

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Jul 06 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

MOTION TO RECONSIDER

I motion the court to reconsider the order dated June 30th, granting the respondent's motion for dismissal. The matter that the original appeal was born from was requirement that the magistrate judge, the Honorable Laura Saunders set as the appeal bond. As the appellant, I was seeking to get a judgment from this court on the matter of the bond appeal. Initial bond was set by The Honorable Laura M. Saunders at \$11,076.26. The appellant argues and asserts that there are many charges on the rental ledger provided to Judge Saunders that he was not responsible for, and that the rental ledger should be scrutinized before a bond was set. American Homes for Rent padded several high value charges. 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). This appeal motion should be decided purely based on the bond amount issue as a hearing for actual cause has not been had. The appellant has not had the opportunity to assert a defense for whether he is responsible for the rental amount.

The appellant asked for a jury trial where he would be able to assert a defense. He would argue that SC law does not allow the landlord to terminate tenancy based on attorney fees as 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.

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.

Eviction Appeal Process Update

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Eviction Appeal Process Update

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

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.

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.

“South Carolina renters who face removal from their homes are routinely denied the chance to have their case heard by a higher court for a simple reason: To fight an eviction, they have to come armed with cash. When tenants appeal evictions handed down by the Palmetto State’s magistrates, those same judges regularly demand that they come up with thousands of dollars in a matter of days. If they don’t, their cases can be thrown out. That has happened to more than 120 tenants since the start of 2019, according to a Post and Courier analysis of court records across the state. It’s a process that blocks

renters around the state from having their evictions reconsidered, a barrier to their efforts to seek justice. In order to keep an appeal alive and hold off eviction, state law only specifies that tenants have to keep up with their regular monthly rent. But because the law is tangled and ambiguous, magistrates often require them to pay an additional bond before their case goes forward. The gulf between the law's wording and its application highlights how imprecision in legislation can undermine its goals and detrimentally affect the people it's meant to protect. And magistrates routinely use their discretion to demand that tenants come up with all the money their landlords say they owe — even when they dispute how much that is. Some magistrates go further, ordering tenants to put up all their back rent and pay extra rent upfront. Magistrates in South Carolina don't need to have formal legal training; fewer than half are licensed to practice law. But in eviction cases, they are charged with interpreting the law as they render decisions to remove people from their homes. If tenants disagree with a magistrate's ruling, they can go up the ladder to one of the state's circuit courts, where the judges are all attorneys. But first, they must post bond. The magistrate decides the bond amount based on their interpretation of a law that is ambiguous at best. The cost of pursuing an appeal can vary immensely, often hinging on which magistrate ends up hearing the case. THIS IS SIMPLY NOT A FAIR APPLICATION OF THE LAW. It can be as little as \$0 up-front, as long as you pay your next month's rent on time, the minimum specified in the law. Or it can be as high as everything your landlord says you owe plus your next three months' rent up-front, a formula used by a handful of judges. After all, Circuit Judge D. Craig Brown concluded, the law doesn't actually say tenants have to catch up on rent to appeal an eviction. This is what South Carolina law says about what it takes to appeal a case: If you agree to pay your rent when it's due, that's enough to delay an eviction. When it comes to appeals, the state law that regulates residential leases, the Landlord and Tenant Act, says nothing about catching up on past-due rent. In fact, magistrates regularly dismiss appeals based on laws that don't apply to residential rentals, the newspaper's review of court records found. In dozens of instances, they cited portions of law intended to regulate

commercial lease agreements and deal with trespassers to justify throwing out tenants' cases. The Landlord and Tenant Act simply asks renters to sign an agreement in which they promise to pay their rent each month while their appeal is pending. If they miss a month, it warns, they can be kicked out of their homes. The law even includes a sample form agreement for tenants to sign; nowhere does it leave room for back rent to be required. The computer system that judges use to manage cases even includes a template they can fill out, according to the South Carolina Judicial Department, which runs the state's court system. It doesn't mention back rent, either. Bond requirements like South Carolina's have a simple goal: They're designed to prevent tenants from using the court system to stay in their home rent-free. That's why the law specifies they must keep paying their rent month-to-month while the courts hear their appeal, or else be put out.

