

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jun 13 2022

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward Miller, Circuit Court Judge

Case No. 2022-00424

American Homes 4 Rent, Respondent, v. Justin Stoddard, Appellant

RESPONSE TO MOTION TO DISMISS THE APPEAL

Appellant responds to the motion of appeal and asks that the court dismiss the motion for reasons stated below. Appellant has failed to file the bond required because the initial bond required was set at \$11,076.26 and that included several attorney fees, back rent and utilities. The basis for this appeal IS for the bond set amount. Initial bond was set by The Honorable Laura M. Saunders in which the appellant asked the court to not set bond at the amount as there were numerous charges in the \$11,076.26 that the appellant was not responsible for and believed had been charge ad hoc by American Homes for Rent. Appellant attempted to show several charges on the rental ledger that were duplicates and questioned the attorney fees. Further appellant asserted the following argument in re: to a memo sent by Chief Justice Beatty asserting that the bond requirement by state statute only required that ongoing rent be kept up and does not require that back rent be paid to catch up in order to preserve the jury trial.

The appellant requested a jury trial. A pre-trial hearing was set on February 16, 2022, before Judge Laura Saunders. Judge Saunders proceeded to try the matter as Rule to Show Cause

hearing before being well into the trial with the appellant reminded her that he thought he was attending a hearing to set bond. The tenant was scrutinized during the hearing under the premise of a Rule to Show Cause, materially damaging his position for a subsequent jury trial.

Nonetheless, Appellant attempted to ask that the magistrate court use the definition found in **SECTION 27-40-210** of the Residential Landlord Tenant Act to define *rent as consideration payable for use of the premises including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges* and to determine while the jury trial is pending that rent be set at the fair-market rent value. The Residential Landlord and Tenant act defines *"fair-market rental value" means the actual periodic rental payment for comparable rental property to which a willing landlord and a willing tenant would agree. In determining the fair-market rental value, the court may consider appraisals offered by the tenant, landlord, realty experts, licensed appraisers, and other relevant evidence.*

The tenant acts that bond be set at the "fair-market rental value" because **SECTION 27-40-790** of the act maintains:

In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement: (a) The tenant is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check. If the landlord and tenant disagree as to the amount of rent or the time of payments thereof, the court shall hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter. If the basis for the disagreement of the amount of rent due is the landlord's alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

The appellant was notified through a newly printed rental ledger given minutes before the hearing that he allegedly owed \$11, 076.26. Appellant attempted to talk through the rental ledger with the judge, but the judge responded: "I am not going to forensically go through your

rental ledger.” Not walking through it didn’t allow the appellant to show the judge a series of misapplied charges and other charges that AH4R says is owed. Much scrutiny should be taken so that AH4R does not pad the ledger thus increasing what is owed. The judge set bond for the total back rent owed of \$11,076.26 including the disputed attorney fees and other charges allegedly owed (there are several other miscellaneous fees that aren’t rent that is showed owed; the appellant disputes these charges) and without examination and due within 5 days In order to proceed with the right to the jury trial.

In October 2020, South Carolina Chief Justice Beatty circled a memo directing magistrates to cease ordering tenants to post past due rent in a residential eviction in order to stay the eviction on appeal. Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that ***it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered.*** Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal. Attached below is a new article re: Justices Betty’s memo circulated and the

Code § 27-40-790 is not applicable to a residential eviction appeal as it is inconsistent with Code § 27-40-800. Likewise, Code §27-37-130 is not applicable to residential landlord tenant matters as it is also inconsistent with 27-40-800 and applies only to commercial landlord tenant evictions.

This should be the case in this process. A judge or jury hasn’t determined that the attorney fees allegedly owed can be defined as rent according to the Landlord Tenant Act and if the Landlord Tenant Act supersedes the residential lease made between the appellant and AH4R.

Further the appellant asserts that, on April 7, 2022, after applying for covid-rental assistance, assistance was granted and through the Salvation Army and they contacted the respondent to facilitate payment. Respondent refused to work with them. The bond that respondent is now saying failed would have been paid if they hadn't respondent hadn't refused. On May 20, 2022, appellant reached out to Attorney for respondent to work out payment options and attorney refused as evidence by enclosed email.

