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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.

FINAL BRIEF OF APPELLANT

March 10, 2022

SOUTH CAROLINA LEGAL SERVICES

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II. If Article VII does not comply with the S.C. Residential Landlord Tenant Act, did the trial Court err in finding that Article VII of the lease nevertheless placed on Appellant the duty to repair the damaged roof because he accepted the landlord's claim that it had no responsibility to repair or maintain the structure of the house?

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 of a single family home. (R. p. 19). Rizan counterclaimed seeking damages and alleging that Appellant had failed to pay rent and failed to maintain the property under a lease agreement. (R. p. 27). Plaintiff pled several affirmative defenses, including that the S.C. Residential Landlord Tenant act barred Rizan's attempt to shift the maintenance and repair issue involved in the case onto Appellant. (R. p. 33). 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. 13).

The Master held a trial on Rizan's counterclaim on July 28, 2021[1] and issued an order on August 6, 2021, finding Appellant liable for $31,960 in damages to the house at

[1] The Master ruled on Appellant's claim for specific performance by a separate order on cross motions for summary judgment. That Order is pending before the Court of Appeals under appellate case number 2021-000218.

issue and $6,351.00 in rent and late fees. (R. pp. 2-8). Appellant filed a Rule 59 motion on August 16, 2021. (R. p. 72). By order entered September 3, 2021, the Court denied the motion. (R. p. 11). On September 22, 2021, Appellant served the Notice of Appeal.

STATEMENT OF FACTS

Appellant and his girlfriend, Jackie Pearson,[2] began renting a single-family house located at 39 2nd Ave. in Greenville, SC (the "Property") from Rizan on approximately August 3, 2011, under a lease agreement. (R. p. 268). Lukas Rigdon ("Ridgon") was the sole member-manager of Rizan. (R. p. 87, lines 3-6; p. 279).

On or about May 1, 2013, Appellant, Ms. Pearson and Rizan signed two documents, a new Lease Agreement ("Lease") plus an Option to Purchase the Property. (R. pp. 274-280; pp. 266-267). Rizan's attorney provided the documents that the parties signed. (R. p. 146, lines 1-4).

The Lease contained the following provision:

> 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.

(R. p. 275).

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[2] Jackie Pearson died July 1, 2019. (R. p. 144, lines 2-7).

Responsibilities for maintaining the Property were not discussed at the closing. (R. p. 146, lines 10-p. 147, line 1; p. 179, lines 18-20; p. 181, lines 6-7). Appellant is not a contractor. (R. p. 185, lines 20-21). He had cut trees for a living. (R. p. 150, lines 5-9, p. 185, lines 22-23). Appellant is nearly blind and has difficulty reading. (R. p. 6, fn.1; p. 146, lines 14-16; p. 174, lines 6-10). He had eyesight problems at the time he and Rizan entered into Lease. (R. p. 179:12-14). Because of that he was not able to read the Lease, including Article VII. (R. p. 177, lines 17-21; p. 179, line 24-p. 180, line 5). It is unclear whether Ms. Pearson read the Lease to Appellant prior to the closing. (Compare R. p. 178, lines 2-19 with p. 179, lines 12-17 and p. 181, lines 3-7). Regardless, at trial he did not understand basic terms such as "Lessee." (R. p. 180, lines 16-22).

At some point in 2014 or 2015, wind blew down a large limb from a tree located at the back of the Property, causing it to fall onto the house. (R. p. 147, lines 2-13, p. 149, lines 3-6). Attached to the back of the house is a structure containing the laundry room and bathroom. (R. pp. 286-287; p. 296; p. 298). The limb fell primarily on this structure and up towards the chimney. (R. p. 147, line 16-p. 148, line 5; p. 298). Appellant informed Rigdon about the incident, and Rigdon came and looked at the limb as it lay on the roof. (R. p. 149, lines 9-14). Rigdon asked Appellant to cut the tree off the roof in exchange for $1200 credit towards his rent payments. (R. p. 149, lines 9-18). Appellant hired people he knew to remove the tree limb. (R. p. 149, lines 18-25).

Later, Appellant noticed brown spotting on the laundry room ceiling. (R. p. 151, lines 11-18). He told Rigdon about the brown spotting. (R. p. 151, lines 22-24). Rigdon told him, "I'm not responsible for nothing but the air conditioning." (R. p. 151, line 24-p. 152, line 1).

Appellant could not make repairs immediately because he had to save up money. (R. p. 152, lines 8-12).

In the meantime, a bad storm came through, causing large amounts of water to enter the laundry room and bathroom from the roof. (R. p. 152, line 17-p. 153, line 3). Appellant again mentioned this to Mr. Rigdon who told him that it was his responsibility. (R. p. 155, line 22-p. 156, line 6; p. 219, lines 22-25). Appellant spent about $3,500 and worked on the repairs for about a month. (R. p. 155, lines 15-21). He also had to hire help to make the repairs. (R. p. 182, lines 2-8). Appellant hired a person he knew from down the street to help. (R. p. 182, lines 5-8).

During the month-long process, Appellant made extensive repairs to the laundry room and bathroom. (R. p. 153 line 6-p. 154, line 21; p. 184, lines 11-13). He cut out and replaced the laundry room ceiling and joists (R. p. 153, lines 6-9; p. 153, line 22-p. 154, line 2). He replaced the pipes on the hot water heater in the laundry room. (R. p. 153, lines 10-11). He also removed the back wall in the laundry room down to the studs such that one could see through it to the outside.[3] (R. p. 153, lines 12-21). He also replaced the wall in the bathroom, which is next to the laundry room. (R. p. 154, lines 3-7). Appellant installed what he called a "tin" on the roof. (R. p. 185, lines 13-19). Rizan's expert testified that this tin top was actually something called B decking, which is supposed to be installed beneath a roof to support it. (R. p. 112, lines 15-23). Rizan's expert opined that damage he observed in the Property stemmed from where the tree fell on the roof and the subsequent repair work. (R.

[3] The back wall in question can be seen in the photos at R. pp. 296, 298.

p. 5).

Mr. Rigdon stopped by to pick up rent from Mr. Powers while he was working on the repairs, and he could have seen from the living room back through the house to laundry room area that Appellant was reconstructing. (R. p. 156, lines 7-23). The part of the house being worked on was visible to anyone passing by the house. (R. p. 158, lines 9-12; pp. 264-265; p. 296).

Appellant did not see any further water leaks in the laundry room or bathroom. (R. p. 158, line 23-p. 81, line 2). He did notice a leak in his bedroom for which he placed a tarp in the attic. (R. p. 167, lines 7-9 and lines 14-23). In late 2018, Rigdon told Appellant that he would have to sell the Property to be able to pay alimony, child support and a medical bill. (R. p. 164, lines 7-14). Prior to this conversation about needing to pay bills, Mr. Rigdon had never expressed dissatisfaction with Appellant under the Lease and had never given any prior written notice to cure as required by Article XVI of the Lease. (R. p. 164, lines 15-18, p. 277). On December 3, 2018, Mr. Rigdon gave Appellant and Ms. Pearson a document titled "Eviction Notice" informing them to vacate the Property immediately. (R. p. 164, line 19-p. 165, line 2; p. 281).

While Ms. Pearson moved out, Appellant objected. (R. p. 165, lines 3-6; p. 281). However, Appellant paid rent in January 2019 and thereafter moved out to help Ms. Pearson afford rent at the new place she found. (R. p. 165, lines 9-25).

STANDARD OF REVIEW

Actions to construe a lease and for money damages based on a breach of a lease are actions at law. *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 562, 772 S.E.2d

882, 887 (Ct. App. 2015). Findings of fact will not be disturbed unless there is no evidence to reasonably support them. *Id.* They may not be disturbed unless '"wholly unsupported by the evidence or controlled by an erroneous conception or application of the law.'" *Cook v. State Farm Auto. Ins. Co*., 376 S.C. 426, 429, 656 S.E.2d 784, 786 (Ct. App. 2008) (citation omitted).