The state's Landlord and Tenant Act, however, only specifies that a tenant challenging an eviction needs to keep up with their monthly rent while their appeal is being heard. By adding past-due rent, Justice Beatty concluded, judges were applying the law incorrectly.

“Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal,” the chief justice wrote.

The appellant further asserts that this lease has not been terminated properly because no judgment has been made on nonpayment of rent. The nonpayment of rent has been a result of American Homes for Rent refusing to accept rent in December because the appellant did not include the attorney fees that they ascertain that the tenant owes. A magistrate judge or a jury trial would need to take place to hold a hearing to rule on that matter as American Homes can not simply refuse rental

charges and then file for eviction for nonpayment as the reason. This would indicate that any landlord could at any time pad a rental ledger for any amount, refuse to accept rent and then go to a court and file for eviction. This would set a dangerous precedent in SC and would be unfair for any tenant/landlord relationship. The appellant sent in the required rent amount minus the attorney fees on several occasions and it was returned because it didn't include attorney fees. Section 27-40-710 of the South Carolina Code provides that "[i]f rent is unpaid when due and the tenant fails to pay rent within five days from the date due[,] the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period." The appellant attempted to post monthly rent and it was refused. The Lease contains similar language that termination of the Lease may occur upon the failure to make a rent payment within five days after the due date and that tenant would receive no other notice of Landlord's intent to terminate the Lease and proceed with eviction for nonpayment of rent. Therefore, the tenant made the attempt and was NOT in default and Landlord had NO right to unilaterally terminate the Lease.

Historically, under South Carolina law, "a landlord is under no obligation to accept a late rent payment." 14 S.C. Jur. Landlord and Tenant § 56 (2019) (Westlaw). The Supreme Court of South Carolina has permitted late rent payments in circumstances in which there is an immaterial or trivial breach of a commercial lease. This appellant would assert here that American Homes for Rent is in trivial breach. Previously the Supreme Court of South Carolina had held that a landlord may terminate a lease and proceed eviction for any failure to make a timely payment to the landlord regardless of the circumstances; and therefore, the landlord was under no obligation to ever accept late rent payments. See *Wright v. Player*, [233 S.C. 223](#), [104 S.E.2d 289](#) (1958); *Hairston v. Carolina Wholesale Furniture Co.*, [291 S.C. 371](#), [353 S.E.2d 701](#) (App. 1987). However, in *Kiriakides v. United Artists Communications, Inc.*, [312 S.C. 271](#), [440 S.E.2d 364](#) (1994), the Supreme Court of South Carolina

tempered this unlimited right to termination by holding that notions of equity and common sense should be factored into whether a landlord may terminate a commercial lease, and that a commercial lease should not be terminated in circumstances in which the breach is trivial, immaterial, or technical. While it is unclear if the holding of *Kiriakides* is extended to residential leases under South Carolina law. 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.

The appellant asked the court set a bond that is consistent with Justice Beatty's memo and consistent with state law and that the appeal still should go forward. This would include setting a bond for \$1695.00 as evidenced by the monthly rent noted in the lease with that amount due within 5 days thus posting a bond in order for the appeal to move forward. Failure to do so, would continue to allow magistrate judges to be inconsistent with state law and statutes and perpetually allow tenants to continue to have the odds stacked against them.

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PROOF OF SERVICE

I certify that I have served this **Motion for Reconsideration** to the court order dated June 30th on American Homes 4 Rent by depositing a copy of it in the United States Mail, postage prepaid, on July 5, 2022, addressed to their attorney of record, John B. Kelchner, Post Office Box 1473, Columbia, South Carolina 29202.

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE