked you about was the first lease; not the one we're here fighting about but the ---
THE COURT: Here's the first lease.
MR. HAYNSWORTH: The first one.
Q. So now this that was marked as Exhibit 6, that's the first lease that you and Jackie did with Lukas; is that right?
A. Yeah. In 2011, yeah.

Q. Isn't that what you told Mr. Fessler, that that was the ---

A. We read that one the first time.

Q. Right. Y'all were walking along and you saw him and you did a lease with him, and this is that lease?

A. Yeah. What I was saying was I was living in Laurens at 109 Jackson Street.

Q. Yes, sir.

A. And I was going down the street. Me personally. Jackie was working. And Lukas was working on a house that he owned in Laurens.

Q. Right. And you talked to him and y'all wound up doing this lease?

A. Yes. We did a lease to rent.

Q. Right. You and Jackie and him?

A. Right.

Q. Okay.

A. To rent.

Q. And this is the lease that y'all first did; right?

A. Let me look. Yes.

Q. Okay. And let me just flip over, if you don't mind, to the last page where we've got signatures. Jerry Powers, is that your signature?

A. Yes.

Q. Okay. I don't see Jackie anywhere on there?

A. Because she was at work and I did it.
Q. Okay. So Jackie never signed this lease?
A. She didn't sign it. She was at work.
Q. Right. But as far as -- she never went back later and signed this lease? You don't have a copy that's got Jackie's ---
A. I don't have no copy of her.
Q. But you and Jackie were both renting from Lukas?
A. Right.
Q. Okay.
A. I was making the payment.
Q. Okay. And so when you sat down to -- did Jackie -- did you carry this and show it to Jackie before you signed it when y'all were thinking about renting from Lukas?
A. I don't remember.
Q. You don't remember?
A. No.
Q. Well, do you know if Jackie ever saw this document?
A. I'm sure she probably saw it.
Q. Well, how would she have seen it?
A. Because we lived together.
Q. So you would have shown it to her ---
A. Yeah.
Q. --- when you got it?
A. Yeah. Yeah.

Q. Okay. And did you read this document before you signed it?
A. No, I didn't read it.
Q. You didn't read it. You just signed it?
A. (Affirmative nod.)
Q. Do you typically sign documents that you don't read ---
A. No.
Q. --- Mr. Powers?
A. I have a problem with my eyesight. That's why I use this right here.
Q. Right. But you've had occasion to sign documents before?
A. If I've got my thing I'll look it and then I'll sign it.
Q. Well, how about twenty years ago, thirty years ago when ---
A. I ain't never had to sign no documents. Because back in the day then, they didn't give you a document when you rent houses. You take ---
Q. So you never read and sign any documents?
A. No.
Q. Well, sir, you've had some experience with our criminal system; have you not?
A. I ---
Q. You've been arrested for some crimes; have you not?

A. Yes, sir.

MR. FESSLER: Objection, Your Honor, relevance.

Q. And in connection ---

THE COURT: Hold on. Sir?

MR. FESSLER: Relevance. I don't know if he's attempting to impeach Mr. Powers, but I don't know what ---

MR. HAYNSWORTH: I'm attempting to establish documents that Mr. Powers in his life experience may have had occasion to read and sign.

THE COURT: All right. For that limited purpose.

Q. Okay. Mr. Powers, -- Mr. Powers, as recently as -- as recently as May 29th of this year, you were arrested; weren't you?

A. Was I arrested?

Q. Yes, sir. Were you arrested on 5/29/21 for driving under suspension, failure to pay ---

A. You know why ---

Q. Were you arrested?

A. Yeah.

Q. Okay.

A. Can I explain to you why?

Q. I don't need to know why. That wasn't my question. In connection with your arrest, sir, were you given any paperwork? Did you have to sign anything having to do with

your arrest?
A. I didn't have to sign nothing because what happened, when they pulled me over I was on the way to the hospital because my heart was bad. And they said when you've got a heart problem, come to the hospital. They did not do nothing to me. They didn't arrest me. In fact, they didn't arrest me. He just wrote that up. I wasn't arrested. They took me to the hospital.
Q. You weren't ---
A. No, sir, I wasn't arrested. And I've got proof of that.
Q. Okay. All right. So you say no documents that you had to sign in connection with that?
A. No. I never signed nothing.
Q. Let me ask you about another one. Now back in 1990 your eyesight was pretty good; right?
A. Yeah.
Q. Okay. Were you arrested for burglary in 1990, April 12th of 1990?
A. I wasn't never arrested for no burglary. I don't know where you get that from.
Q. Well, I ---
A. I don't know where that come from
Q. I got it from Jerry Powers ---
A. I ain't never been arrested for no burglary.

Q. --- arrest date 4/12/1990 burglary.
A. I ain't never been arrested for no burglary.
Q. Okay.
A. I can say that, now.
Q. How about narcotics possession, would ---
A. I have been arrested for that in 1990.
Q. May 4th?
A. Did a year in prison for it.
MR. FESSLER: Objection.
THE COURT: 1990, we're just too far afield. So I'm going to sustain the objection.
MR. HAYNSWORTH: Okay.
Q. So you've never had to execute any documents? You've never had to read documents and sign them? Is that what you're telling me?
A. When I went to Court I pleaded guilty.
Q. Right. Just out in the world, you know, like -- you're telling me that you didn't read either of these leases?
A. No, no, no.
Q. You just signed them?
A. Just signed them.
Q. Okay. Well, what if this ---
A. Because I know I was guilty for what I did.
Q. Well, what if these leases said something that you didn't agree to? You knew that by signing it you were

agreeing ---
A. That's why I would let Jackie look at them.
Q. I see.
A. Because she was my second eye. At the time of this I couldn't see.
Q. Okay. So you -- this first one, Jackie didn't see to explain to you because she was working?
A. Right.
Q. That's the one y'all rented. But when y'all did the other one ---
A. We went to an attorney.
Q. Right. But did you have Jackie ---
A. There ---
Q. --- read this lease to you?
A. Yes, sir.
Q. Okay. So this one that we marked as Exhibit 1, you knew what it said before you signed it because Jackie had read it to you and explained it?
A. Yes, sir.
Q. Okay. And then did you have any questions for Jackie, you know, what ---
A. No.
Q. Okay. And after Jackie explained it to you, then y'all went to the lawyer's office together; right?
A. Right.

Q. And it was the lawyer, Mr. Heckman, and his staff ---
A. His witness.
Q. His witness?
A. Jackie, me, his lawyer and Lukas.
Q. And Lukas. And y'all all sat down and talked about what y'all were doing?
A. Right.
Q. And then that day you signed this lease that we've marked as Rizan Exhibit 1. That's your signature back there, Jerry Powers. Right?
A. Yes, that's my signature.
Q. Okay. And even though you didn't read this before you signed it, Jackie had read it to you?
A. She had to read it because of my sight.
Q. Because of your eyesight. Okay. Okay. And as far as you know, she read everything in there that ---
A. I'm pretty sure she did.
Q. And did she read it to you even when y'all were there at the lawyer's office?
A. No, no, she didn't read it then.
Q. This was when y'all were at home and had some time -- to spent some time and not be in a rush about what it said?
A. Yeah. Yes, sir.
Q. Okay. All right, Mr. Powers, so you had said that you were responsible for maintaining that house; right?

A. Yes, sir. That's what he told me. He was not responsible.
Q. And what's what the lease you signed said, too; wasn't it, that you were responsible for the house?
A. I didn't read that. Jackie might have. I didn't read it. Can I talk? I mean will I be able to speak?
Q. Well, what I'm trying to figure out, Mr. Powers, is you told us that Jackie read the lease to you and you signed it. And the lease has some provisions in it about your responsibilities; right? Like you were responsible for, as an example, this says that -- bear with me -- this right here. The parties hereto ---
THE COURT: What paragraph ---
MR. HAYNSWORTH: I'm sorry. I'm reading, Your Honor, Article VII, Maintenance and Repairs.
Q. I think you told your lawyer about this, Mr. Powers. This says the parties do agree that the maintenance of the structure of the house and the major systems, electrical, plumbing, heating and air, shall be the responsibility of the Lessee.
A. Who is the Lessee?
Q. You.
A. But he told me he was responsible on the air conditioner. I was responsible for everything else. After the water ---

Q. But what I just read, I read that correctly; didn't I?
A. Yeah. I'm telling you I couldn't read that.
Q. Right. And you told me that Jackie read this to you before you ever signed it?
A. She read the contract. We didn't even go through that -- this thing occurred after that tree fell. Nothing ever was talked about.
Q. Let get back to the tree falling. You said a tree fell and the branch was eleven feet long?
A. A limb.
Q. A limb. A limb fell ---
A. Of approximately eleven.
Q. Approximately from me to you?
A. Approximately, yeah.
Q. And you heard wham-yah? Heard a big noise?
A. Yes.
Q. And did I understand you to say that you didn't go up and actually start patching and repairing for quite sometime? You didn't have the money to buy supplies initially?
A. That ain't what I said.
Q. Okay. Well, I'm sorry. I must have ---
A. I told you the limb fell on the house. Lukas told me he couldn't afford to pay for the limb to come off.
Q. Okay. You took the limb off and he swapped you out some rent for removing the tree?

A. Right.
Q. Okay. Now, fixing the holes in the roof, fixing the structure of the house, you fixed that; right?
A. Yes.
Q. Okay. And the way you fixed it is you went, and I believe you told me some white guy from down the street kind of knew what he was doing and he helped you fix it; right?
A. Yes, he did.
Q. Is he going to be here today to testify about all that?
A. He ain't here. Apparently he's not here.
Q. Okay. Did your lawyer ask him to come here, do you know?
A. No. Because I don't know where he were.
Q. Okay. You made mention about that house was so nice when you left and in such good shape. Do you have any pictures except before you took once this lawsuit was going on, do you have any pictures ever of the interior of that house to show us what it looked like when you were there? Or do you have any pictures you or Jackie took to show we left it in good shape when we ---
A. I wouldn't think there would be no reason when we left it like that. We cleaned it up, vacuumed it. The house was livable. The last time we lived there, the house was livable.
Q. Yes, sir. Do you have any pictures at all that you or Jackie ever took ---

A. No.
Q. --- that you could show us what that house looked like?
A. Because she told me they didn't want me on the property because I was going to jail if I got caught on the property.
Q. That's not what I'm talking about.
A. So why would I take pictures of it?
Q. No, sir. I'm talking about between 2011 when you and Jackie moved in and January of '19 when you leave?
A. I don't think ---
Q. Any pictures in between those dates? I'm not talking about after you were gone and all that.
A. Okay. Go ahead.
Q. Any pictures at all you've got to show us what the inside of that house looked like during any of the time you were there?
A. I don't think there would have been a reason to take a picture.
Q. Sir, is the answer no, you don't have ---
A. No, I don't have any pictures.
Q. --- pictures to show us what the house looked like at all when you were there? All right. Now, you and this fellow who helped you repair that house, repair that hole in the roof; right?
A. Right.

Q. You put up the tin that's on the roof that we saw in the pictures?
A. Yeah.
Q. You put that on there; right?
A. We put that on there.
Q. Okay. All right. And you and the other fellow, you said you took out some wood and put in new wood. I think you said you spent thirty-five hundred dollars and that's what it cost you to fix all that damage from that tree?
A. Right.
Q. And it took you about a month to actually fix it; right?
A. Right.
Q. Okay. And it was about, was it not, a month or so before that brown in the ceiling got to the point to where water actually made the ceiling collapse?
A. Right.
Q. Okay. And I think you told us that you had so many buckets you didn't sleep that night? You said it rained for about a week?
A. I said we had a bad rain in Greenville County. You probably remember it, too.
Q. And you got all those buckets out there and you can't sleep because you're having to go out and empty the buckets down into either the toilet or the tub; right?

A. Right.
Q. Okay. Tons of water coming in during that week; wasn't there?
A. Yeah.
Q. All right. Now, so after you do these repairs that you and this fellow from up the street did -- well, let me back up for a second. When you and this fellow were up there repairing whatever you were repairing, did y'all do any moisture readings to see if the wood had gotten water in it?
A. I toted wood out of there. That wood that was down in there, I pulled all that out and replaced new wood. New joists.
Q. How about all the roof deck that was underneath all the shingles that you ---
A. I took all of that out and replaced it with new joists. Pulled everything up. The shingles and everything and put new joists. Then we come back and I put plyboard on top of that. That's new wood. Then I come back and put that tin on top of that plyboard.
Q. And you're not a contractor, are you?
A. No.
Q. You said you cut trees?
A. Yeah.
Q. Okay. The fellow who helped you, he's not a licensed contractor?

A. No, he's not licensed.
Q. Did y'all ever get any licensed contractor builder to come help you with these repairs?
A. No. When you're doing your own work you don't have to have a license.
Q. Did you ever get anyone to come inspect, like a building inspector, a home inspector, that sort of person?
A. No.
Q. To come inspect y'all repairs to see if you'd done it right?
A. No.
Q. Okay. Now let me make sure I understood something you told your lawyer. This blue tarp, you put that up there?
A. I did inside.
Q. It's in the attic?
A. Yeah.
Q. It's up in the attic?
A. Yeah.
Q. Okay. And you put that blue tarp up in the attic after you and that boy had done the repairs? Because you were still getting some water coming through that was dripping in your bed?
A. That's a different area.
Q. Right. Different area of the house?
A. That was on the lower end of the house. The bottom end

of my house what I fixed.
Q. Right.
A. Later on then that started from another spot. I guess it was where that tree had hit the top corner of the house. But it had started coming through there.
Q. Right. The tree had done more damage than y'all knew when you first went and tried to fix it?
A. Apparently had.
Q. Right. And so you then noticed, even after y'all thought you had fixed all the damage, man, I've still got water coming in this house?
A. It wasn't coming in until we had a rain later on.
Q. Right. Right. But then water was dripping on your bed?
A. Right.
Q. And you can't have that, so the way you fixed the water dripping on your bed is you just took a big blue tarp and you spread it out up there in the attic so the water would drip through the roof onto the tarp and wouldn't drip on down onto your bed?
A. And later on I was planning on fixing it until he come up with that idea that I had to get out of there.
Q. And you never -- I assume you never talked to anybody in the building trade about whether putting that tarp down there was a good way to address that problem?

A. The reason I never talked to them because I had some heart attacks after I did this and lost my eyesight, so I couldn't do nothing. I was in the hospital four or five times from that.

Q. Okay. I remember you had a couple of stays for a day or two ---

A. No. I had a massive heart attack.

Q. Right.

A. Wasn't no staying one day.

Q. I'm sorry. What was the most time you were in the hospital? A week?

A. About a week or two.

Q. Okay. So you've been kind of in and out of the hospital off and on at times with heart related problems?

A. It wasn't -- this really started about from '14 up when the heart attacks started.

Q. 2014?

A. From there back. Other than that wasn't nothing wrong.

Q. All right. And I think you and I covered in your deposition, when y'all moved in this house everything was new; right, ---

A. Yeah.

Q. --- when you and Jackie first moved in?

A. Yeah.

Q. Because Lukas was -- you couldn't move in when you

wanted to because he was still fixing up this house?
A. And I make a deposit to him until he got through with it.
Q. Right. But he was still working on it and having it fixed up ---
A. Whatever he was doing, yeah.
Q. --- before y'all could actually move in? And when you moved in everything was good and new, carpet was new, appliances were new, ---
A. I guess it -- yeah.
Q. --- brand new roof. Turnkey house for rent; right?
A. Yeah.
Q. Okay. And Mr. Powers, I think, unless you lawyer asks you some more to prompt me to ask you some more, I'm finished. Thank you.
A. Yes, sir. Thank you, too, sir.
THE COURT: Mr. Fessler.
MR. FESSLER: Yes, Your Honor.
I don't think I have any redirect for Mr. Powers.
THE COURT: All right. Thank you, sir, you can step down.
MR. POWERS: I appreciate it, sir. Thank you very much.
THE COURT: I appreciate you being here. Be careful with those steps.

MR. POWERS: Yes, sir. I'll hold on.
THE COURT: Mr. Fessler, any other witnesses?
MR. FESSLER: No other witnesses for the Plaintiff, Your Honor. We rest our case on this matter.
THE COURT: Mr. Haynsworth?
MR. HAYNSWORTH: No, sir, Your Honor.
THE COURT: Let me ask a couple of questions of you. Because I know some of this case is going to turn on interpretation of any applicable statutes. Do both sides agree that the Landlord Tenant Act applies?
MR. FESSLER: Mr. Powers certainly asserts that.
THE COURT: Simple yes or no would probably be a good starting point.
MR. FESSLER: I would say yes, it does apply. There's a case to that effect.
THE COURT: All right. Mr. Haynsworth.
MR. HAYNSWORTH: For purposes of our discussion today, Your Honor, yes, we will assume it applies.
THE COURT: All right. And under 27-40-440, it has a statutory premise that the landlord is generally responsible for the condition of the premises. Both sides agree with that?
MR. FESSLER: Yes, Your Honor.
THE COURT: Mr. Haynsworth?
MR. HAYNSWORTH: Yes, sir.

THE COURT: And part of the legislative intent in the Landlord Tenant Act is to provide guidance as far as obligations and responsibilities. In other words, landlord, you're supposed to do these things. Lessee tenant, you're supposed to do these things. But as both attorneys have pointed out, under 27-40-440 subparagraph (c), the statute specifically allows a transfer of general or specific responsibilities under the lease agreement. Do you agree with that, Mr. Fessler?

MR. FESSLER: I would agree as to specific, not generally, Your Honor.

THE COURT: I understand. Mr. Haynsworth?

MR. HAYNSWORTH: I would agree with that, Your Honor.

THE COURT: All right. Now, it seems like a lot of the issues in litigation has been involving Article VII of the 2013 lease agreement. And when I look at Article VII in the lease agreement, it is -- the paragraph is titled Maintenance and Repairs.

So, Mr. Haynsworth, would you acknowledge or agree that neither the word maintenance nor repairs is defined under Article VII?

MR. HAYNSWORTH: I would agree with that statement, Your Honor. Yes.

THE COURT: And in the wording itself of the

paragraph, it says the parties hereto do hereby agree that the maintenance of the structure. It doesn't use the word repairs. It narrows it and says the maintenance. Typically in a situation where someone is renting a residence if there is a roofing issue, that is typically a landlord responsibility. But Mr. Haynsworth, are you arguing -- let me strike that. You are arguing that Article VII transfers that responsibility contractually to the lessee who, in this case, of course, is Mr. Powers.

MR. HAYNSWORTH: Yes, sir, Your Honor, I am arguing that. And I don't know if it comes into the analysis you're engaging in, but I did want to -- Article XXII also addresses the overall issues that this case has been about. So I didn't want the Court to think that our breach of lease was limited to the section we're dealing with entitled Maintenance and Repairs. We also believe that that provision has been breached.

THE COURT: And that's just kind of a general miscellaneous? It says Lessee is responsible for all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse or willful abuse of the premises hereby leased.

MR. HAYNSWORTH: And just so you understand our position, Judge, the negligent use, misuse, call it willful abuse of laying a tarp to fix a known leak in the house is

considered that, but the improper non-effective repairs we believe falls under this category. And you know, the damage occurred and the negligent repair apparently took place and the result is we've got what we've got.

So I just -- I didn't want the Court to think I was hanging my whole hat on that one provision in the lease dealing with maintenance. I think Mr. Powers has breached Article XXII and has to indemnify Rizan for any losses, liability or expenses that it incurs growing out of his negligent use ---

THE COURT: Well, Mr. Haynsworth, while I have you still standing up, typically would just the word maintenance apply to a situation where there's roof damage and the tenant would be responsible for roof repairs?

MR. HAYNSWORTH: I would think if you just said tenant is responsible for maintaining the structure and that's your sentence. And what happens is a tree hits it during the tenant's occupancy and knocks a hole in it that to maintain the structure, you've got to fix the hole in the structure. So I would take the position that, yes, if tenant is to maintain structure period, that means what it says. The structure ---

THE COURT: So if you're leasing a house and a limb falls, punches a big hole, you call the landlord and say, landlord there's a big old hole in your house. Thought I'd

let you know. Landlord says, well, Mr. Haynsworth, thank you for calling, but under the lease you're responsible for maintenance of the structure of the house. So it's on you. How do you respond to the landlord saying that?

MR. HAYNSWORTH: Well, Your Honor, I suppose if I looked at my lease and I agreed with what the landlord said, I'd say, okay, I'll tend to it.

THE COURT: Could ---

MR. HAYNSWORTH: And if the landlord had said you're responsible and my response was I know, I'll get to it, then, you know, I would assume me and the landlord are on the same page. We all know I'm responsible for it.

THE COURT: As the tenant, could you -- would you, could you have an insurable interest in the structure? In other words, to protect yourself by having insurance that would cover damage to the roof?

MR. HAYNSWORTH: I do not know enough about renter's insurance to give you an accurate answer to that question. My suspicion would be if you can insure somebody's behind or their legs or their arm, that I could probably go find myself some renter's insurance to give me an insurable interest in the structure.

THE COURT: All right. Mr. Fessler, who in my view is a very fine lawyer, says that in light of the general responsibilities under 27-40-440 that the landlord is to

maintain the premises, that if you want to carve out responsibility, you need to do something other than just use the word general or just use the word maintenance. In other words that in light of the legislative intent and in light of the language used, if you're trying to transfer responsibility for the roof to a tenant or to a lessee, you need to define it. How do you respond to that?

MR. HAYNSWORTH: Well, I guess my initial response would be, well, Your Honor, if we were having this discussion before he went and made these repairs to the roof, which obviously Mr. Powers viewed was his responsibility, you know, that would be the time to flesh that out. You know, the practical problem we face ourselves with in having the discussion now is everybody, including Mr. Powers, understood and apparently didn't have a problem with fixing that hole in the roof was his responsibility. The first time we've ever heard uh-uh, and I don't know if we've heard it now, is raising the specter that the lease that was not objectionable by Mr. Powers ever before has now become objectionable because some of the provisions in it, his position is, fly in the face of the Landlord Tenant Act.

You know, my whole analysis of that is much simpler. The statute says what it says, but it gives the parties the ability to rearrange those obligations. That's what these people did in this lease. And nobody, not Mr. Powers, not Ms.

Patterson (verbatim), said word one about, time out, I shouldn't have that responsibility. You're the landlord. That should be on you. They accepted those terms. They operated under those terms. And the only time we're having a discussion as to whether that obligation doesn't fall with either tenant is now that we're in a lawsuit over it.

THE COURT: All right. Mr. Fessler, let me hear from you. And I've obviously read your brief or your memo. Why isn't the word where it says the parties, including your client, hereby agree that the maintenance of the structure of the house -- it doesn't just say maintenance. It says maintenance of the structure of the house. Why isn't that sufficient to make your client responsible for the issue with the roof?

MR. FESSLER: Your Honor, it's not specified. In the terms of the statute, the repairs -- and of course the statute treats repairs and maintenance as separate things. And the paragraph only refers to maintenance. But it's not specific as to what needs to be done to maintain. And I think the confusion that exists in this case is a perfect example of why the statute reads the way it does.

I think the legislature and I think the drafters of the uniform law upon which our Residential Landlord Tenant Act is based understood that, you know, landlords can put into leases any provision they, you know, want. And a lot of tenants,

like Mr. Powers, are just going to sign whatever it is. They're not going to understand their rights. So the drafters built in these safeguards, these safety valves that says you're not allowed to waive your rights. And as far as the 440 analysis is concerned, they say, all right, well, if you want to waive your rights to the fitness and habitability issue, you know, the landlord is responsible for fitness and habitability, but if you want to waive that you have to be specific about it. You have to, you know, example, if the windows break or if there's, you know, a door that breaks. It has to be some sort of specificity so that the tenant can understand what the tenant is getting into. And I think cases that have interpreted the idea of this paragraph have come to that conclusion.

We don't have any in South Carolina, Your Honor, but perhaps the most comprehensive analysis of 440 was Iowa's version, but it's I believe word for word verbatim, was the *DeStefano* case. And they talk about -- they talk about the idea that a landlord would be allowed to get around -- the question in that case was whether or not the waiver provision of 440(c), which I don't remember the Iowa quote, but it's the exact same language, whether it applies only to subsection 445 or whether it even allows the transference of fitness and habitability obligations, meaning structural obligations, et al. So the question in that case was even if this provision

is specified, even if it is otherwise valid, does the statute just bar that transference of fitness and habitability duties outright. And the Court didn't reach that question because in that case the issue was that an exterior door had been damaged and the landlord said, well, you've got to -- we'll repair it, but you've got to pay for it based on the language in the lease. And there was language in the lease specifically talking about doors, damage to doors. So there was a specificity there. And the Court said, you know, a good lawyer could lawyer up a lease and list all the little things that are the tenant's responsibility. And that was one reason why they were debating whether or not fitness or habitability issues could be transferred at all.

But the analysis that the Iowa Supreme Court engaged in contemplated a specific listing of items. And I think an example could help clarify the ambiguity in -- and why ambiguity is not allowed. Let's say -- let's say instead of a roof issues, let's say it's a foundation issue, a foundation crack sort of arises and it shifts the property. Is the tenant reading the parties do hereby agree that the maintenance of the structure of the house, does the tenant understand that by agreeing to that they would have to pay to jack up the house, re-pour possibly the foundation, level it off, spend thousands and thousands of dollars. It's just another example of why specificity is required. Because the

legislature building in a safety valve says, all right, in a single-family home if you want to engage in certain repairs that are the landlord's responsibility, they have to be set out so that the tenant walks in with eyes wide open; not just a general transference.

So I don't believe that maintenance of the structure of the house is specific enough to meet the criteria of the statute.

THE COURT: All right. Shift gears with me for just a moment then on Mr. Haynsworth's argument because he argues that even if you accept your argument about Article VII, then Article XXII where it says the lessee agrees to hold harmless and indemnify the lessor from any -- from and against all losses, liability and expenses that may be incurred in any way growing out of the negligent use, misuse, of the premises. And Mr. Haynsworth argues that if you look at the repairs undertaken by your client in light of the testimony from the building contractor, clearly they are negligent at best. Why would Article XXII not be a catch-all even if Article VII doesn't apply?

MR. FESSLER: Because the question goes to, you know, what was the negligence? The negligence that they're alleging were the repairs. We don't have case law directly on point. However, we do have case law I think that is instructive here, *Watson v. Sellers* and some other cases that

talk about whether a landlord can be liable in tort for damages -- physical damages that a tenant encounters based on conditions of the property that the landlord is responsible for. And one of the cases, I believe it might be the *Medrol v. Pruitt* case, talks about how -- yeah, *Medrol v. Pruitt* says the fitness and habitability obligation created under the act is non-delegable. So in the tort context that means if I as the landlord contract that repair job out to another person and they do it negligible, I'm still responsible as the landlord. The analogy in this case is, Mr. Rigdon was aware of the damage. He was certainly aware of the tree falling. Was aware of the water coming through. And he essentially said -- and I admit that the way it was written in the lease, he said, Mr. Powers, that's your job. And so in a similar situation where a landlord has attempted to shift liability onto a third party, the Court in *Medrol v. Pruitt* said that is a non-delegable duty.

So I don't think that by using the language the tenant shall not negligently use the property. If they're saying he made negligent repairs, it's the same situation that the Court has said you can't shove it off on the third party. It's the landlord's obligation. And that's the reason, because the landlord is almost always in a better position to address these issues rather than a tenant who doesn't have the means or the skill or the expertise to handle that.

I would further say Mr. Rigdon made no inquiry or attempt to understand Mr. Powers' capacity to make these repairs. And so, you know, in a certain sense, he brought it on himself. That would be my response.

THE COURT: All right. Let me ask you one other question. Don't sit down quite yet. I'm going to make Mr. Haynsworth stand up in a minute.

MR. FESSLER: I appreciate that.

THE COURT: What's the Court to do with the fact that the limb damage was 2014, 2015. The date is uncertain. As I recall there's no direct testimony. And then the lawsuit is not filed until 2020. And somewhere along the way Mr. Powers goes into a very smart lawyer who looks at all this and says, you know, I think under the Landlord Tenant Act, you didn't have a responsibility. But yet for years from the first call throughout the time you went in to see this very fine lawyer, the landlord says, hey, Mr. Powers, that's your responsibility. Mr. Powers, he doesn't argue. He doesn't disagree. He undertakes the duty to start doing the repairs and in fact does the repairs, and operates that way for years. Is it not too late to now come into Court and say, you know, by the way I know I've got these two or three years where I accepted the analysis or the premise of the landlord, but I really shouldn't have done that after all, so, Court, please unwind the clock and let me go back?

MR. FESSLER: Certainly, Your Honor. And I think the intent of the act is to prohibit the landlords from -- prohibit tenants from being able to waive certain obligations. There is a provision of the Residential Landlord Tenant Act that is addressed specifically to that. It says, a rental agreement may not provide that the tenant agrees to waive or forego rights under this chapter. So they can't even assert that this is a valid waiver because the tenant is not allowed to waive it under the language of the Act.

And then there's further provision of the Act that says, -- it's 27-40-340. The title is separation of rents and obligations to maintain the property are forbidden. And what that says is a rental agreement, etcetera, assignment mortgage, etcetera. A rental agreement may not permit the receipt of rent absent the obligation to comply with 27-40-440(a). So I don't think the law allows -- and I understand this is a very unique issue because generally speaking people can contract to whatever they want to agree to. But the law does not allow the separation of rent without the landlord's obligation -- the law does not allow the landlord to receive rent without a corresponding obligation to maintain the property in accordance with 440(a).

THE COURT: All right. But that's not the situation here because we have Mr. Powers who talks to the landlord. The landlord says, under the lease it's you. Mr.

Powers says, uh, okay. And he undertakes the repairs. And now three years later or four years later he comes into Court and says, you know, I really shouldn't have done that. I mean I'm troubled by unwinding a course of conduct and a pattern that the parties voluntarily engaged in.

MR. FESSLER: Well, I would say, Your Honor, Mr. Powers had no knowledge that there was a problem until December of 2018. So in terms of like filing a lawsuit, we're talking about 2020 back to December '18. He was not under any awareness that his repairs were, you know, improper or invalid. Of course, he's not an expert in this field. And I don't think the landlord can use an unsophisticated tenant's lack of knowledge of their legal rights to simply shift that argument and say, well, you didn't say anything about it for, you know, three or four years. Well, I didn't know what my rights were. And so I don't think the Court is prohibited from applying the law as it is written. Whether it's been, you know, three years, five years, ten years, if the lease does not allow it, the Court should not permit it just because Mr. Powers acquiesced under the mistaken belief of what his legal rights and obligations were.

THE COURT: All right. Let me shift gears again. Because I have two other -- or three other areas I want to -- two other areas, at least.

Mr. Haynsworth, ---

MR. HAYNSWORTH: Yes, sir.

THE COURT: --- 27-40-610 requires written notice. Does it apply here and was it done?

MR. HAYNSWORTH: Your Honor, based on the testimony I believe the written notice would -- written notice of the breach?

THE COURT: That's what the statute seems to say and certainly what Mr. Fessler is arguing, that the statute says, landlord, before you can do anything to impact the rights of the tenant or the lessee, you've got to give them specific notice and an opportunity, basically, to cure.

MR. HAYNSWORTH: Well, I believe, Your Honor, that the interaction the evening that Mr. Rigdon came to the house and talked to Ms. Pearson and Mr. Powers and presented the eviction notice with the tally of unpaid rent and late rent was the -- and also made reference, I believe, in that document, Your Honor, to water damage and mold. If you look on the first page, I believe that is in it.

So Your Honor, I believe the evidence is that Mr. Powers -- or excuse me -- Mr. Rigdon presented Mr. Powers with this eviction notice, told him he needed to get out. And one of the reasons he told him he needed to get out was he had caused damage to the house. No efforts were made -- there was no more contact after that, as I recall it. We've heard -- you've seen his deposition, you heard him testify. I told him

I wasn't signing that. But then later on he turned in his keys, he left, he abandoned the property, he moved in with her and started paying rent elsewhere. So I think he was availed with notice. He just didn't do anything in response to it.

THE COURT: Does the -- I'm looking at it, and it's Rizan Exhibit 2. It is an eviction notice as opposed to an opportunity to cure. Is that a distinction with or a difference under the applicable statute?

MR. HAYNSWORTH: Well, Your Honor, I would characterize it as notice of both. It is notice of damage that had Mr. Powers said, okay, I'll fix it and cured the damage, we may not be here having this discussion. But my position would be, that was notification -- if you've got to have a writing -- I don't know exactly how much dialogue they had, but if you've got to have something in writing putting him on notice that there are damages, that document references water damages, which is what we're ---

THE COURT: Mr. Fessler, how about it, does Rizan Exhibit 2, the eviction notice dated 12/3/18 sufficiently comply with 27-40-610?

MR. FESSLER: No, it does not, Your Honor. First of all it doesn't give an opportunity to cure. It says, if the home is not vacant -- in the final paragraph -- all resources necessary will be taken to collect financial penalties. It clearly contemplates that Mr. Rigdon had made a

decision to terminate the lease.

The first paragraph, this notice is to serve as the immediate eviction requirement of lessees Jerry Powers and Jackie Pearson of the premise. Contract to own home is null and voice. It doesn't say if you don't make these repairs. If you don't bring the rent current then you -- then it will be terminated. It says, it is terminated as of the date of this written notice.

And I would further point out two things, Your Honor. In addition to the statute under the Landlord Tenant Act that requires a landlord to give fourteen days and an opportunity of a notice of a right to cure, there's also an additional requirement in the lease itself, Article XVI, for the lessor to give a ten-day notice of default. If the lessee shall continue in default for payment of rent -- of any rent reserved hereunder for a period of ten days, etcetera, etcetera, or if the lessee shall default in the performance of other terms, etcetera, etcetera, and lessee does not remedy such default within ten days after notice ... So there's a notice requirement written into the lease itself which is the basis of our argument that they've breached the lease and therefore they're not entitled to recover damages.

But I would just point out, the Court of Appeals' decision in *Litchfield Company of South Carolina, Incorporated versus Kiriakides* and it talks about lease provisions that are

required by -- notice provisions that are required by a lease. And it says, forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract as to time and content.

Now, of course, that case was about evicting -- terminating a lease and evicting a tenant. But the idea is if you landlords say that you're going to be required to give notice in the lease -- and I would say the same principal applies to the statute -- then you have to give the notice in strict compliance with time and content. And they require -- the statute requires a written notice. The lease requires a written notice.

Mr. Haynsworth averted to potential conversations that they may have had. That does not satisfy the requirements -- if that occurred, that does not satisfy the requirements of the lease nor the statute.

THE COURT: All right. But what happens under the -- in the same -- I guess the same analysis but where the next month, January of 2019, Mr. Powers moves out. And now a year or so later comes back and says, eh, you know, I really shouldn't have moved out. Is there a waiver aspect under the Landlord Tenant Act under the unique facts of this case?

MR. FESSLER: As far as defending their claim for damages against him, he moved out after they had already

terminated the lease. And there is no waiver by Mr. Powers saying, you know what I'm going to waive my right to receive a notice. I mean the regulation in the statute and the lease bind the landlord to comply. And if they're trying to say that the tenant has not complied with the lease, then the landlord has to comply with the lease. It's the principal established in *Parks v. Lyons*. It says, if you want to sue somebody for damages for breaching a contract, you have to show that you are ready, willing and able and have complied with your part of the contract.

And so I mean, I understand that they're trying to get a money damage against Mr. Powers to, you know, convince him to withdraw his appeal, but they have not followed the process that they're required to follow. And so it's not proper for the Court to enter any kind of damages judgment against Mr. Powers. He did not waive that right.

Additionally, you have to show -- they would have to show that he was aware of the statute and intentionally waived it. So there's been no proof that he was aware of his right under the Landlord Tenant Act.

THE COURT: So isn't that pushing it to a whole new level to say, hey tenant, landlord has to come in and affirmatively prove you knew of the statutory rights you -- I'm not familiar with any case that puts it to that level.

MR. FESSLER: If the argument is that Mr. Powers

waived the right -- a waiver is an intentional relinquishment and so there has to be some evidence before the Court that Mr. Powers was aware of that statutory right before the Court could find that he waived it.

THE COURT: All right. Mr. Haynsworth, last little caveat to go into.

MR. HAYNSWORTH: Okay. After this caveat can I ---

THE COURT: Go ahead. And make it brief because we've about at the end of the field.

MR. HAYNSWORTH: Couple of things, Judge. If we're talking about the lease itself, it doesn't say squat about written notice. It says ten days notice. Clearly, when Mr. Rigdon came in that night and had the discussion with Mr. Powers, that was notice of a default.

THE COURT: But doesn't the Landlord Tenant Act -- isn't it implicit in all residential agreements pursuant to our state code?

MR. HAYNSWORTH: Well, Judge, I'm simply -- and I suppose if the answer to that is yes, then what I just said doesn't matter. But to the extent that Mr. Fessler might have been representing to the Court that this document and Article XVI requires written notice, it doesn't. It requires notice. Notice was given. Mr. Powers abandoned the property, breached his lease. As you're aware, I think that's already been

decided based on your prior Order.

Your Honor, back to the Landlord Tenant Act, generally, again, the Act provides that you can shift some of these statutory responsibilities. So to say the law provides the tenant isn't to do this and the landlord is to do that, is a mischaracterization. The statute allows a shifting of those responsibilities. And to your point, that was done and operated under. If you buy their argument, then Mr. Powers could have -- he could have wilfully caused damage to that property. You know, I'm just going to go up and take more of the roof off and leave a bigger hole. And if I tried to sue him for wilful damage when he was a tenant under this lease, their position is you can't do it because by implication the Landlord Tenant Act took any responsibility in tort that a tenant may have and changed it. Well, that just doesn't make any sense. If a tenant goes and wilfully breaches a provision of a lease that says they're responsible for wilful damage to the property, it just doesn't make any sense that that obligation they accepted when they signed it somehow vanishes because a case from some other state interpreting the Landlord Tenant Act said it's to be construed broadly.

Now, I've said my piece about what he said and I'll address ---

THE COURT: All right. Mr. Fessler also argues the roof damages are in 2014 or at the latest 2015 and so the

clock starts ticking for any claim for damages. Mr. Fessler also argues that the counterclaim for roof damage was filed in 2020. As a result the statute of limitations applies. What's your response to that?

MR. HAYNSWORTH: My response is, Your Honor, that I don't believe when you review the record that you will find the event was in '14 or '15. I believe you will find that the event was -- well, let me correct what I -- what I just started to say. Well, I've confused myself now, Your Honor. But to address ---

THE COURT: The only testimony today that I recall is Mr. Powers saying that the roof fell in 2014 or '15. He wasn't sure. And I think that also Ms. Rigdon may have said that -- and I'd have to go back through my notes -- something around that same time frame. But anyway ...

MR. HAYNSWORTH: Well, let's assume for our discussion that the roof gets a hole knocked in it in '14. Okay? Everyone is operating on the assumption that Mr. Powers is going to fix and does, in fact, fix the roof because everyone understands that's his responsibility. We don't have any knowledge -- there's been no testimony that we knew the roof hadn't been fixed until, at a minimum, Judge, the reference in that eviction notice in December of '18 to water damage. You know, none of us know was he talking about back when the guy told him the roof fell in. But that's the

earliest I could possibly see that Rizan had any knowledge that there was untended-to damage to the roof. If Mr. Powers says that the branch fell in '14 and Lukas Rigdon knew about it, Lukas ain't here to tell us otherwise, but I don't think that's the analysis. The analysis is when did we know that damages were caused by the negligent repair?

THE COURT: All right. How about it, Mr. Fessler, is it -- does the clock start ticking the date the limb falls or does the clock start ticking from some period where if there's a finding of negligent repairs that those negligent repairs become either known or should have been known?

MR. FESSLER: Yes. I believe, you know, the case law is under discovery rule, it begins when the cause of action reasonably ought to have been discovered. Mr. Rigdon was aware of the event that caused the hole. Mr. Rigdon was aware of the water intrusion that required the repairs. Turning a blind eye -- you cannot avoid the discovery rule by turning a blind eye and simply saying Mr. Powers is not qualified or licensed to make these repairs. You do it. And then years go by and then I see something and now I'm going to bring it to your attention. Now I'm going to bring it up. I mean he has an obligation to inspect that. I mean their own witness talked about how it should have had a licensed roofing contractor. How there should have been inspections done. Mr.

Rigdon had that obligation. And so he cannot avoid the running of the statute of limitations by wilfully ignoring the repairs that Mr. Powers did or checking them. So the statute of limitations did begin to run in the 2014, 2015, whenever they occurred.

And Your Honor, may I address the manner of written notices in the lease. Article XII talks about the manner of giving notices. It says, any notice from either party pursuant to provisions of this lease or any law, shall be given by registered or certified mail, addressed to the party for whom it is intended. It makes no sense that a verbal notice could be authorized through registered mail. So it has to be in a written notice. Just to address that.

And then Mr. Haynsworth was talking about, well, is it Mr. Powers' position that he can just go up and remove a piece of the roof and then he's, you know, free to -- he has to get a notice before anything can happen. We're not talking about wilfulness here. I don't think there was any testimony that this was anything other than a negligent, at worst, repair job. So that's not the situation. And when there is negligent damage to property, yes, a notice is required. The statute contemplates that; the lease contemplates that. And yes, I do believe the statute of limitations began to run at the latest in 2015.

THE COURT: All right. Let me make a couple of

comments to ---

MR. HAYNSWORTH: Judge, can I speak to the statute one ---

THE COURT: Yeah, last time. It's really not an Olympic tennis match where you've got to keep going back over and volleying and ---

MR. HAYNSWORTH: Okay. Then I ---

THE COURT: If so, then we're in sudden death.

MR. HAYNSWORTH: No. I don't want to volley for the sake of volleying. But if that's an important issue for the Court, I ---

THE COURT: Every issue is an important issue for the Court, Mr. Haynsworth. As it is for the litigants. But if you want to have something on the record, speak now or forever hold your peace.

MR. HAYNSWORTH: Well, Your Honor, I just -- I don't think there's any evidence that anyone knew there was a negligent repair resulting in massive water damage in this house until, at a minimum, the notice -- eviction notice referenced to it. But even more importantly, for purposes of this litigation, we didn't know that he had negligently repaired the house until they sued us claiming that they had an option on the house. And then when we went over and started looking in the house and had people inspect it, then we discovered these, quote, unquote, repairs obviously didn't

work.

So to the extent it matters to the Court, I think our damages claim -- you know, we've got negligent repairs that we discovered when we went in the house after we got sued. At a minimum Mr. Rigdon knew there had been negligence on the watch of Mr. Powers at the earliest in '18 when he claimed there had been water damage that Mr. Powers was responsible for. But other than that, I don't think there's any evidence that we knew or should have known.

And there's no law that I'm aware of that says a landlord -- if a tenant's responsibility is to repair a premises and the tenant says, I fixed it, that there's any obligation of the landlord to go behind them and make sure they fixed it properly.

THE COURT: All right. Mr. Powers and Ms. Rigdon, thank y'all for being here. Boy, y'all have been living with this nightmare for years.

My candid observations are that probably both of y'all are at fault to some extent, or your late husband was involved somehow. My unenviable job now comes to taking all the evidence that's been presented and determining both contractually and under the Landlord Tenant Act what is the Court compelled and required to do. I understand this case matters a lot to both of you. And I get that. So I'll treat it with all the respect that I can. I've been well familiar

with the case. And your lawyers have raised a lot of really good, strong legal arguments that are also unique in South Carolina, which means there have been no Appellate Courts to give guidance to exactly what happens under the facts here. It's never good to be a guinea pig. And I understand that.

I do want -- I commend you on choosing of your lawyers. Your lawyers have done a good job and I appreciate that.

And I'm going to ask the lawyers if you'll step back with me in chambers in just a moment. And then following that if y'all will go through all the exhibits with Ms. Hanks, my court reporter, just to make sure all of them stay here with the Court as opposed to inadvertently going home with somebody.

So thank y'all so much.

MR. FESSLER: Yes, Your Honor.

END OF REQUESTED TRANSCRIPT OF RECORD

The undersigned, Danette P. Hanks, Court Reporter, Office of Master in Equity for Greenville County, South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of requested portions of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 28th day of July, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any parties hereto.

November 22, 2021

Danette P. Hanks

Danette P. Hanks, CCR

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jerry Powers,

Plaintiff,

vs.

Rizan Properties LLC, Anthony Pearson, and Tiesha Dash,

Defendant(s).

THIRTEENTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

2020-CP-23-02076

PLAINTIFF'S RESPONSE TO RIZAN PROPERTIES LLC'S SCRCP 32(a)(5) DESIGNATIONS

TO: KNOX HAYNSWORTH, III, ESQ., ATTORNEY FOR RIZAN PROPERTIES LLC

Jerry Powers proposes the following excerpts from his deposition pursuant to Rule 32(a)(4) and (5), SCRCP.

1. Deposition of Jerry Powers Page 40, Line 22 through Page 41 Line 3
2. Deposition of Jerry Powers Page 42, Line 7 through Line 10
3. Deposition of Jerry Powers Page 49, Line 2 through Line 5
4. Deposition of Jerry Powers Page 147, Line 5 through Line 25

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES



Greenville, South Carolina
July 27, 2021

By: Mark Fessler, SC Bar No. 77376
701 South Main St.
Greenville, South Carolina 29201
Office: (864) 679-3254
Fax: (864) 679-3260
Attorney for Plaintiff

water damage to the roof, and some rotting wood, and some mold. What can you tell me about that?

A. If you can remember we had a storm come through, which there was damage. And when they did the roof evidently they left a hole in it and the water started leaking through the roof. It messed the side of the wall up here. I replaced the wall and I replaced the roof, put a tin top on that roof. I did that personally.

Q. Let me back you up a little bit. So you move in and start leasing from Mr. Rigdon. Let me get my date straight. You-all would have moved in and started renting May of '13. And so by the time we get to December of '18 at that point there had been a storm and some damage to the roof?

A. Yes, sir.

Q. What happened to -- before the storm damaged the roof was the roof fine?

A. Yes, sir.

Q. All right. The storm comes through and a tree limb or something hits the roof and knocks a hole in it; is that right?

A. Whatever happened it just started leaking real bad. Just was leaking, leaking. And I mentioned it to Mr. Lukas. He told me, "I'm not responsible for that. That's your responsible. I'm only responsible for the

air-conditioner. "After eight years if something happened to it," he said I've got to fix it. "For anything else you've got to fix it.

Q. All right.

A. So I had to tear that wall out. Replace that wall and put a new top on the house where it was leaking. I put a tin top on it. In fact, it's still on there now.

Q. When you say tin top you --

A. That new tin they come out with. You know they've got the new tin now.

Q. What was the roof made of before? Was it a tin roof?

A. Shingle.

Q. Okay. So you took a shingle roof and patched a hole in it with a piece of tin?

A. No, I did the whole thing all away across, because it was like it tore up where the bathroom was at. That new tin they come out with, I bought that tin and -- the tin and put -- did it with that.

Q. Okay. And how -- and when was this storm that caused the roof to start leaking?

A. I'm going to say probably about -- I'm going to say between '14 and '15.

Q. All right.

A. There was a bad storm come through Greenville.

Q. Okay. And so let's say it was '15 just to pick a year.

A. Yes, sir.
Q. How long after that storm before you started to notice a water problem?
A. When we got a rain it started coming straight through that. Just dropping. It was coming straight to the floor.
Q. Okay. And so you went and talked to Lukas about it and he reminded you that under the Lease you were responsible for maintaining it?
A. Yes, sir.
Q. So about how long after you noticed the water problems did you actually go put this piece of tin up there?
A. Oh, when it started raining that's when I noticed that water was running down.
Q. All right.
A. I had to put a bucket down to catch the water.
Q. Okay.
A. Because it was so fast -- it was so bad.
Q. All right. Did you ever hire a roofing contractor or a contractor of any sort --
A. No.
Q. -- to give you an estimate as to what needed to be done to fix that roof?
A. No, sir.
Q. After you put this tin around the area -- so did you

Q. Mr. Rigdon says you verbally refused to pay it.
A. No, but I do recall paying him in January. After I come out of the hospital he came to my house again and I do recall paying him, because he came to my house. And that's the last time I spoke with him.
Q. Right. And --
A. So I -- go ahead.
Q. So January of 2020 Mr. Rigdon came to your house?
A. Yes, sir.
MR. FESSLER:
Objection. I think you meant 2019.
A. Yeah, 2019 he came to my house.
Q. Okay. I thought you said January?
A. Of 2019.
Q. Well -- okay. All right. I gotcha. I gotcha. So January 2019 Mr. Rigdon comes to your house and you give him cash?
A. 550 cash. That's when he give Jackie that paperwork to sign the Eviction Notice. We had to move, but I still went on and paid him after I had came out of the hospital.
Q. All right. I've gotten confused. So he comes to you-all's house and he gives you-all this Eviction Notice. It says you're behind in your rent and you refused to pay November. You've got late fees. And there's

was late. Do you have any reason as we sit here today to dispute that your payment for January 1st of 2017 was late?

A. No.

Q. All right. Keep going over. The same date. Stay on that 1/1/2017 and go over to the column that says, "Amount Past Due." And do you see that 681?

A. Right.

Q. And then you see where it says "Notes"? It says, "Still a debt of 681 from 2015/16?

A. I see what you're talking about.

Q. Do you see where I'm reading?

A. Yes.

Q. Do you have any reason to dispute, Mr. Powers --

A. Yeah, because I'm not understanding where that coming from.

Q. Well, it appears to be he's claiming you still are owing $681 from the 2015/2016 time period. That that money is still owed as of January of '17.

A. Yeah, I'm saying why did he not -- I mean he ain't brought that to my attention no kind of way.

Q. I'm wondering if you dispute that. Not whether he ever brought it to your attention before --

A. I'm just saying. Yeah, I'm disputing it because he never brought it to my attention that I owed that.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jerry Powers, Plaintiff, v. Rizan Properties LLC, Anthony Pearson, and Tiesha Dash, Defendant(s)	)	CASE NO. 2020-CP-23-02076 DEFENDANT RIZAN PROPERTIES, LLC'S DEPOSITION DESIGNATIONS PURSUANT TO SCRCP 32(a)(5)

TO: MARK P. FESSLER, ESQUIRE ATTORNEY FOR PLAINTIFF

Rizan proposes to use the following excerpts from the deposition of Jerry Powers during its case in chief:

1. Deposition of Jerry Powers Page 22 Lines 14 through 16
2. Deposition of Jerry Powers Page 37 Lines 17 through 19
3. Deposition of Jerry Powers Page 37 Lines 23 through 25
4. Deposition of Jerry Powers Page 38 Lines 16 through 24
5. Deposition of Jerry Powers Page 39 Lines 19 through 23
6. Deposition of Jerry Powers Page 40 Lines 16 through 18
7. Deposition of Jerry Powers Page 44 Lines 6 through 22
8. Deposition of Jerry Powers Page 48 Lines 1 through 5
9. Deposition of Jerry Powers Page 48 Lines 23 through 25
10. Deposition of Jerry Powers Page 52 Lines 1 through 12
11. Deposition of Jerry Powers Page 55 Lines 9 through 11

12. Deposition of Jerry Powers Page 55 Lines 15 through Page 56 Line 3

13. Deposition of Jerry Powers Page 110 Lines 11 through 17

14. Deposition of Jerry Powers Page 113 Lines 15 through 17

15. Deposition of Jerry Powers Page 114 Lines 3 through 5

16. Deposition of Jerry Powers Page 127 Lines 8 through 18

17. Deposition of Jerry Powers Page 141 Lines 19 through Page 142 Line 2

18. Deposition of Jerry Powers Page 144 Lines 8 through 17

19. Deposition of Jerry Powers Page 146 Lines 24 through Page 147 Line 4

20. Deposition of Jerry Powers Page 148 Lines 16 through 22

21. Deposition of Jerry Powers Page 149 Lines 18 through 21

22. Deposition of Jerry Powers Page 160 Lines 21 through Page 161 Line 15

23. Deposition of Jerry Powers Page 162 Lines 14 through 20

24. Deposition of Jerry Powers Page 163 Lines 14 through 19

25. Deposition of Jerry Powers Page 164 Lines 4 through 7

26. Deposition of Jerry Powers Page 165 Lines 21 through Page 166 Line 4

27. Deposition of Jerry Powers Page 168 Lines 4 through 17

28. Deposition of Jerry Powers Page 169 Lines 6 through Page 170 Line 1

29. Deposition of Jerry Powers Page 171 Lines 7 through 9

30. Deposition of Jerry Powers Page 172 Lines 1 through 11

31. Deposition of Jerry Powers Page 172 Lines 12 through 17

Respectfully submitted.

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC

Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
July 27, 2021

take a look at Exhibit 4.

(Introduction of seven-page document Lease Agreement as Defendant's Exhibit Number 4.)

MR. FESSLER:

That is Exhibit 4, Mr. Powers.

A. All right. Yes, sir.

Q. Okay. Now, it appears to me, Mr. Powers, that that Lease we were just talking about in 2011, that you were renting under that Lease for a couple of years?

A. Yes, sir.

Q. 2011 to 2013?

A. Yes, sir.

Q. Okay. And then when 2013 rolled around you signed this Lease that we marked as Exhibit 4; is that right?

A. Yes, sir.

Q. Okay. So if you look on Exhibit 4 on the last page there is the name Jerry Powers printed and someone has written it and then Jackie Pearson and someone has written about it?

A. Okay. Yeah. Okay. Yes, I see that.

Q. Is that your signature on the last page of Exhibit 4?

A. Yes, that's mine on the top, Jerry L. Powers.

Q. Okay. All right. And we're going to sort of jump back and forth. Go ahead and get Exhibit 5 as well.

Q. So what I'm trying to pin down is did you owe any back rent at all?
A. Not to my knowledge.
Q. Okay. Mr. Rigdon said you did owe back rent; right?
A. That's what this paper said.
Q. Okay. When he showed up that day did you dispute that you owed back rent?
A. No, we didn't talk about that.
Q. Okay. It also says that were there 55 late fee payments unpaid for a total of $2,750; is that accurate?
A. No, sir, he never explained that to me.
Q. Well, your Lease says, does it not, that if you don't pay your rent on time there's a late payment?
A. Yes, sir, and he never charged me a late fee. Yes, sir.
Q. But the Lease you signed provides for a late fee; doesn't it?
A. Yeah. Yes, sir.
Q. Okay. And you were late on your rent a number of times based on the terms of the Lease; correct?
A. That -- that -- yeah, that was the payments in, yes.
Q. I mean you don't dispute that you were late with your rent, do you?
A. No, I might have been late a few times.

Q. So what I'm trying to pin down is did you owe any back rent at all?
A. Not to my knowledge.
Q. Okay. Mr. Rigdon said you did owe back rent; right?
A. That's what this paper said.
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A. Yeah. Yes, sir.
Q. Okay. And you were late on your rent a number of times based on the terms of the Lease; correct?
A. That -- that -- yeah, that was the payments in, yes.
Q. I mean you don't dispute that you were late with your rent, do you?
A. No, I might have been late a few times.

Q. Okay.
A. Because I was hospitalized and couldn't get to my money.
Q. Yes, sir. Well, I'm sort of talking about December of '18 backwards?
A. Yes.
Q. So do you agree that you had paid rent late, you just disagree that you've done that 55 times?
A. No, sir, I didn't do no 55 times. I disagree with that.
Q. Do you know how many times you were late?
A. No, sir, I can't really say.
Q. Okay. Would you agree that you owed some amount of late fees?
A. It could have been a possibility, yeah.
Q. Okay. He's also got here, "Failure to maintain the home. Water damage to roof, determine unsafe due to rotting wood and mold." Under your Lease who was supposed to take care of the house and maintain it?
A. Me.
Q. Okay. When you moved into that house what condition was it in? You told me that he was fixing them up before you-all moved in.
A. It was in good condition.
Q. Okay. And when you-all moved in there was a stove

there; correct?

A. Yes.

Q. A small refrigerator?

A. Yes.

Q. Okay. Did you and Ms. Pearson ever bring a washer and dryer in?

A. Yes.

Q. Okay. So appliance-wise the landlord had a stove and a little frig. You and Ms. Pearson supplied the washer and dryer. I'm trying to think what other -- what other utilities -- not utilities. I'm using the wrong term. Okay.

A. A dishwasher.

Q. You-all bring the washer and dryer and he got the stove and the frig?

A. Yes.

Q. Did you-all bring anything else appliance-wise?

A. No, sir.

Q. Okay. So when you move in the house is in good shape. No water leaks, no buckling paint, appliances work --

A. Yes.

Q. -- utilities work?

A. Yes.

Q. Okay. So by the time we get to December of '18 according to Mr. Rigdon's Eviction Notice, there's some

water damage to the roof, and some rotting wood, and some mold. What can you tell me about that?

A. If you can remember we had a storm come through, which there was damage. And when they did the roof evidently they left a hole in it and the water started leaking through the roof. It messed the side of the wall up here. I replaced the wall and I replaced the roof, put a tin top on that roof. I did that personally.

Q. Let me back you up a little bit. So you move in and start leasing from Mr. Rigdon. Let me get my date straight. You-all would have moved in and started renting May of '13. And so by the time we get to December of '18 at that point there had been a storm and some damage to the roof?

A. Yes, sir.

Q. What happened to -- before the storm damaged the roof was the roof fine?

A. Yes, sir.

Q. All right. The storm comes through and a tree limb or something hits the roof and knocks a hole in it; is that right?

A. Whatever happened it just started leaking real bad. Just was leaking, leaking. And I mentioned it to Mr. Lukas. He told me, "I'm not responsible for that. That's your responsible. I'm only responsible for the

A. Yes, sir.
Q. And you put some tin over that and then you reshingled on top of the tin?
A. No, I didn't reshingle on top of the tin. The tin was made to go up there.
Q. Okay. So the roof is substantially a shingle roof except it's a tin roof in this area that you were involved with?
A. Yes, sir.
Q. Okay. And after you did this repair with the tin did you ever have any sort of roofing contractor or a home inspector come look over your work to make sure it was up to code and had been done properly?
A. No, sir.
Q. Okay. Did you ever have anyone come look to see if any more wood had been rotted or damaged beyond that wall that you tore out?
A. No, sir.
Q. Okay. Did you ever have anyone come by to inspect for any mold that have been caused by the moisture coming in through that roof?
A. No, sir. No, sir.
Q. Okay. Did you ever notice any mold? Mr. Rigdon says in his Eviction Notice that there's a mold problem. Did you ever see any mold at the house?

$100 balance for October rent. That is what it says. The receipt that's dated November 2nd when you paid the 100 bucks is actually paying rent for October 1 through October 31 of 2018.

A. Right.

Q. If you look at the receipt above it you paid 450 on October 22nd and you paid the remaining 100 on November the 2nd.

A. Right.

Q. Okay. Can you show me the receipt where you paid your November rent that you just told me that you paid?

A. Well, see, I don't have it because I was in the hospital at the time.

Q. You were in the hospital in November?

A. December. After this I went to the hospital in December.

Q. Okay. You told me that you paid your November rent though.

A. I don't have that November. I can't find it I don't think.

Q. Okay.

A. These are the only ones that I have.

Q. As we sit here day do you have any proof that you paid your November 2018 rent?

A. No.

$100 balance for October rent. That is what it says. The receipt that's dated November 2nd when you paid the 100 bucks is actually paying rent for October 1 through October 31 of 2018.

A. Right.

Q. If you look at the receipt above it you paid 450 on October 22nd and you paid the remaining 100 on November the 2nd.

A. Right.

Q. Okay. Can you show me the receipt where you paid your November rent that you just told me that you paid?

A. Well, see, I don't have it because I was in the hospital at the time.

Q. You were in the hospital in November?

A. December. After this I went to the hospital in December.

Q. Okay. You told me that you paid your November rent though.

A. I don't have that November. I can't find it I don't think.

Q. Okay.

A. These are the only ones that I have.

Q. As we sit here day do you have any proof that you paid your November 2018 rent?

A. No.

A. I don't have -- I didn't have that one available.
Q. Right. What I'm trying to establish, Mr. Powers, when you gave him the cash, did he give a receipt --
A. He gave me a receipt.
Q. -- like he always did?
A. Yes, sir.
Q. Okay. And that receipt would have presumably told us what that payment you made was for?
A. Yes.
Q. Whether that was for back rent, current rent, future rent or what?
A. Yes, sir.
Q. Okay. So after Mr. Rigdon shows up and tells you-all he wants you out and gives you-all this document we marked as Exhibit 10, and you tell him you're not signing it, and Ms. Pearson signs it. And she says she'll be out by January 5th?
A. Yes, sir.
Q. Of 2019?
A. Yes, sir.
Q. Is she gone by then?
A. Yeah, she moved -- not right then. Right after that she moved. We moved -- she moved into another house that she couldn't afford, so I said, "Well, I'm going to have to go with you, you need help, because I know

A. I don't -- I rightly don't remember.
Q. Okay. Do you have any paper trail showing you paid rent for December of 2018?
A. The only thing I have is where I made my withdrawal from my bank.
Q. Okay. You don't have the receipt that you used to have that would have showed --
A. No, sir.
Q. -- the payment? Okay. How about January of 2019, did you --
A. I don't have that available either.
Q. Did you pay rent in the amount of $550 for 39 2nd Avenue --
A. My last one was in January for 550. I remember that.
Q. Yes, sir. That wasn't exactly my question. My question was whether you paid rent for January, not whether you made a payment in January.
A. I can't rightly remember.
Q. Okay. February of '19, did you pay rent for 39 2nd Avenue?
A. In what year?
Q. Of 2019, February?
A. No, sir. No, sir.
Q. One month later?
A. No, sir.