Questions of law are reviewed de novo. *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). "[Q]uestions of statutory interpretation are questions of law which are subject to de novo review and which the Court is free to decide without any deference to the court below." *Hueble v. S.C. Dep't of Natural Res*., 416 S.C. 220, 228, 785 S.E.2d 461, 465 (2016) (citing *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010)).

ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT ACQUIRED THE LEGAL DUTY TO REPAIR THE ROOF WHERE THE LEASE PROVISION PURPORTING TO ESTABLISHING THAT DUTY DID NOT COMPLY WITH THE S.C. RESIDENTIAL LANDLORD TENANT ACT AND THEREFORE WAS INEFFECTIVE FOR THAT PURPOSE.

The trial Court held that the Lease gave Appellant the duty to make major structural repairs to the Property because that is how the parties eventually acted. (R. p. 6). The trial Court's analysis fails to give effect to the plain language of S.C. Code Ann. § 27-40-440(c). It also disregards protections built into the S.C. Residential Landlord Tenant Act (the "Act") that prohibit a rental agreement from (1) including provisions that the Act prohibits,

(2) waiving a tenant's rights under the Act, and (3) completely separating the landlord's right to receive rent from the landlord's obligation to make the dwelling fit and habitable under Section 27-40-440(a). S.C Code Ann. §§ 27-40-310(a), 330(a)(1), and 340. Provisions that operate to waive a tenant's rights under the Act are unenforceable. S.C. Code Ann. § 27-40-330(b). Therefore, the trial Court's conclusion that Appellant acquired the duty to make the roof repair is legally incorrect and should be reversed. Because he had no such legal duty, the damages award for injury to the house should be reversed as well.

A. Relevant provisions of the S.C. Residential Landlord Tenant Act

At common law a landlord had no duty to repair or maintain leased property. *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 372 (Ct. App. 1989). The Act reversed this. *Id.*, 299 S.C. at 426, 385 S.E.2d at 373. In adopting the S.C. Residential Landlord Tenant Act the S.C. General Assembly substantially adopted the Uniform Residential Landlord Tenant Act of 1972 ("Uniform Act").[4] The Legislature intended for the Act to "modernize, and revise . . . the rights and obligations of landlords and tenants" and to "encourage landlords and tenants to maintain and improve the quality of housing." S.C. Code Ann. § 27-40-20. "While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves." *Burbach*

[4] The sections of the Act relevant to this appeal are S.C. Code Ann. §§ 27-40-20, 310, 330, 340 and 440. The corresponding sections of the Uniform Residential Landlord Tenant Act of 1972 are §§ 1.102, 1.401, 1.403, 1.404 and 2.104. 7B U. L. A. 269, et seq. (2018)

v. Investors Mgmt. Corp. Int'l, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (finding a residential lease to be a matter of public interest sufficient to support a cause of action under the Unfair Trade Practices Act). The Act must be "liberally construed and applied to promote its underlying purposes and policies." S.C. Code Ann. § 27-40-20.

One modernization the Legislature adopted to improve the quality of housing was the warranty of habitability that had developed in other jurisdictions across the United States. §2.104, Comment, 7B U. L. A. 322 (2018) (listing jurisdictions that recognized the warranty of habitability that the Uniform Act adopted). Section 27-40-440 of the Act established for the first time in South Carolina a residential landlord's obligation to keep a residential dwelling unit fit and habitable. This duty included responsibility for repairing and maintaining a residential dwelling's roof and walls. *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 Section 27-40-440 means that "the landlord's duty applies to the inherent physical qualities of the premises . . .").

The Legislature also indicated its intent to protect tenants from contracting away certain rights under the Act by building in multiple layers of statutory protection. The Act allows the parties to add terms or conditions to a rental agreement as long as the Act or other rule of law does not prohibit them. S.C. Code Ann. § 27-40-310(a). The Legislature also linked a landlord's right to receive rent to the corresponding obligation to maintain the property. S.C. Code Ann. § 27-40-340. One commentator noted that this was a fundamental change to South Carolina's landlord-tenant law. Robert M. Wilcox, A Lawyer's Guide to the South Carolina Residential Landlord and Tenant Act, 39 S.C.L. Rev. 493, 496 (1988)

(noting that "for the first time in South Carolina," the RLTA conditioned a tenant's duty to pay rent "upon continued performance by the landlord of statutory and contractual obligations to maintain the premises.").

Finally, the Legislature adopted a strong anti-waiver provision, which says that a "rental agreement may not provide that the tenant (1) agrees to waive or forego rights or remedies under [the Act]." S.C. Code Ann. § 27-40-330(a)(1).[5] Any provision in a rental agreement that violates 27-40-330(a) is unenforceable. S.C. Code Ann. § 27-40-330(b). That the Act specifically prevents a tenant, rather than the landlord, from waiving rights or remedies recognizes the reality that the landlord likely will be the party drafting the lease while a tenant likely will be uninformed about his or her rights under the Act. Further recognizing this reality, the Act specifies that a landlord can be held legally liable for deliberately using a rental agreement containing a prohibited provision. S.C. Code Ann. § 27-40-330(b). There is no corresponding remedy against a tenant. *Id. See also* §1.403, Comment, 7B U. L. A. 306 (2018) (noting that prohibited provisions "may nevertheless prejudice and injure the rights and interests of the uninformed tenant . . .").

With this statutory underpinning the Act created a general division of labor between landlords and tenants with respect to maintenance and repair of residential real estate. A landlord must

> (1) comply with the requirements of applicable building and

[5] A rental agreement also may not require a tenant to confess judgment or exculpate or limit "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)(2) and (3).

> 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). These duties are allocated to a landlord because "[m]ajor repairs, even access, to essential systems, outside the dwelling unit, are beyond the capacity of the tenant." §2.104, Comment, 7B U. L. A. 323 (2018).

A tenant's duties are to:

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

For tenants leasing single-family homes, the landlord and tenant "may agree in writing that the tenant perform . . . specified repairs, maintenance tasks, alterations, and remodeling, but only if 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). This language derives from the first draft of the Uniform Residential Landlord Tenant Act of 1972. *See* Robert M. Wilcox, A Lawyer's Guide to the South Carolina Residential Landlord and Tenant Act, 39 S.C.L. Rev. 493, 516 and n.94 (1988). The meaning of the phrase "specified repairs, maintenance tasks" is at the heart of this appeal.

B. The written agreement must specify the repairs or maintenance tasks to be performed, which the lease did not do.

The trial Court erred by not ruling that Article VII violated Section 27-40-440(c) of the Act. Because the Act is concerned about the methods a landlord might use to absolve itself of its duties under Section 27-40-440(a), that section, along with Section 27-40-340, limits a landlord's ability to shift its duties onto a tenant. Article VII did not specify any repairs or maintenance tasks but instead attempted to shift all of Rizan's repair and maintenance responsibilities under the Act onto Appellant. The Act prohibits a general transference of all of a landlord's repair and maintenance duties.

i. Plain meaning of "specified" and "tasks"

The trial Court erred by not finding that Article VII of the Lease violated the Act because neither it, nor any other part of the Lease, specifies any particular repairs or tasks that belong to Appellant. Rather, the Lease seeks to nullify the statutory warranty of habitability. By requiring that a written agreement designate "*specified* repairs, maintenance tasks, alterations, and remodeling" the Legislature signaled its disapproval of the use of general, all-encompassing language to shift all a landlord's maintenance and repair duties onto a tenant. S.C. Code Ann. § 27-40-440(c) (emphasis added). *See also* 27-40-340 (prohibiting a rental agreement from completely separating the right to rent from the obligations of Section 440(a)). By using the modifier "specified," Section 27-40-440(c) requires the parties to list out the repairs or maintenance tasks that the tenant agrees to undertake, otherwise the modifier has no purpose.

The words "specified" and "tasks" have plain meanings that the trial Court overlooked.

> 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, 85, 533 S.E.2d 578, 581 (2000) (internal citations omitted). "When faced with an undefined statutory term, the Court must interpret the term in accordance with its usual and customary meaning" *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011).

Specify 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" to mean "[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 duty stated in general, sweeping terms. A "task" is "1. work to be done; work assigned or found necessary . . . 2. any piece of work" World Book Dictionary 2149 (1990). Thus, S.C. Code Ann. § 27-40-440(c) requires a writing to make explicit and definite the particular repairs or maintenance tasks that are to be the tenant's responsibility.

Article VII does not "name definitely" or "state or describe in detail" what "maintenance of the structure of the home" includes, let alone that it includes repairing a damaged roof. (R. p. 275). Therefore, it fails to comply with the plain meaning of S.C. Code Ann. § 27-40-440(c).

ii. Principles of statutory interpretation reach same meaning

Should the phrase "specified repairs, maintenance tasks" appear 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 a general statement as to all "maintenance of the structure of the house" as Article VII does. (R. p. 275). These include the rule against surplusage, the rule that like words should receive a consistent meaning throughout the statutory scheme, that courts should prefer a construction that is consonant with the purpose, design, and policy of an act, and that the Act should be liberally construed to modernize and revise pre-existing landlord-tenant law.

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.'" (internal citation omitted)). If the Legislature had intended to permit a transference of duties by using general language, then it would not have used "specified" to modify "repairs, maintenance tasks, alterations and remodeling, . . ." 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.

Further, Section 440(c) places limitations on the obligations of the landlord that can be shifted onto a tenant. Even if the parties agree to shift certain obligations, that transaction must be entered into in good faith and may not be done for the purpose of evading the obligations of the landlord. S.C. Code Ann. §27-40-440(c). These limitations are further evidence that the statute does not permit the wholesale shift of a landlord’s obligations onto a tenant that Rizan seeks to impose. If such a wholesale shift were permitted, these limitations, along with the word “specified” would have no practical import.

Perhaps recognizing the limitations inherent in the language of Section 440(c) requiring “specified repairs” and “maintenance tasks,” other states modified the Uniform Act’s text to expand the duties that a tenant may contractually undertake. For example, in Mississippi, “the landlord and tenant may agree in writing that the tenant perform some or all of the landlord’s duties under this section, but only if the transaction is entered into in good faith.” Miss. Code Ann. § 89-8-23(3) (2021). Wyoming’s version says, “Any duty or obligation in this article may be assigned to a different party or modified by explicit written agreement signed by the parties.” Wyo. Stat. Ann. § 1-21-1202(d) (2021). And Florida’s statute says, “The landlord’s obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.” Fla. Stat. § 83.51(1) (2021). South Carolina did not modify but rather adopted the approach to Section 440(c) contained in the Uniform Act. Robert M. Wilcox, A Lawyer's Guide to the South Carolina Residential Landlord and Tenant Act, 39 S.C.L. Rev. 493, 516 and n.94 (1988). This approach requires

a written agreement that lists specified repairs or maintenance tasks that the tenant is agreeing to undertake.

An interpretation of "specified" as used in Section 440(c) that requires a particularization of the work to be done also is consistent with the manner in which the Legislature has used "specified" in other parts of the Act. "As a general rule, 'identical words and phrases within the same statute should normally be given the same meaning.'" *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 100, 705 S.E.2d 28, 34 (2011). *See also Spartanburg County v. Arthur*, 180 S.C. 81, 185 S.E. 486 (1936) ("[T]o aid in the construction of the language of a statute, the Court should look to the construction placed upon similar language in other statutes dealing with the same or a cognate subject-matter.").

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). The notice must identify specifically the defective condition. *See Robinson v. Code*, 384 S.C. 582, 587, 682 S.E.2d 495, 497-98, (Ct. App. 2009) (finding that a landlord had no liability where a complaint did not allege that the tenant had notified the landlord of the lack of smoke detectors before a house burned down) and *Thompson v. CDL Partners LLC*, 378 Fed. Appx. 288, 292 (4th Cir. 2010) (relying on *Code* and finding that a landlord had no liability where it did not have notice of a defective railing). 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). This section requires a tenant to particularize the

landlord's acts or omissions.

Section 27-40-710(A) sets out a parallel procedure for a landlord to terminate a lease early for the tenant's failure to remedy a breach of the lease. As with Section 610(a), the landlord first 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). If repairs are not made or the breach cured, the rental agreement terminates on "the date specified in the notice." § 27-40-710(A)(1).

This Court has endorsed the method of construing like terms together under the Act. In *Prevatte v. Asbury Arms*, the 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). To interpret that sub-section, the Court examined the word "may" as used in § 27-40-610 and in other sections of the Act. *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)) (holding that the word "may" as used was mandatory, not discretionary). Thus, the term "specified" as used in section 27-40-440(c) should be construed to require a specific detailing or identification of the work to be done, which is how the Legislature used it in other parts of the Act.

This construction also is consistent with the purpose, design, and policy of the Act. "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. . . . Courts should consider not merely the language of the particular clause being construed, but the undefined word and its

meaning in conjunction with the whole purpose of the statute and the policy of the law. *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011) (citations omitted).

S.C. Code Section 27-40-440 places obligations for a property's fitness and habitability on the landlord. The Act then prohibits the separation of a landlord's right to receive rent from the obligation to maintain the property in a fit and habitable condition. S.C. Code Ann. § 27-40-340. It also protects tenants by prohibiting rental agreements from allowing them to waive rights or remedies unless expressly permitted by the Act. S.C. Code Ann. § 27-40-330. Given the extensive protections that the Legislature put in place, it does not make sense that the Legislature also would have made these protections meaningless by allowing them to be easily overthrown in general language that a tenant be responsible for all "maintenance of the structure of the house." (R. p. 275).

Moreover, requiring a specific listing or description has practical purposes. First, it permits a tenant to understand the exact obligations or repairs he is agreeing to make. Given that the Act presumes that a tenant may be uninformed about his legal rights and therefore protects against provisions that waive those rights, it makes sense that the Act would require a specific listing of repairs or maintenance tasks. S.C. Code Ann. § 27-40-330 (tenant may not waive rights or remedies through a rental agreement). A general transference of the duty to maintain a fit and habitable dwelling could encompass many unknown and expensive problems. As Iowa's Supreme Court pointed out, a situation might arise where "a tenant could be liable for highly expensive repairs that occur at the end of the term of the lease even though the tenant did not cause the uninhabitable condition to

arise." *De Stefano v. Apts. Downtown, Inc*., 879 N.W.2d 155, 182 (Iowa 2016). Given the potential for abuse and inequitable outcomes, Section 27-40-440(c) takes the sensible position that a written agreement must specify exactly repairs or tasks the tenant agrees to undertake.

Second, by requiring specificity, the statute enables a tenant to assess whether the value received for the repairs is fair and adequate. The general phrase "maintenance of the structure of the house" does not bring immediately to mind all the myriad issues that could go wrong or require maintenance. (R. p. 275). It leaves a tenant without a clear picture of the cost he might face. For example, the broad language of Article VII could theoretically encompass anything from a small issue like a broken window or faulty door lock to something major like repairing the house's foundation. Requiring the agreement to specify what repairs or maintenance tasks will be the tenant's responsibility allows the tenant to calculate the potential cost so that he can ensure that he receives a fair exchange for what could be, and in this case was, thousands of dollars' worth of repairs. (R. p. 155, lines 15-21).