It appears that respondent has included a new rental ledger with an astronomical amount of a \$23,047.55 that has more then doubled in 3 months from the 11,076.26 previous sought as a bond. Appellant contends that this rental ledger has padded figures to prevent appellant the ability to catch up on any payment that is rightfully owed to respondent.

Appellant asked that the motion of dismissal be denied and that the appeal of bond to stay move forward.

EXHIBIT A

https://www.postandcourier.com/opinion/editorials/editorial-eviction-order-underscores-problems-with-sc-magistrates/article_12ed1f90-12e7-11eb-8d59-b35675152534.html

Editorial: Eviction order underscores problems with SC magistrates

BY THE EDITORIAL STAFF

OCT 20, 2020



SC senators decide who gets to be a magistrate, and their choices frequently have more to do with politics than ability. (AP Photo/Christina L. Myers)

CHRISTINA L. MYERS

Unless you're a landlord or someone facing eviction, you might not have paid close attention to S.C. Chief Justice Don Beatty's order making it tougher to kick out renters.

It's worth attention.

Unlike the chief justice's March order putting a **temporary COVID-19 moratorium** on all evictions, which was done in conjunction with drastically scaling back all court activity, this latest order didn't upend any part of the law. Quite the opposite. And that's what makes it worthy of attention.



REAL ESTATE

SC renters no longer need to pay thousands to appeal evictions, chief justice says

BY THAD MOORE TMOORE@POSTANDCOURIER.COM

As The Post and Courier's Thad Moore reports, the directive protects renters from having to pay all of their past due rent in order to appeal an eviction order — a requirement that prevented most renters from filing an appeal, even if they had a sound legal basis.

Justice Beatty sent the memo to judges not because he decided to give renters a break but because the law doesn't require them to pay any past-due rent in order to appeal. Rather, S.C. Code Section 27-40-800(b) clearly says the eviction is delayed during an appeal as long as renters pay their rent on time during the appeal, and judges were routinely tacking on additional, burdensome requirements without authority to do so.

Although there's a huge difference between evictions and police raids, this was actually reminiscent of an order in July that **temporarily halted no-knock warrants**.



EDITORIALS

Editorial: Limit which SC judges can issue no-knock warrants to authorize police raids

BY THE EDITORIAL STAFF

Justice Beatty issued that earlier moratorium after he conducted a survey of magistrates and found that “no-knock search warrants are routinely issued upon request without further inquiry” because “most do not understand the gravity of no-knock warrants and do not discern the heightened requirements for issuing a no-knock warrant.

The chief justice said that moratorium would stay in place until he could write some clear standards — South Carolina has none now, through either state law or judicial orders — for when judges should issue warrants that essentially protect police from liability when they barge unannounced into homes and businesses.



EDITORIALS

Editorial: Housing courts merit support to help stem tide of evictions

BY THE EDITORIAL STAFF

As big a difference as this latest directive will make in the lives of people in dire situations, what’s legally and politically significant is that it marked the second time in three months that the chief justice had to step in to correct clear misapplications of the law not in an individual case but systemically.

It’s not uncommon for the court to reverse lower-court orders; that’s why we have appellate courts. What’s uncommon is for the chief justice to see mistakes that are so widespread that he has to act outside an individual appeal to set the lower courts straight.

It’s no coincidence that in both instances, the judges who were misapplying the law were our most political and least educated judges: magistrates.



EDITORIALS

Editorial: SC senators won’t let us fix magistrate system. But here’s how to improve it

BY THE EDITORIAL STAFF

Magistrates are technically appointed by the governor, but in fact they're hand-picked by the state senator who represents the area they serve. They don't have to be attorneys, or have any relevant experience, and as The Post and Courier's Joseph Cranney reported last year, S.C. magistrates frequently ignore defendants' basic constitutional rights and have less required training than the state's barbers or masseuses.