A. I don't -- I rightly don't remember.
Q. Okay. Do you have any paper trail showing you paid rent for December of 2018?
A. The only thing I have is where I made my withdrawal from my bank.
Q. Okay. You don't have the receipt that you used to have that would have showed --
A. No, sir.
Q. -- the payment? Okay. How about January of 2019, did you --
A. I don't have that available either.
Q. Did you pay rent in the amount of $550 for 39 2nd Avenue --
A. My last one was in January for 550. I remember that.
Q. Yes, sir. That wasn't exactly my question. My question was whether you paid rent for January, not whether you made a payment in January.
A. I can't rightly remember.
Q. Okay. February of '19, did you pay rent for 39 2nd Avenue?
A. In what year?
Q. Of 2019, February?
A. No, sir. No, sir.
Q. One month later?
A. No, sir.

Q. Okay. March of 2019, did you pay any rent for 39 2nd Avenue?
A. No, sir.
Q. Where were you living in March of 2019?
A. 300 Watson Road, Greenville, South Carolina.
Q. Okay. April of '19 did you pay any rent for 39 2nd Avenue?
A. I was hospitalized.
Q. Where were you living in March of '19?
A. 300 Watson Road.
Q. Okay. So can you tell me the last month that you would have paid rent or for which you would have paid rent for 39 2nd Avenue?
A. January the 3rd of 2019 is the last time I remember paying him.
Q. Right. And, again, but my question was, Mr. Powers, not when you actually made the payment, but for which month did you last pay rent?
A. That had to be the month of December.
Q. The month of December?
A. Yes, sir.
Q. Okay. And you would have made that December rent payment when?
A. January 3rd.
Q. Okay. So your recollection of making a payment January

Q. Okay.
A. You know where I had to tear the wall out. I had to tear the wall out and the water heater is sitting in the corner, so it damaged them pipes, so I had to replace them pipes on that water heater. Maybe that's why I didn't put a new one in there.
Q. The pipes that you replaced on the water heater, the water heater that was there when you started renting it --
A. Yes, sir.
Q. -- why did you need to replace those pipes?
A. Because that water had damaged them pipes up there.
Q. Okay. What water? The water from the roof leak?
A. Yes, it was bad. That thing was kicking out five-gallon buckets of water was dropping from that roof down in there. Like literally like (indicating downward motion) water was running.
Q. Okay.
A. That bucket I had to check the water. I had bucket, bucket, bucket.
Q. All right. So there's tons of water getting in the house through this roof leak and some of that water is getting on the hot water heater. And is it rusting the pipes; is that --
A. No, it was messing them up. The pipe was like

Q. You took all the wood out, too?
A. And put new ones in, brand new ones in. Yes, sir. Yes. Yes. All the way back.
Q. How about the stringers at the top of the wall, did you replace that wood, too?
A. No, because when it went up -- I had -- look, I had to replace the top of that section. The top right here, I had that boy take all of that out and put new up here. I had to tear the joists right there that it run against and, you know, where the two-by-four went down.
Q. All right.
A. I had to take them out to get that presswood back like this and finding joists I'd need to nail against that.
Q. And you did all that yourself; right?
A. Well, I had a guy to help me. I mean some white guy helped me. He was living up the street from me, he kind of help. He knew a little bit of stuff.
Q. Do you know this white guy who lived up the street name?
A. No. I'd probably never find him.
Q. Okay. So you and a white guy, who lived up the street, did all these repairs to take care of this water damage and --
A. Yes.
Q. -- the wood getting moisture in it and stuff like that;

right?

A. Yes, sir.

Q. Did you ever have anybody come and inspect the repairs you-all did to see if it was done properly?

A. No.

Q. Okay.

A. I know a little bit about carpentering, a little bit.

Q. Okay. And you know a little bit about roofing, I assume?

A. Yeah, that top -- I mean that top was nice. Of course, my plan was to do the whole top in tin. You know run the whole thing. You ever see them houses with a top on, that blue and colors on top of there. I was planning to do the whole thing eventually with that. The whole roof like that, the whole roof.

Q. Okay. Alrighty. Let me get you to flip over to page 5 in the same document we're looking at.

A. The same one?

Q. Yes, sir.

A. Okay. I see 5.

Q. All right. Up at the top it's got Bettie Briggs. That's your sister?

A. Yes, sir.

Q. Okay. And she was going to loan you the money to buy -- to buy this house and she also knows about renting

Q. I understand --
A. And I said, "I'll you the rest when I get to the bank on the 3rd."
Q. Right.
A. My money would come in like that.
Q. Right. Right.
A. Okay. Go ahead.
Q. Right. But in point of fact, you admit you were late with some of your payments?
A. Yes, sir.
Q. And the receipts from your records show that?
A. Yes, sir.
Q. Okay. So it wasn't news to you and Ms. Pearson that you had been late in payments before?
A. Right.
Q. You knew you had been late because you had the paper trail?
A. Yes, sir.
Q. Okay. All right. Paragraph 14. The next one down. "Ms. Pearson signed the December 3rd letter saying she would vacate --"
A. Where you at?
Q. I'm sorry. Let me let you get with me.
MR. FESSLER:
Right here.

A. No, because Jackie do all the paperwork. I mean --
Q. Right.
A. -- she did everything.
Q. When is the first time that you had occasion to actually read the back two pages of Exhibit 10?
A. The first time right here?
Q. Yeah.
A. I don't know. I'm going tell you I haven't seen that until -- I mean the only thing I would look at was this Jackie Pearson where he tried to evict us.
Q. Right.
A. But as far as looking back I can't see that good. I didn't see nothing, but I kept them receipts I had. I just know every time he gave me a receipt I would put them in a Ziploc bag, my receipts.
Q. So the two pages that you still never really paid a lot of attention to --
A. No, sir.
Q. -- do you dispute what those pages reflect? Do you think that is inaccurate and it is not correct as far as the numbers in/numbers out are concerned?
A. They say missing receipt. I don't know. I mean I can't say.
Q. Well, let me ask it a different way, Mr. Powers. As we sit here today, do you have any evidence to dispute the

paper trail as reflected in these two pages attached to Exhibit 10?

A. I'm not really understanding. I'm not understanding.

Q. Well, as an example, the first page down at the bottom for the entry January 1, 2018, there's an "X" and according to the top column that "X" means it's a late payment. So do you see where I'm looking 1/1/2018?

A. So you're saying I've been late with all these Xes?

Q. Well, I'm just asking you about the one entry.

A. Oh.

Q. Right now for 1/1/18 it's an "X" by it, which suggests that that was a late payment.

A. I can't remember that. It could have been like I said -- like I said the 3rd could have rolled. I don't know date that rolled on. It could have rolled through the week like a Saturday or Sunday and I didn't pay you till Monday.

Q. Okay. Well, as we sit here today do you have any evidence to dispute that you were late with your payment that was due --

A. No.

Q. -- on 1/1/18?

A. No, I don't have evidence.

Q. The same question for the payment right above it that was due December 1, 2017?

A. Then he come back and told me the reason why he said it.

Q. Right. But let's talk about the document as opposed to what he told you. I could go add them. They're not near 52, but there are a number of late payments between May 1 of 2013 and November 1 of 2018. And by each of those due dates there's an "X" and for every "X" supposedly that's a late payment. If you're telling me this document is wrong, that you weren't late on the payments that are reflected in these two pages, then I'd like you to tell me which ones are wrong.

A. I can't. That's something he made up. That's something he did.

Q. Right. Do you have any proof that he's wrong in this document?

A. No, I don't have no proof.

Q. Okay. When you would short pay -- well, let me back up, Mr. Powers. Over the course of the time you were renting were there any times that you would agree that you may roll into a new month and still owe money on the prior month's rent?

A. No, we never -- we never talked about nothing like that.

Q. So you never got in a situation where you -- you may

Q. Yeah, the document you just had.
A. Okay. Yeah. All right.
Q. Okay. All right. Look down to the entry for January 1 of 2017.
A. This right here?
Q. Yeah, the thing with the columns and the Xes that we're talking about.
MR. FESSLER:
You said January 1 of '17?
MR. HAYNSWORTH:
Yes, about bottom third -- bottom quarter of the page.
MR. FESSLER:
Okay. Look down the row here.
THE WITNESS:
It would be that one right here. Is that one January 1 of 2017?
MR. FESSLER:
Yes.
MR. HAYNSWORTH:
Yes, sir.
THE WITNESS:
Okay.
Q. Do you see where we're looking?
A. Yeah, I saw it. Yeah. Well, I think I got it. Yeah.
Q. Okay. There's an "X" by it that signifies that payment

was late. Do you have any reason as we sit here today to dispute that your payment for January 1st of 2017 was late?

A. No.

Q. All right. Keep going over. The same date. Stay on that 1/1/2017 and go over to the column that says, "Amount Past Due." And do you see that 681?

A. Right.

Q. And then you see where it says "Notes"? It says, "Still a debt of 681 from 2015/16?

A. I see what you're talking about.

Q. Do you see where I'm reading?

A. Yes.

Q. Do you have any reason to dispute, Mr. Powers --

A. Yeah, because I'm not understanding where that coming from.

Q. Well, it appears to be he's claiming you still are owing $681 from the 2015/2016 time period. That that money is still owed as of January of '17.

A. Yeah, I'm saying why did he not -- I mean he ain't brought that to my attention no kind of way.

Q. I'm wondering if you dispute that. Not whether he ever brought it to your attention before --

A. I'm just saying. Yeah, I'm disputing it because he never brought it to my attention that I owed that.

Q. So it's your position you didn't owe any past due in '17 for your 2015/2016 --

A. No, I can't see that. Because I know he only brought this stuff up when it's time, that's something he needed to get that house sold. All of sudden you bring all this stuff up. What else?

Q. Mr. Powers, you're -- you're missing me. I'm not arguing with you.

A. Oh, yes, I know.

Q. But about what point in time he brought the papers -- or what point in time that he pointed out you might still owe rent from back in 2015/2016. My question was --

A. I can't remember. I just don't remember nothing like that.

Q. As we sit here today, do you have any evidence --

A. No.

Q. -- to dispute that you would have owed some money from '15 and '16 --

A. No, I don't have no evidence.

Q. -- as of January of '17?

A. No, sir.

Q. Okay. And a similar question. Go up a little bit to January 1 of 2016.

A. Where that at?

Q. Go up from where we were just reading.
MR. FESSLER:
It's this right here.
THE WITNESS:
What do that be? January the 1st?
MR. FESSLER:
January the 1st of 2016.
THE WITNESS:
Okay. Where it's saying minus 531 owed?
A. All right. Go ahead while I'm trying to get it straight.
Q. Okay. You're with me. We're on the payment date column 1/1/2016?
A. Yes. I'm kind of with you, yes.
Q. And there's an "X"? Do you see in the column where it's late?
A. Yeah.
Q. Okay. As we sit here today, Mr. Powers, do you have any evidence to dispute that your payment due on 1/1/2016 was late?
A. No, sir, I don't have any evidence.
Q. All right. Stay with me on that same date, but come over with me on the column. You go to the right do you see that minus 531 under amount past due?
A. Yeah.

raised Cain I didn't have no other choice. I mean, you know, she didn't play. You done it right or you ain't going to do it.

Q. All right. But you've got no idea whether you've got a leak in there now or not?

A. No, I ain't been there. No. I don't think it has, because I put good stuff in there.

Q. All right. You didn't put shingles back on?

A. Yeah, I put the shingles on the top like the shingles was on, but I put that tin down. I joined -- we joined that tin up under there so if it did rain that water would go off through a drop off like there.

Q. Well, the branch that hit the roof that caused the leak to begin with from the storm back in '15 that you told me about, when you went up to inspect the roof itself, did you get up on a ladder, did you get up on the roof?

A. Yeah, I went up. We had to fix the house from the -- you know, you had to go on top of it to fix it.

Q. Okay. So you're up on the roof. It's a shingle roof. Had the shingle got a hole knocked in it?

A. What it was, see, what happened after it rained and for a while we didn't know. And it kept raining till it make that hole like right here. That's when that water started coming in there.

Q. Right. So once you went up on the roof you saw there

was noticeable hole?

A. Yeah, we tore all that out. But it had done damaged all that stuff before I could get to that. You know all that had done been damaged.

Q. About how long between when it got damaged and when you got to it to fix it? How much time went by?

A. It was probably -- it was good while had went by, because I noticed that thing that kept getting brown. You know the top kept getting brown and brown. Like it was getting bigger and bigger and bigger. I guess that shingle warped -- you know, that wood busted through there and the water started coming through there.

Q. Okay. When you say it was a pretty good while was it weeks? Was it months?

A. I don't know. It probably had to be at least a month, because that big storm come through one year.

Q. Right.

A. And you recall -- I don't know, when they was giving them people all them free stamps and stuff out there on, you know, Pleasantburg, that's when that happened. And them people in line getting all that free food. The free food stamps, that's when it happened. They was paying people storm damage to their house.

Q. Okay.

A. A lot of people ripped the system off that didn't have

the damage.

Q. And was it a tree branch that did it?

A. Yeah, it was tree, because, you know, cutting that -- it was a tree on the side over there. And I cut another big tree out for him.

Q. Okay.

A. A huge tree. But then there was another one over to the right back there, a big one, that I cut down, because it probably come from that big cedar tree. I had to cut it down because it was sitting beside the house back there.

Q. So --

A. That must have been the one that hit it.

Q. So I mean was there a branch or a tree actually laying on the house after this storm?

A. A big limb.

Q. A big limb laying on the house?

A. A big limb had boom (indicating with hand). So it must have knocked that -- it had to knock that hole in there.

Q. Okay.

A. But I ended up cutting that tree down, but I never charged him for that. That tree I didn't.

Q. Right.

A. And I was responsible -- I'm responsible for that.

Q. So how did the branch that hit the roof get off the roof?
A. We took it off.
Q. Okay.
A. I had a chainsaw.
Q. All right. So you got a chainsaw and went up and cut it and pulled it off the roof?
A. Cut it up, you know, like that and threw the pieces off.
Q. Right. And looked at the roof. Didn't see any damage then?
A. I didn't see no damage then. There wasn't no damage. I mean you know.
Q. Right. And then you start noticing on the ceiling browner and that spot was getting bigger and bigger and bigger?
A. Yeah.
Q. Then finally it just the ceiling collapses?
A. Collapsed.
Q. Hits the floor?
A. By the time that -- by the time it corroded from that, you know, that old presswood. You know what -- you know what presswood is?
Q. Right.
A. That started to swell up.

Q. Right.
A. And then it had wet all that -- you know, the stuff I told you about that I pulled out of there.
Q. Right. So enough water got in through that hole over a long enough period of time where eventually the ceiling just collapsed?
A. It just collapsed and tore all to pieces. But all of it is new in there now.
Q. Right.
A. We busted all that out, the wall, and put the new tile in the bathroom. I mean in that bathroom. It even tore up the bathroom. That bathroom, it busted it out, too.
Q. The limb did?
A. No, no, the water where come in. It busted the bathroom. It busted all that bathroom tile out up there like that. It busted that washroom out and tore the wall up.
Q. Oh, so the -- so the water that came in from that limb hitting the roof not only made the ceiling collapsed ultimately in -- would that be the living room, the den?
A. No, no, that's the washroom. The laundry room.
Q. Okay.
A. That's the laundry room and the bathroom. All that was

joined together.

Q. That same water leak caused damage in what area?

A. It caused a lot of damage.

Q. And what other room did it cause damage in, the laundry room?

A. It did the laundry room and the bathroom. It didn't bother like the kitchen or nothing like that.

Q. Okay. All right. And the big storm was in '15 and you were telling me about people waiting for the food stamps. Do you have any idea what month in '15 that storm was?

A. No, I can't remember.

Q. Okay.

A. We had a bad storm come through Greenville. In other words, it tore up a lot of stuff.

Q. Right. Okay. And, well, whenever it was in '15, the repair that you did when you went up and put the tin on the roof, and when was that repair done? Was that in '16 or in late '15; do you remember?

A. I don't exactly remember.

Q. Okay. It was a while after the limb hit?

A. Yeah, it was a while after that. We might have waited three or four months before when we got that rain when it really started.

Q. Right. Right. And did you go up and fix the hole with

that piece of tin before that --

A. No.

Q. -- before or after the ceiling actually collapsed?

A. After. After.

Q. Okay.

A. We had to put new -- put new tin over the top there.

Q. Okay. And the work, you told me that you and the white guy from down the road took out the old insulation and replaced the wood and all. What about the damage in the other rooms like in the laundry room and stuff? Did -- did --

A. I did that whole -- I had to tear that wall out.

Q. Okay.

A. I had to tear that wall out in the laundry room. I tore the wall out where you could see the whole room. So I had to paint that whole wall.

Q. Right. And did you keep -- I guess you had to go buy insulation, and by lumbar, and by that tin?

A. I had to buy everything. The lumber, the tile, like, you know, the tile.

Q. Right.

A. The commode. The laundry room was so bad we go, "It ain't really that big though."

Q. Right. And did you keep your receipts?

A. No.

A. Oh, yeah. Yeah. I ain't seen nothing since that, but we had been there over a year. It didn't leak. It wasn't leaking no more. I keep telling you.
Q. Right. And did you tell me earlier it was leaking so much you had to have five-gallon buckets?
A. We had five-gallon buckets and had to sit them in the floor to catch the water.
Q. Right. More than one bucket?
A. Yeah, I had more than one bucket. I had like them five-gallon buckets, because the running water was so bad.
Q. Right. But was the water just falling in one place?
A. No, it was coming like over from -- coming from there, some from there, some from there.
Q. Okay. So how many different buckets did you have catching water?
A. I had about four different buckets.
Q. Okay. So you had four different spots in the roof where water was coming?
A. Right. One was in the bathroom was leaking, right here by the washing machine back there. Yeah, I had to put one on top of the washer. I put one in the corner. That was leaking that hot water heater.
Q. Right.
A. I was scared of the hot water heater, because it's got

electricity there.

Q. That's right. You told me water was leaking on it and you had to replace those top pipes.

A. Yeah. We was scared because of that electricity. I said, "I hope that thing don't catch afire."

Q. Right. Did you ever get anybody to come give you an estimate of what they might charge to do the repairs?

A. No, I didn't never get nobody.

Q. Okay. And you're not -- you don't have a builder's license or anything like that?

A. No, you don't have to it. In the county you don't have to have it. Now, if I'd been in the city you had to have it.

Q. Right. But you're not a licensed contractor --

A. No.

Q. -- or a licensed builder, are you?

A. No.

Q. And in your work history you did -- you didn't do construction work, build houses, and things like that?

A. No. Huh-uh.

Q. Okay. And that white fellow who helped you was he --

A. He was pretty good. He knew what he was doing.

Q. Right. But --

A. He was instructing me what he needed to do.

Q. Who came up with the idea to put tin up there?

A. Me.
Q. Okay.
A. See, I wanted to do the whole house. You know I said eventually I was going to do the whole house. I wasn't going to do it. I was going to have somebody put that tin on the top.
Q. Right.
A. The whole house.
Q. And when you say tin there are houses now that have metal roofs.
A. That. I mean metal. Not --
Q. Okay.
A. I apologize. That metal. That's what I've got on top on that.
Q. I gotcha.
A. I said tin because, you know, it's an old thing.
Q. Okay. Okay.
A. But a metal roof with the roof tabs (making a noise).
Q. Yeah, they're just split seams.
A. Yeah, that's because you can take that and join on top and do the -- then you come with your stripping. You lay a strip down and do like this (hitting table with fist).
Q. Right.
A. And lock it in and then you cap it off.

Q. Okay. All right. And that fellow that helped you, even though he knew what he was doing, as far as you know he wasn't a licensed builder or a licensed contractor?

A. No. No, he was just somebody that stayed up the street. He needed to make some money.

Q. Okay. And when you moved into that house do you know how old the roof was?

A. He just had put a new roof on there.

Q. Okay.

A. He had put a new roof on that house. Shingles, too.

Q. Okay. So when you and Jackie moved into it in May of '13 --

A. Yeah.

Q. Or no.

A. Yeah, before that.

Q. Eleven.

A. Yeah.

Q. You did 11 for two years under the old Lease?

A. Right.

Q. Okay. So when you-all moved in in 2011 he'd just put a new roof on it?

A. Yeah, he had put a new roof on it because they was throwing it off.

Q. Okay.

A. You know put that new carpet and put that hardwood in the living room and it might be in the kitchen.
Q. Okay. So when you-all moved in that carpet that you said probably needed to be replaced that was new when you-all moved in?
A. Yeah, but it was about that thin carpet (indicating).
Q. Right. And then the hardwood floors were new?
A. Yeah, the hardwood floor was new.
Q. A new roof?
A. Hardwood floor in the living room and I think the kitchen.
Q. Okay. Okay. All right. How many total holes do you think were in the ceiling? You told me you had four leaks and four buckets. As far as the whole house, how many total holes do you think were in the ceiling from that water coming in?
A. I'll probably say about three or four I guess.
Q. Okay. The three or four that you had the buckets under?
A. Yeah.
Q. And were all of those buckets in one room or other rooms?
A. One in the bathroom. One was in the bathroom.
Q. Right.
A. I had one right there by the hot water heater and I had

A. You know put that new carpet and put that hardwood in the living room and it might be in the kitchen.

Q. Okay. So when you-all moved in that carpet that you said probably needed to be replaced that was new when you-all moved in?

A. Yeah, but it was about that thin carpet (indicating).

Q. Right. And then the hardwood floors were new?

A. Yeah, the hardwood floor was new.

Q. A new roof?

A. Hardwood floor in the living room and I think the kitchen.

Q. Okay. Okay. All right. How many total holes do you think were in the ceiling? You told me you had four leaks and four buckets. As far as the whole house, how many total holes do you think were in the ceiling from that water coming in?

A. I'll probably say about three or four I guess.

Q. Okay. The three or four that you had the buckets under?

A. Yeah.

Q. And were all of those buckets in one room or other rooms?

A. One in the bathroom. One was in the bathroom.

Q. Right.

A. I had one right there by the hot water heater and I had

Greenville County, SC



October 9, 2020

1:480

0 20 40 80 ft

0 5 10 20 m

Greenville County GIS Division, Greenville, South Carolina., Greenville County GIS Division, Greenville, South Carolina, Greenville County, South Carolina GIS Division

Powers 1



Powers 2d

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) OPTION TO PURCHASE
)

KNOWN ALL MEN BY THESE PRESENTS, that Rizan Properties, LLC,

in consideration of Five Hundred Fifty and No/100s ($550.00) Dollars,

the receipt of which is hereby acknowledged, have granted, bargained and delivered and by these presents do grant, bargain and deliver unto Jerry Powers and Jackie Pearson;

AN OPTION TO PURCHASE

1. The Grantee shall have the option to purchase premises known as 39 2nd Ave., Greenville, SC 29609 for the period of eight years from the date of this agreement for the price of Fifty Two Thousand Eight Hundred and No/100s ($52,800.00) Dollars. The total consideration herein shall be payable as follows: 1) $550.00 payable at the signing of this agreement; 2) $52,300.00 payable upon closing. Should the Grantee exercise its right to purchase, the amount of $550.00 plus $550.00 of each month's rent paid shall be applied to the purchase price at closing. Should the Grantee fail to exercise his option to purchase all monies paid hereunder are considered forfeited as consideration for the option.

2. If the Grantee chooses to exercise his option to purchase, all expenses necessary for the consummation of the sale shall be paid as follows: 1) Seller shall pay for deed preparation, deed recording fees, costs associated with the mortgage payoff, state and county deed stamps and other customary Seller's expenses. 2) The Grantee shall pay all lenders charges in connection with financing, customary purchaser's attorney's fees, title insurance, recording fees and all other customary purchaser's expenses. If the Grantee chooses to exercise his option to purchase, the Seller agrees to deliver a proper statutory warranty deed free of all liens and encumbrances with all stamps affixed thereto. The Seller shall pay for deed stamps, document preparation and all expenses necessary to deliver clear, marketable and insurable title to the premises. The parties shall formally execute a purchase contract within ten (10) days of the purchaser's notification to the seller that he is exercising this option.

3. If the premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this option, Grantor, with due diligence, shall repair, restore, rebuild or replace the premises or such portions of the premises that are damaged and/or destroyed so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall include more than 50% of the insurance value of the premises, Grantor, at Grantor's option

Powers 4

may cancel and terminate the option to purchase by giving written notice to Grantee within thirty (30) days after the date such damage or destruction has occurred and returning all consideration paid for the option. In such an event, this option shall terminate on the date specified in such notice, and Grantor shall not be obligated to repair or rebuild the premises.

4. The closing will be conducted at the offices of The Heckman Law Firm, 409 Pettigru Street, Greenville, SC 29601 and the closing shall occur on or before date specified by the closing agent. If the Grantee wishes to exercise this option, it should notify the Grantor herein in writing and the parties shall execute a contract of sale incorporating the price and terms herein at that time. The terms of this provision shall be binding upon the heirs, successors and assigns of the parties.

SIGNED, sealed and delivered in the presence of: May 1, 2013

RIZAN PROPERTIES, LLC

WITNESS

(SEAL)
By: Lukas Lavette Rigdon, Member

WITNESS

WITNESS

(SEAL)
Jerry Powers

WITNESS

(SEAL)
Jackie Pearson

...nces to SC Residential Landlord Tenant Act ("SCRLTA") in Agreement.

...the Agreement.

...ery situation, May need to include or delete provisions.

REEMENT STATE OF SOUTH CAROLINA, COUNTY OF LAURENS

✓ Apartment lease _____ Other _____

Rental Agreement is entered into between RIZAN PROPERTIES, LLC

...ner, hereinafter known as LANDLORD, and _____

...NANT, this 3rd day of AUGUST 20 11, at 2:30 p.m., South Carolina.

...of the rent to be paid by the Tenant to the Landlord, the parties agree as follows:

1. The property, which is the subject of this Rental Agreement, consists of the land and buildings located thereon and is known as 39 2ND AVE GREENVILLE SC 29609

2. Occupants of the premises shall be limited to TERRY POWELL, JACQUELINE PERSON & MOSEAH CARLSON AGE 2

...rd leases the premises to the Tenant, subject to the provisions of this Rental Agreement, for a term of 12 MONTHS beginning SEPTEMBER 1, 20 11, and ending at midnight AUGUST 31, 11. ...grees to vacate the property on the ending date, leaving it clean and in good condition, free of Tenant's personal ..., and to return the keys to the Landlord. Notice requirements are specified in paragraphs 18 and 19.

...for the term of this lease is 6,600.00 and is payable in monthly installments of 550.00 ... 39 2ND AVE. or at such other place as the Landlord may designate in writing.

...ID RETURNED CHECKS. Rent is due in advance on the first day of the month. IF RENT IS NOT PAID WITHIN 5 ...DATE, LANDLORD MAY TERMINATE THIS RENTAL AGREEMENT. Rent paid after the fifth day of the ...e of $ 10.00/DAY. Returned checks shall be subject to a charge of $ 50.00. ...d before the sixth day of the month. Notwithstanding, if any check of the Tenant for the security deposit or ...sufficient funds, Landlord may declare this rental agreement void and immediately terminated.

5. 550.00 will be deposited (interest free) by Tenant upon execution of this agreement, and prior to ...mination of this tenancy as security for the full and faithful performance by Tenant of all the terms of ...place said security deposit with other security deposits in a separate trust account and to deduct ...sums to the property and/or any accrued rent or late charges, upon vacating of tenant. Security ...month of this tenancy. If the damages sustained by the Landlord as a result of Tenant not ...ed so much of the security deposit as is left after deductions therefrom pursuant to this ...s.

PLAINTIFF'S EXHIBIT 5 7-28-21

PENGAD 800-631-6989

a failure to deliver possession of the premises at the commencement of this lease, the monthly rental provided ...ily basis and shall not be due until occupancy is available. The tenant, however, may notify the Landlord upon ... he elects to terminate the lease for failure to deliver the premises. In such case, the Landlord shall return all prepaid

It is agreed that inspection will be made within three (3) working days after Tenant has completely vacated the premises ...e hours of 9 a.m. and 5 p.m. Monday through Friday. No inspection will be made on Holidays or weekends; and UTILITIES TO THE TIME OF INSPECTION. Tenant has the right to be present during the inspection, and Tenant's failure to appear at the constitute the Tenant's agreement to accept the Landlord's Inspection Report as conclusive and final.

PETS. Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the ...Landlord does, at his sole discretion, consent, and if Tenant makes payment of any required pet fee, Tenant may keep and maintain the ...estic animal upon the leased premises in accordance with the terms hereof and any special agreements reached between Landlord and ...contradiction of these terms. Tenant shall be responsible for the animal, its behavior, and any damage, over and above the pet ...sit. The Landlord will have the right to withdraw consent and demand removal of any previously permitted animal upon the ...ed against such animal or upon evidence of injury or damage caused by animal. Any special pet agreement is an integral part

...EMISES. Tenant acknowledges that he has inspected the premises and agrees that the premises and the ...e in safe, fit and habitable condition. The electrical, plumbing, heating and air-conditioning system, if any, ...d with the premises are in good working order.

...AND REPAIR. Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable ...her agrees to maintain in reasonably good and safe working order and condition, all electrical, gas, plumbing, sanitary, ...ing and other facilities and appliances supplied by him. The Landlord agrees to comply with all obligations set ...rial Landlord and Tenant Act in Article II, Section 21(a).