Therefore, if a tenant is going to undertake responsibility for major, extensive structural repairs and maintenance tasks, the specific obligations undertaken at least must be "specified" or particularized so as to leave the tenant with no question about the exact duties he is agreeing to undertake and to give the tenant some way to determine the cost that he might be called upon to incur when negotiating a rental agreement.

Finally, an interpretation of "specified repairs, maintenance tasks" that gives vitality to those terms also is consistent with a liberal interpretation of the Act because it is

faithful to the modernization and revision of S.C.'s landlord-tenant law that the Legislature sought to create. S.C. Code Ann. § 24-40-20 (stating that the Act should be construed liberally to modernize and revise rights and obligations of landlords and tenants).

The issue of a landlord's "duty to maintain a habitable premises has been characterized as critical and central to landlord—tenant law." *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 182 (Iowa 2016). It is not simply a matter of the parties' right to contract because the Act limits that right in the public interest. *Burbach v. Investors Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) ("These duties protect the public interest . . . regardless of the private arrangements parties have made between themselves.").

If Article VII complies with the Act, then no lessor will leave the landlord's and tenant's duties where the Legislature placed them. Landlords will adopt terse, general repair and maintenance waivers cast in the vein of Article VII and insert them in non-conspicuous text in the middle of finely lawyered leases. Consequently, the groundbreaking modernization that the Legislature introduced into South Carolina's landlord-tenant law will disappear over time. The Act embarked 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." *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). Respondent's position that the law's course can be so easily reversed is without merit.

iii. Cases from other Uniform RLTA jurisdictions

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.").

Appellate cases from other jurisdictions comprehend the requirement of "specified repairs" or "maintenance tasks" to require a list or a detailed writing.[6] In *De Stefano v. Apts. Downtown, Inc*., Iowa's Supreme Court, considered the following similar statute 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 subsection 1, paragraph "a", subparagraphs (5) and (6), and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

The Court expressed concern that "under [the landlord's] approach to the 'specified repairs' section, however, the landlord's obligation to provide a fit and habitable premises under section 562A.15(1)(b) can be undermined by *a stock laundry list of specified repairs*." 879 N.W.2d 155, 182 (2016) (emphasis added).

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,

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[6] The only case appellant found directly addressing the question was a Connecticut trial court decision. *Raynor v. Lucisano*, 1985 Conn. Super. LEXIS 275 (Conn. Super. Ct. July 17, 1985). 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 of S.C. Code Ann. § 27-40-440(c). (R. pp. 48-52).

518 (2005). Mont. Code Ann. § 70-24-303(4)(a) (2005), which is materially similar to S.C. Code Ann. § 27-40-440(c), reads in relevant part,

> (4) A landlord and tenant of a one-, two-, or three-family residence 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.

Concluding that the landlord retained the duty to repair the light, that Court said, "Under § 70-24-303(4)(a), MCA, 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 Appellant to undertake but rather attempts to transfer all of the landlord's obligations onto him. It is an effort by Respondent to de-modernize landlord-tenant law, setting it back thirty-six years to before the Act's passage. The trial Court erred in not finding that Article VII violates the Act.

C. A tenant cannot undertake the landlord's duty for repairs and maintenance by his actions because the Act specifically provides that a tenant may not waive rights.

The trial Court erred in holding that Article VII nevertheless placed the duty to repair the roof on Appellant because that is how the parties acted. The trial Court's ruling disregards the Act's anti-waiver provision and its specific declaration that prohibited lease

terms are unenforceable. If this were a simple matter of the right to contract, there would be no error. However, the Act limits this right. Considering the purposes and protections provided for in the Act, a provision that does not comply with S.C. Code Ann. § 27-40-440(c) and that entirely separates a landlord's repair and maintenance obligations from the right to receive rent, cannot become effective simply because a tenant does not object when the landlord tells him that he is not responsible for a roof repair. A contrary holding is not reconcilable with the protections and proscriptions that the Legislature built into the Act.