The chief justice's back-to-back orders calling them down for routinely taking actions on such potentially life-changing matters that don't comply with the law underscore the need for reforms to either our magistrate requirements or our magistrate appointment system or both. And sooner rather than later.



EDITORIALS

Editorial: Reappointment of reprimanded magistrate is an indictment of SC Senate

BY THE EDITORIAL STAFF

MORE INFORMATION

Editorial: Unpaid rent is a looming crisis in SC and rest of US

Editorial: The federal government must pay for what it takes, even from landlords

Editorial: Deadbeats on the bench? SC chief justice's order should spur magistrate reform

Editorial: Chief justice's swift action on conflict should be the rule, not the exception

EXHIBIT B

https://www.postandcourier.com/business/real_estate/sc-renters-no-longer-need-to-pay-thousands-to-appeal-evictions-chief-justice-says/article_77a27cf4-of2d-11eb-9422-73d75c9bc9bo.html

SC renters no longer need to pay thousands to appeal evictions, chief justice says

BY THAD MOORE TMOORE@POSTANDCOURIER.COM

OCT 17, 2020



South Carolina's chief justice, Donald Beatty, instructed magistrates to stop requiring tenants to pay thousands when they appealed evictions. File/Mary Ann Chastain/AP

South Carolina renters no longer need to pay thousands of dollars to appeal an eviction after the state's chief justice reversed a widespread practice that had long derailed legal challenges.

The change makes it much easier to have an eviction order reviewed by a higher court and removes a critical barrier that few tenants seeking an appeal had been able to clear. Magistrates around the state previously required tenants to first pay all

the past-due rent they allegedly owed before their appeal could go forward — even if they were challenging the amount due.

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Reach **Thad Moore** at 843-937-5703. Follow him on Twitter @thadmoore.

MORE INFORMATION

Editorial: Eviction order underscores problems with SC magistrates

Charleston County offering landlords cash if they drop eviction cases against their tenants

Why Charleston councilman Karl Brady's DUI has so far been private

NAACP says SC Supreme Court ban on data scrapers hurts advocacy for evicted tenants

THAD MOORE

WATCHDOG AND PUBLIC SERVICE REPORTER

Thad Moore is a reporter on The Post and Courier's Watchdog and Public Service team and a graduate of the University of South Carolina. To share tips securely, reach Moore via ProtonMail at thadmoore@protonmail.com or on Signal at 843-214-6576.



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Eviction Appeal Process Update

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https://www.postandcourier.com/news/to-appeal-an-eviction-in-sc-tenants-are-required-to-pay-thousands-of-dollars-first/article_7f8e2a42-cbd2-11ea-8d20-df3fb28181ad.html

Upon specific and immediate direction of Chief Justice Beatty, all magistrates are to immediately cease ordering a tenant to post past due rent in a residential eviction in order to stay the eviction on appeal.

Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered. Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal.

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Categories

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Posted by: Byron King on 10/19/20 (This information is only accurate as of 10/19/20. You must contact SCR for updates and changes to this information after 10/19/20 as laws and regulations may change over time. SCR 803-772-5206 or email Byron)

By Michael Crist | October 19th, 2020 | Coronavirus, Legal FAQs | Comments Off

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EXHIBIT C

RECEIVED

Apr 06 2022

SC Court of Appeals

From: Thad Moore <tmoore@postandcourier.com>
Sent: Thursday, March 24, 2022 2:59 PM
To: Justin Stoddard
Subject: RE: SC renters no longer need to pay thousands to appeal evictions, chief justice says

Hi Justin - unfortunately I don't have a copy of the order, but the state's court administration provided me with the language of a memo that was sent to magistrates. This was sent on Aug. 11, 2020:

Upon specific and immediate direction of Chief Justice Beatty, all magistrates are to immediately cease ordering a tenant to post past due rent in a residential eviction in order to stay the eviction on appeal.

Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered. Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal.