...dwelling unit and all parts of the premises that he uses safe and clean. In the case of a single-family house or ...ntered and free of rubbish and to keep the gutters clean and the shrubs neatly trimmed. Tenant shall ...safe and sanitary manner. Tenant shall not negligently destroy, deface, impair, or remove any part of ...to so.

...at Tenant's expense, keep sinks, lavatories and commodes open, reporting any initial malfunction ...ken windows and burned-out light bulbs; repair any damage to screens, interior walls and doors, ...ss of, or damage to, electrical, plumbing, heating or air-conditioning systems. Tenant agrees to ...ence or careless use of the premises, including repairs to electrical, plumbing, heating and ...ppliances, and to pay for repairs resulting from theft, malicious mischief or vandalism by

for, and to make at Tenant's expense all routine maintenance including, but not limited to, stoppage of sewer pipes or fixtures due to neglect or carelessness of Tenant. Tenant is directly responsible for any damage caused by same. Tenant is responsible for changing air filters in heating and air-conditioning systems and reporting any water stain for damage to heating and air-conditioning systems by filters not being kept in a satisfactory condition.

31. Tenant will report any pest problem within three (3) days of possession. Tenant's failure to identify any pest problem ___ days shall constitute Tenant's agreement that premises has no infestation of any kind. Any future infestations of any kind shall ___ of ( ) Tenant ( ) Landlord.

AGE OR CASUALTY. If the premises are damaged or destroyed by fire or other casualty to the extent that normal use and ___ substantially impaired, Tenant may immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter ___ to terminate the rental agreement, in which case, the rental agreement terminates as of the date of vacating. If continued occupancy is ___ vacate any part of the dwelling until rendered unusable by the fire or casualty, in which case the Tenant's liability for rent is ___ the diminution in the fair-market rental value of the unit. If the rental agreement is terminated, the Landlord shall return ___ Paragraph 6 of this agreement and all prepaid rent. Accounting for rent in the event of termination or apportionment will ___ the fire or casualty.

___ acknowledges that the Landlord does not carry insurance to cover the Tenant's personal property or his personal ___ obtain Renters' Insurance to protect his interests. Tenant agrees to comply in all respects with the requirements of the ___ insurance carrier and not to permit anything to be done at or within the premises which shall cause cancellation of, or ___ insurance thereon. Tenant agrees to obtain liability insurance to cover possible water damage should a waterbed be ___

___ agrees that he will pay for all utilities except ___.

___ the premises by the Tenant, and in the event of Tenant's default therein, Landlord may pay the same and add the ___ of rent thereafter falling due hereunder, together with any penalties or interest which may have been paid by the ___ for any inspections required by utility companies due to the Tenant's failure to obtain service at time of occupancy. ___ of this agreement.

___ Agreement shall not be assigned nor shall the premises be sub-let without written consent of the Landlord. ___ party who signs this Rental Agreement is responsible for rent and the obligations herein.

___ OF TERMINATION. At the end of the term of this Rental Agreement as set forth in Paragraph 3 ___ shall be extended for successive one month periods and be considered a month-to-month tenancy, ___ provided Landlord gives Tenant thirty (30) days written notice prior to the adjustment. If Tenant ___ this agreement or at any extension thereof, Tenant shall notify the Landlord, in writing, at least ___ termination of this agreement, or at least thirty (30) days prior to the date specified in the notice ___. Any termination shall be on the last day of the calendar month, unless otherwise stated. ___ date of this agreement he may do so by giving Tenant at least thirty (30) days ___ may terminate any extension of this agreement by notifying Tenant, in writing, at

ired or authorized to be given hereunder or pursuant to applicable law shall be sent by certified or registered
ing addresses: Tenant at the address of the premises; Landlord at the address to which rental payments are sent.
and address of the Landlord herein or the person authorized to act on behalf of the owner as agent is _____
30 BELLE TERRE CT GREENVILLE SC 29609 LUKAS.REDDY 864-991-1719
made upon said agent and he is authorized to receive notice or demands under this agreement.

T. If Tenant fails to perform any of the terms of this rental agreement, other than the payment of rent, or non-compliance with
agreement affecting health, safety or the physical condition of the property, the Landlord may deliver written notice to Tenant
such and Tenant shall remedy the breach within fourteen (14) days. If Tenant fails to do so, Landlord may terminate this rental
to a default in the payment of rent and/or non-compliance with the provisions of the agreement affecting health, safety or the physical
property, the terms of this agreement and the South Carolina Residential Landlord and Tenant Act shall apply.

ENTRY BY LANDLORD. ENTRY WILL BE MADE BY THE LANDLORD IN ACCORDANCE WITH THE SOUTH
RESIDENTIAL LANDLORD AND TENANT ACT, SECTION 25:

unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary
decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or
purchasers, tenants, workmen, or contractors.

enter the dwelling unit without consent of the tenant:

emergency – prospective changes in weather conditions which pose a likelihood of danger to the property may be
ity;

a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace
s, providing termite, insect or pest treatment, and the like, provided that the right to enter to provide regularly
vices is conspicuously set forth in writing in the rental agreement and that prior to the entering, the landlord
enter to perform services; or

a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the
to enter to perform services.

use of access or use it to harass the tenant. Except in cases under item (b) above, the landlord shall give the
of his intent to enter and may enter only at reasonable times.

except:

Article IV:

officer at reasonable times for the purpose of service of process in ejectment proceedings; or
the premises.

area facilities, if any, when open and operating are subject to applicable rules and
designated parking areas and only for the vehicles belonging to the Tenants and their
Other vehicles will be permitted to be parked at the premises without written
ly prohibited. The Landlord has the right to tow away and store at the Tenant's

...ned which become a nuisance to the premises, such as wrecked or disabled vehicles or vehicles not currently ...ble law. Auto repairs requiring disassembly of auto are not permitted without written permission of the Landlord. ... only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or ...ereon. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt ...to include any restrictive covenants in effect within the community and/or legal jurisdiction.

...TIONS. Tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without prior written ...lord. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface ...ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any wall ... be hung with "bulldog" type hangers. Any alteration or improvements made by the Tenant including any fixtures, carpeting, ...ver, shrubs or any other plants shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon ...ve, the Tenant shall restore the property to its original condition or repair, safety and appearance, ordinary wear and tear ...the fixtures, carpeting, painting, wallpaper, shrubs or any other plants which Landlord has accepted. If Tenant fails to do so, ...burse the Landlord for any expenses required to so restore the premises.

...USE. If Tenant is a member of the Armed Forces of the United States, stationed in the Tri-County area and shall, after ... tenancy receive permanent change of station orders out of the Tri-County area, Tenant may, upon presentation of a ...to the Landlord, along with thirty (30) days written notice of intent to vacate, and payment of all rent to the expiration ...any miscellaneous charges in arrears, terminate this Rental Agreement. Normal enlistment termination or other type ...unless due to conditions beyond the Service Member's control, or acceptance of Government quarters is not a ...d is not justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry ...ny consideration or protection offered under this section.

...acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any ...rmation are untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant ...including reasonable attorney fees. Tenant and only those persons named in the application shall occupy or use the

...plained absence of a Tenant from premises for a period of fifteen (15) days after default in the payment of ... the premises. When premises has been abandoned, or the rental agreement has come to an end and the ...s property or voluntarily and permanently terminated his utilities, and has left personal property on the ...d ($500.00) dollars or less, the Landlord may enter the premises, using forceable entry if required. ...ered by this section will be handled under the provisions of Code of Laws of South Carolina for ...ndons the unit, he shall be liable for the rent for the remaining term of this agreement pursuant to ...sidential Landlord and Tenant Act.

...scribed in this rental agreement is delivered to a bonafide purchaser in a good faith sale, ... events occurring after written notice to the Tenant of the conveyance.

... the entire agreement of the parties. No agreement, statement, representation, ...ed contained in this agreement.

[illegible]TIONS, ADDENDA: _____

_____

_____

[illegible]greement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control.

[illegible]ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE [illegible] AGREED TO.

LANDLORD: Company RYAN PROPERTIES, LLC TENANT Jerry Powers

By _____ By _____

_____ Witness JERRY POWERS

CToR form, 3/88

[illegible]

_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

LEASE AGREEMENT

THIS AGREEMENT entered into by and between Rizan Properties, LLC, hereinafter referred to as Lessor, and Jerry Powers and Jackie Pearson, hereinafter referred to as Lessee.

WITNESSETH

FOR AND IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE I.
DESCRIPTION OF PREMISES

Lessor, for and in consideration of the rents, covenants and agreements hereinafter specified to be paid, kept and performed by the Lessee, leases the premises consisting of a house and lot designated as 39 2nd Ave., Greenville, SC 29609 (the "Demised Premises").

ARTICLE II.
RENT, LATE FEE & SECURITY DEPOSIT

Lessee shall pay to Lessor as rent for the Demised Premises the amount of Fifty two Thousand Eight Hundred and No/100s ($52,800.00) Dollars. Rent shall be payable at the rate of Five Hundred Fifty and No/100s ($550.00) Dollars per month in advance. Rent not received by the Lessee by the fifth (5th) day of each month shall be deemed late and the Lessee shall be charged a $50.00 late fee. A Security Deposit of Five Hundred Fifty and No/100s ($550.00) shall be paid from Lessee to the Lessor.

ARTICLE III.
BEGINNING DATE OF LEASE TERM

The beginning date of this Lease shall be May 1, 2013. The term of this Lease will begin at that date and will continue until eight years from the beginning date herein.

ARTICLE IV.
RENTER'S INSURANCE

Lessee covenants and agrees that it will at all times during the term of this Lease or any extension thereof at its own expense, maintain and keep in force comprehensive renter's insurance for damage to the Lessee's personal property. Lessor shall not be liable for damage to, or theft of Lessee's personal property.

Rizan Ex 1

DEFENDANT'S EXHIBIT 4

ARTICLE V.
INSURANCE AND TAXES

Lessor shall maintain all expenses for taxes and insurance on this property for and during the term of this lease; if the Lessee, by reason of its use of the Leased Premises or any other use, causes an increase in the insurance rates of the Lessor, Lessee will compensate the Lessor by paying additional rent to equal the amount of the increase in the rate caused by the Lessee's use. This amount shall be due and payable to the Lessor on the first day of the month immediately following any such increase.

ARTICLE VI.
UTILITY CHARGES

The Lessee shall pay all charges for all utilities, including but not limited to, water, gas and electricity during the term of this lease.

ARTICLE VII.
MAINTENANCE AND REPAIRS

The Parties hereto do hereby agree that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee, except where the damage is due to the negligence of the Lessor or one of his/her agents. General cleanliness of the yard and the interior of the house shall also be the responsibility of the Lessee.

ARTICLE VIII.
REMOVAL OF IMPROVEMENTS BY LESSEE UPON TERMINATION OF LEASE

Upon expiration of the term of this Lease, or sooner termination if applicable, Lessee, at Lessee's expense, shall remove all property belonging to Lessee. Lessee shall repair all damage to the Premises caused by such removal, and restore the Premises to the condition they were in prior to removal of said property, normal wear and tear excepted. It is further expressly understood and agreed that the Premises are in good repair at the time of signing this Lease.

ARTICLE IX.
ASSIGNMENT AND SUBLEASE

It is expressly understood by the Parties hereto that the Demised Premises shall not be sublet, or this lease assigned to any corporation, person or persons without the express written consent of the Lessor herein. It is further agreed by the Parties that the Premises shall be used as single family residential only, and shall be used for no other purpose without the written consent of the Lessor herein.

ARTICLE X.
EFFECT OF DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES

If the Demised Premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this Lease, Lessor, with due diligence, shall repair, restore, rebuild or replace the Premises or such portions that are destroyed or damaged so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall be more than 50% of the insurance value of the Premises, Lessor, at Lessor's option, may cancel and terminate the Lease by giving written notice to Lessee within 30 days after the date such damage or destruction has occurred. In such event this Lease shall terminate on the date specified in such notice, and Lessor shall not be obligated to repair or rebuild. In the event repair of the building is required or elected by Lessor, rent shall be abated for the time during which the Demised Premises may not be used by Lessee. Lessee shall be entitled to receive a pro-rata refund out of any advancement paid by it for the period the Premises were unusable by reason of destruction or damage.

ARTICLE XI.
LESSOR'S RIGHT TO INSPECT

Lessee shall permit Lessor, its agents, or other representatives, to enter the Demised Premises, or any part thereof, upon receipt of 24 hours written or oral notice, to examine said Premises. Lessor shall be reasonable in its inspection requests and Lessee shall not withhold such permission unreasonably.

ARTICLE XII.
MANNER OF GIVING NOTICES

Any notice from either party to the other, pursuant to the provisions of this Lease or of any law, shall be given by Registered or Certified Mail, addressed to the party for whom it is intended at the address of the respective party as set forth on the signature page. The date of delivery as indicated on the Return Receipt shall be deemed to be the effective date of Notice for purposes of determining questions hereunder.

ARTICLE XIII.
LEASE SUBORDINATE TO EMCUMBRANCES

This Lease is subject and subordinate to any Mortgages now on or hereafter may be placed against the premises, and to all advances made or that may be made on account of the encumbrances, to the full extent of the principal sums secured thereby and interest thereon.

ARTICLE XIV.
LESSOR'S WRITTEN APPROVAL REQUIRED FOR ALTERATION

Except as expressly provided herein, Lessee shall not make any alterations, improvements or additions to the Premises without prior written consent of Lessor.

ARTICLE XV.
RIGHTS OF PAYMENT UPON DEFAULT

Lessee shall pay as rental, in addition to the rental herein reserved, any and all sums that may become due by reason of the failure of Lessee to comply with all of the covenants of this Lease, including any and all damages, costs and expenses the Lessor may suffer or incur by reason of any default or Lessee; or failure on Lessee's part to comply with the covenants of this Lease, and also, any and all damages to the Demised Premises cause by any act or neglect of the Lessee, its agents, employees, or invitees.

ARTICLE XVI.
DEFAULT

If Lessee shall continue in default for payment of any rent reserved hereunder for a period often (10) days after notice of such default has been given to Lessee, or if the Lessee shall default in the performance of any of the other terms, conditions or covenants in this Lease to be observed or performed by it, and Lessee does not remedy such default within ten (10) days after notice, or in the event that the Premises are vacated before the expiration of the Lease, or should the Lessee go into bankruptcy, voluntary or involuntary, or be placed in the hands of a receiver or make a general assignment of the property for the benefit of a creditor or file any petition involving the insolvency of the Lessee, then and in such event or events, the Lessor shall have the right to terminate this Lease. Lessor shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse, or elsewhere, at Lessee's expense, all without resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. If Lessor should elect to re-enter as herein provided or take possession pursuant to legal proceedings, Lessor may either terminate this Lease, or from time to time without terminating this Lease may make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises for such term and at such rentals and upon such other terms and conditions as Lessor may deem advisable. In the event of such reletting, all rentals received by Lessor shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; Second, to the payment of any costs and expenses of such reletting, including the expenses of alterations and repairs; and

Third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent due and unpaid hereunder. If such reletting shall yield rentals insufficient for any month to pay the rent due by the Lessee hereunder for that month, the Lessee shall be liable to Lessor for any deficiency and same shall be paid monthly. No such re-entry or taking possession of the leased building by the Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention is given by the Lessor to Lessee at the time of such re-entry. Notwithstanding any such re-entry and reletting without termination, the lessor may at any time thereafter elect to terminate this Lease for such previous breach, including the cost of recovering the Demised Premises and the difference in value between the rent reserved hereunder for the remainder of the term and the reasonable rental value of the property for the remainder of the term.

ARTICLE XVII.
QUIET ENJOYMENT

Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the Demised Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Lessee.

ARTICLE XVIII.
TIME OF THE ESSENCE

Time is of the essence for each provision, covenant, and condition herein contained, and on the part of Lessee or Lessor to be done and performed.

ARTICLE XIX.
LEASE BINDING ON SUCCESSORS AND ASSIGNS

The within covenants and agreements shall be binding on the parties hereto, their respective successors, heirs, executors, administrators and assigns.

ARTICLE XX.
HAZARDOUS MATERIAL

Lessee shall not use or permit to be brought into the Demised Premises or the real estate, any inflammatory or explosive substance or other article deemed hazardous to person or property, nor shall Lessee do or permit to be done any act or thing which will invalidate or be in conflict with fire or other insurance policies covering the Demised Premises, or any part thereof. Lessee shall not do or permit to be done anything in or upon the Demised Premises or bring to keep anything therein which shall not comply with all rules, orders, regulations or requirements

of the Board of Fire Underwriters or any similar organization (Lessee shall at all times comply with all such rules, orders, regulations or requirements), or which shall increase the insurance premiums or the rate of insurance on the Demised Premises, its appurtenances or contents. If by reason of the failure of Lessee to comply with the provisions of this Lease, or by reason of Lessee's use or occupancy of the Demised Premises, any insurance premium shall at any time be increased, Lessee shall reimburse Lessor for all such increase in premium; provided, however, that receipt of such reimbursement from Lessee shall not be deemed a waiver of Lessee's default under this paragraph, and Lessor shall not be estopped from enforcing his/her other remedies against Lessee on account of such default.

ARTICLE XXI
APPLICABLE LAW

This Lease shall be governed and construed under the Laws of the State of South Carolina.

ARTICLE XXII.
MISCELLANEOUS

The Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse, or willful abuse of the premises hereby leased.

Other conditions/covenants:

_____

_____

_____

_____

IN WITNESS WHEREOF, the parties hereunto set their hands and seals as of this ___ day of April, 2013.

LESSOR:

WITNESS

WITNESS

RIZAN PROPERTIES, LLC

LESSEE:

WITNESS

JERRY POWERS

WITNESS

JACKIE PEARSON

Eviction Notice

12-3-18

Jerry Powers and Jackie Pearson

39 2nd Ave. Greenville SC 29609

This notice is to serve as the immediate eviction requirement of lessees Jerry Powers and Jackie Pearson of the premise 39 2nd Ave Greenville SC 29609. This eviction is being required for the following contract infractions:

- Rent past due of $1,401.00
- 55 late payment fees unpaid for a total of $2,750.00
- Failure to maintain the home – Water damage to roof determined unsafe due to rotting wood and mold. Estimate to tear down and rebuild $10,000-$12,000.
- Verbal refusal to pay rent for November 2018.

Contract to own the home is null and void due to late payments not paid in full within 10 days of notification. Failure to pay late fees. Failure to properly maintain the home which will now require partial demolition to rebuild.

If the home is not vacated all resources necessary will be taken to collect the above financial penalties through a court of law including the garnishing of wages and other legal consequences as deemed by a court of law.

Acknowledgement of receipt of notification:

Jerry Powers

Jacki Pearson

Date

12/3/18

I Jacqueline Pearson will be out of said house as of Jan 5. 2019

Lukas Rigdon 12/3/18

Rizan Properties, LLC

DEFENDANT'S EXHIBIT 10

Rizan Ex 2

Payment date	X=late	Amount +/-	Amount past due	Notes
5/1/2013	x			
6/1/2013	x			
7/1/2013	x			
8/1/2013				Missing receipt
9/1/2013				Missing receipt
10/1/2013				Missing receipt
11/1/2013				Missing receipt
12/1/2013				Missing receipt
1/1/2014	x			
2/1/2014	x	-150		
3/1/2014	x	150		
4/1/2014	x	-50		
5/1/2014	x			
6/1/2014	x	-250		
7/1/2014	x			Missing Receipt
8/1/2014				Missing Receipt
9/1/2014				
10/1/2014				
11/1/2014	x			
12/1/2014				
1/1/2015	x	-550		
2/1/2015	x			
3/1/2015				Missing Receipt
4/1/2015				
5/1/2015				
6/1/2015	x	-550		
7/1/2015	x	550		Paid June owe's $490
8/1/2015	x			
9/1/2015	x			
10/1/2015	x			
11/1/2015	x	-25		
12/1/2015	x	-84		
1/1/2016	x		-531	Owes - $531 from 2015
2/1/2016	x			
3/1/2016	x			
4/1/2016	x			
5/1/2016	x			
6/1/2016	x	-210	-731	
7/1/2016	x			
8/1/2016	x			
9/1/2016	x			
10/1/2016	x		-731	Was short $150 then paid up $150 in Oct:
11/1/2016	x	50	-681	
12/1/2016	x			
1/1/2017	x		-681	Still a debt of -$681 from 2015-16
2/1/2017	x	-100	-781	
3/1/2017	x			
4/1/2017	x			
5/1/2017	x			
6/1/2017	x	-50	-831	
7/1/2017	x	50	781	
8/1/2017	x			
9/1/2017	x			
10/1/2017	x			
11/1/2017	x			
12/1/2017	x			
1/1/2018	x		-781	owes $781 from 2015-16
2/1/2018	x		-781	
3/1/2018	x		-781	

4/1/2018	x		-781	
5/1/2018	x	-20	-801	Short $20
6/1/2018	x			
7/1/2018	x	-150	-951	Short $150
8/1/2018	x	-50	-1001	Short $50
9/1/2018	x	150	-851	Paid up $150
10/1/2018	x		-851	
11/1/2018	x	-550	-1401	Verbal refusal to pay rent for November. Total amount past due $-1401.00
				55 late payments x $50 late fee = $2,750.00
				Total amount past due - $4,151.00



Rizan Ex 3a



Ex 3h



Ex 3j



ROA 287

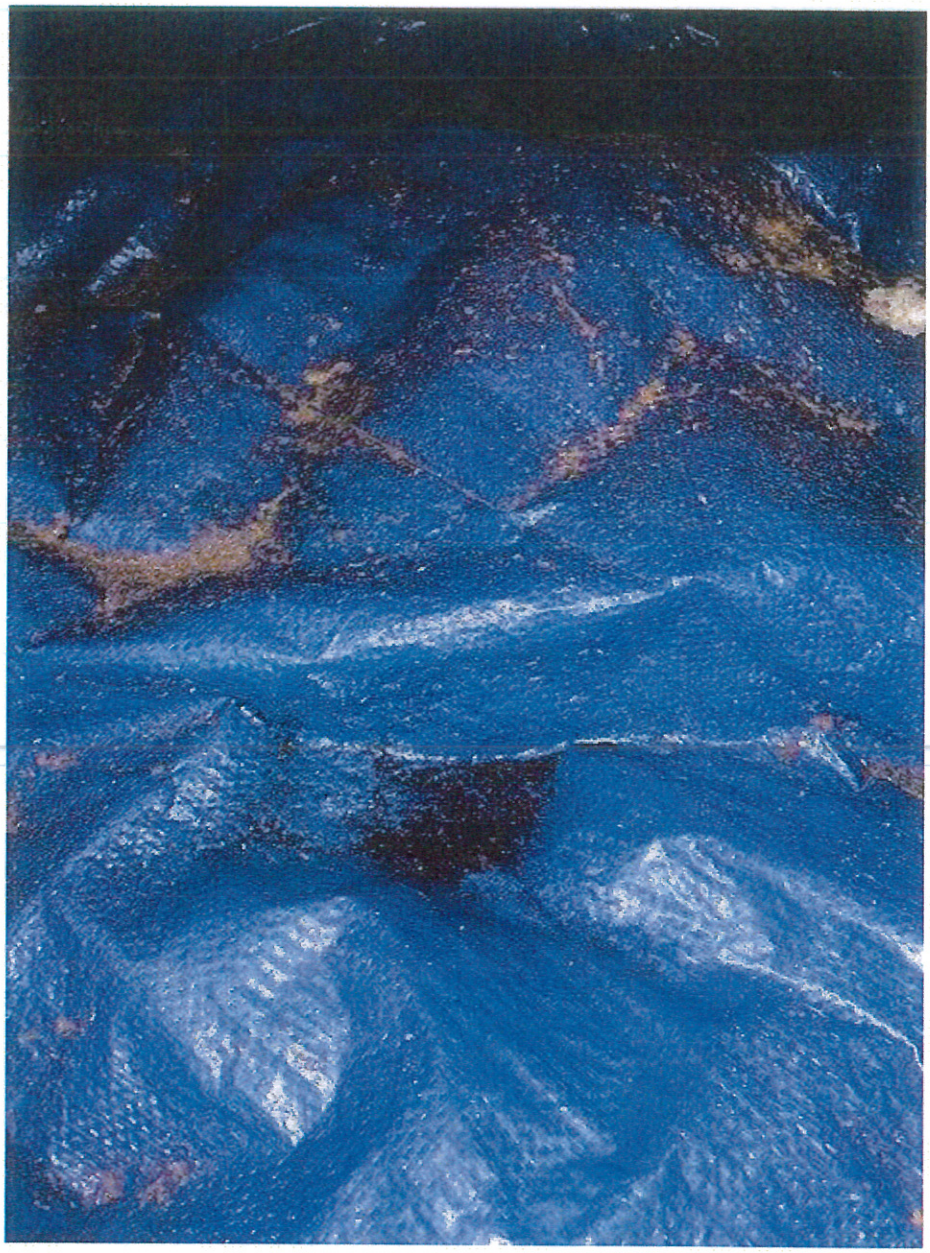
Ex 3m



Rizzo Ex 4a



Ex 46



Ex 4e



Ex 4 f

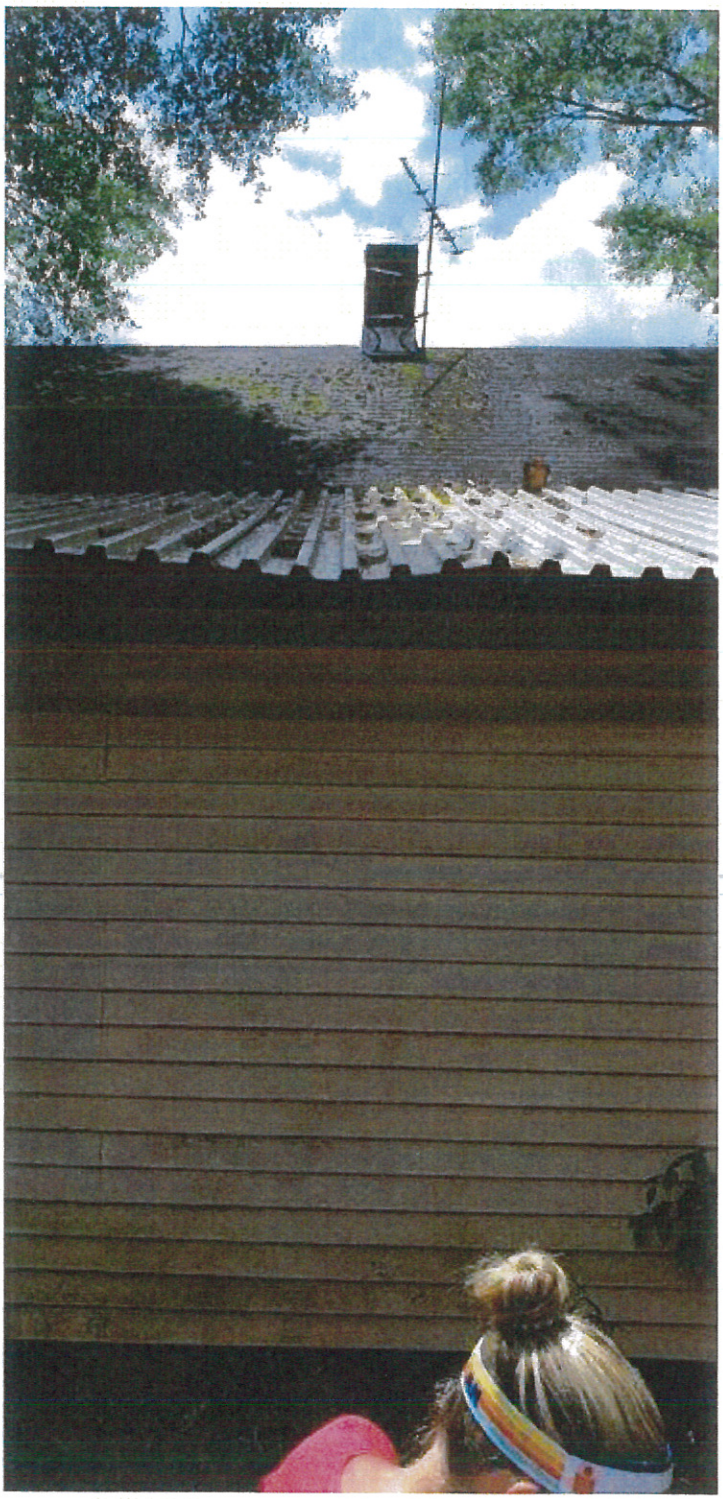
Ex 4r ROA 292



Ex 4W ROA 293



Ex 4x ROA 294



Ex H z 3



ROA 296

Rizan Ex 5a



Ex 56



ROA 298

E&SL

ROA 299

To who it may concern:

After inspecting the property located at 39 Second Street, Greenville, SC 29609 it is my opinion that the following damages are attributed to water intrusion from a leaking roof that was not either not repaired in a timely manner or was improperly impaired. Please see below:

1. Rear section of home that houses the laundry room and bathroom has major water damage will need to be removed and rebuilt. Damage includes sagging ceilings, damages walls, damaged floors, etc. In my experience, once the roof, walls, ceilings, and flooring are remove, there is a high probability that the roof decking, ceiling joints, sub floor, floor joist, and wall framing will have severe water damage. It is also highly likely that there could be foundation damage as well. The rebuilding of this section would also include plumbing and electrical replacement.
2. Entire house will need to have a new roof installed.
3. Flooring through out home has moisture damage and needs to be replaced.
4. Wall and ceiling in the rear bedroom has water damage and needs to be repaired and painted.
5. There is presence of mold in the rear section of home which needs to be remediated.

The estimated cost to repair the items mentioned above is $39,500. Due to likelihood that more water damage will be found during demolition and the rapid rise in construction material and labor, this price will more than likely increase as time passes.

Sincerely,

Jason Osteen

8/12/21 52 6

Breakdown of 39 2nd Street Quote

Permiting	450
Demolition	3600
Roofing	7100
Framing with materials	10150
Electrical	2900
Plumb	3200
Finish carpentry	600
Flooring	6400
Drywall and paint	3550
Mold remediation	2000

A120-1 EX 7

RECEIVED
Mar 10 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers, ……Appellant

v.

Rizan Properties, LLC, Anthony Pearson, and Tiesha Dash,……..Defendants

Of which Rizan Properties, LLC is the Respondent

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.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

March 3, 2022

s/ Mark Fessler
Mark Fessler (S.C. Bar No.: 77376)
701 South Main St.
Greenville, South Carolina 29601
Office: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org