First, the trial Court's ruling disregards the Act's anti-waiver provision. S.C. Code Ann. § 27-40-330(a). The Act gives the tenant a right to a fit and habitable dwelling and gives the landlord the corresponding responsibility to make the dwelling fit and habitable. S.C. Code Ann. § 27-40-440(a). A rental agreement that places the landlord's duty completely on the tenant is, in effect, a waiver of that right. *See De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 180-183 (Iowa 2016) (analyzing the issue of whether tenants had a responsibility to cover the cost of a damaged front door as a question of whether the tenants waived the landlord's fitness and habitability duty with respect to the door). Respondents' lease provision seeking to shift the entirety of the landlord's repair obligations onto Appellant runs afoul of this provision.

Second, Section 27-40-330(b) is clear that any "provision prohibited by [27-40-330](a) included in a rental agreement is unenforceable." The Act makes no accommodations for the parties' behavior, and whether the parties acted in accordance with the prohibited lease provision is of no import. Therefore, the trial Court's conclusion that

the parties acted in accordance with the challenged lease provision is of no import. And the Court's decision giving effect to Article VII is contrary to Section 330(b).

Third, Section 27-40-310(a) permits parties to include in a rental agreement only terms and conditions that are not prohibited. By requiring a written agreement to specify the repairs or maintenance tasks that a tenant agrees to undertake, Section 27-40-440(c) necessarily prohibits the use of general, all-inclusive lease term that Rizan used in Article VII. Section 27-40-340 reinforces the point that a general, all-encompassing lease term transferring all of a landlord's repair and maintenance obligations is prohibited because such a lease provision does what Section 340 says is "forbidden," it completely separates the landlord's right to receive rent from the obligation to comply with Section 440(a). The Court's decision to authorize the use of a prohibited term in the Lease because that is how the parties eventually acted upends all these protections and proscriptions.

This case presents a good example for why the Act includes the protections it does and why the Act allocates maintenance and repair duties in the way it does. Appellant was not a discerning or sophisticated tenant. He had worked as a tree cutter. (R. p. 150, lines 5-9; p. 185, lines 22-23). He was not licensed to do contracting work such as replacing walls and roofs, and by the time he entered into the Lease he was nearly blind. (R. p. 185, lines 20-21; p. 150, lines 5-9; p. 6, fn. 1; p. 146, lines 14-16; p. 174, lines 6-10; p. 179, lines 12-14). On the other hand, the Rizan Properties, LLC, knew how to do major construction on residential dwellings because it had renovated the house before leasing it to Appellant, including by putting on a new roof. (R. p. 90, lines 1-6). Rizan was in a better position to make the major structural repair to the roof. This case confirms the Legislature's judgment

in passing Section 27-40-440 and allocating duties as it does to protect the public interest. Under the Act, Appellant could not unwittingly relieve Rizan of its statutory obligation by complying with Rizan's assertion that Appellant was responsible for all maintenance except the air conditioner. (R. p. 151, line 23-p. 152, line 3).

CONCLUSION

The trial Court erred by not finding that Article VII violated S.C. Code Ann. § 27-40-440(c)'s specificity requirement. It further erred when it concluded that because Appellant acted in accordance with the non-compliant provision he assumed Rizan's duty to provide a fit and habitable dwelling despite the Act's proscription against a tenant waiving rights except as expressly provided by the Act, the Act's statement that provisions waiving these rights are unenforceable, its banning of rental agreements that entirely sever the landlord's ability to receive rent without a corresponding duty to comply with Section 440(a), and its requirement that a rental agreement may not include terms or conditions prohibited by the Act. Because Article VII did not shift onto the Appellant Rizan's duty to repair the roof after the tree fell onto it, the trial Court erred in finding that Appellant breached a legal duty that he did not owe.

Respectfully submitted,

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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 certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully Submitted,

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