Code § 27-40-790 is not applicable to a residential eviction appeal as it is inconsistent with Code § 27-40-800. Likewise, Code §27-37-130 is not applicable to residential landlord tenant matters as it is also inconsistent with 27-40-800 and applies only to commercial landlord tenant evictions.

Please find attached an amended form Bond to Stay Ejectment On Appeal to be used in lieu of the current form contained in CMS. The attached form removes the language regarding posting of bond for back to rent and requires that the tenant pay rent as it becomes due, or within five days thereafter, pending the outcome of appeal. The current form will be removed from CMS.

From: Justin Stoddard [mailto:jstoddard@loandepot.com]
Sent: Thursday, March 24, 2022 3:53 PM
To: Thad Moore <tmoore@postandcourier.com>
Subject: SC renters no longer need to pay thousands to appeal evictions, chief justice says
Importance: High

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognise the sender and know the

content is safe.
Hello Thad-

I desperately need your help. I am in the midst of an eviction where I have appealed and the magistrate judge is requiring that I post over \$11,000 in back rent.

https://www.postandcourier.com/business/real_estate/sc-renters-no-longer-need-to-pay-thousands-to-appeal-evictions-chief-justice-says/article_77a27cf4-0f2d-11eb-9422-73d75c9bc9b0.html
[linkprotect.cudasvc.com]

I read your article and I have also attempted to find the order that you reference in the article to no avail. Would you be able to provide me with your source information? I have a hearing tomorrow and would like to reference something tangible to show that the article is backed by an order or something tangible.

Thanks,

Justin Stoddard
Customer Service Supervisor

(949) 372-3718

(888) 337-6888 ext. 2586

(833) 978-2911

jstoddard@loandepot.com

<https://www.loanDepot.com> [linkprotect.cudasvc.com]

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EXHIBIT D



Justin Stoddard <stoddju@gmail.com>

American Homes 4 Rent

3 messages

Jay Williams <stoddju@gmail.com>
To: John Kelchner <jkelchner@turnerpadget.com>

Wed, May 18, 2022 at 7:05 PM

Mr. Kelchner,

I am writing to inquire if your client would work with me and the rental assistance program to pay what is in arrears.

My reasoning is two fold- we are now in month 4 since the courts go involved and it's been nearly 7 months since AH4R has received any compensation for the home and utilities. Also, there is only 4 months left on the original lease.

I don't know how much longer this could drag out with the court of appeals and in that spirit, I wanted to see if they would work with me on this.

Thanks,

Justin

Kelchner, John B <JKelchner@turnerpadget.com>
To: Jay Williams <stoddju@gmail.com>

Fri, May 20, 2022 at 4:09 PM

Mr. Stoddard,

American Homes 4 Rent will not accept rental assistance or agree to any alternative payment arrangement regarding this lease.

Thanks, John

John Kelchner
Of Counsel Attorney
Turner Padget Graham & Laney P.A.
PO Box 1473 | Columbia, SC 29202
1901 Main Street, Suite 1700 | Columbia, SC 29201
803-227-4234 | Fax 803-400-1522
jkelchner@turnerpadget.com

[Quoted text hidden]

Jay Williams <stoddju@gmail.com>
To: "Kelchner, John B" <JKelchner@turnerpadget.com>

Fri, May 20, 2022 at 4:34 PM

Thank you for your response. I was just looking to resolve this sooner rather than later.

I also dropped your copy of my new motions for the appeal court in the mail.

I anticipate you will receive them in the next few days

-Justin

On May 20, 2022, at 4:09 PM, Kelchner, John B <JKelchner@turnerpadget.com> wrote:

Mr. Stoddard,
[Quoted text hidden]

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SC Court of Appeals

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In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward Miller, Circuit Court Judge

Case No. 2022-000424

American Homes 4 Rent, Respondent, v. Justin Stoddard, Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Proceed in Forma Pauperis on American Homes 4 Rent by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2022, addressed to their attorney of record, John B. Kelchner, Post Office Box 1473, Columbia, South Carolina 29202.

Justin Stoddard 117 EaglestonLn

Simpsonville, SC 29680
864-569-8630
Pro Se Litigant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE