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Jul 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

Case No. 2018-CP-08-00266 & 2018-CP-08-01008
Appellate Case No.: 2019-001169

Aracelis Santos,Appellant,

vs.

Harris Investment Holdings, L.L.C.,Respondent.

&

Case No. 2021-CP-08-00513
Appellate Case No.: 2021-000768

Aracelis Santos,Appellant,

vs.

Harris Investment Holdings, L.L.C.
City of Hanahan,
City of Hanahan Police Department,
John Doe #1 and John Doe #2
Employees of the City of Hanahan Police Department,Defendants,
of which
Harris Investment Holdings, L.L.C. is the.....Respondent.

REPLY TO RESPONDENT’S RETURN TO
APPELLANT’S MOTION TO CONSOLIDATE

July 18, 2022

/s/ Thomas R. Goldstein
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ATTORNEYS FOR APPELLANT

Pursuant to Rules 240(d), *South Carolina Appellate Court Rules*, Appellant files this brief Reply to the Respondent's July 15, 2022 Return.

Respondent gratuitously asserts on page 3 of its July 15th Return that the Magistrate entered ejectment “[a]fter receiving reports from Hanahan authorities of **repeated dangerous criminal activity** at El Alamo.” This “dangerous criminal activity” is summarized in the first appeal at pages 232-237 and in the second appeal at pages 158-162 and 188-191. For the Court's convenience, a summary of this “repeated dangerous criminal activity” is attached here as Exhibit 1, and, the Court can reach its own conclusion as to whether Hanahan's prosecution of multiple alleged zoning violations and alleged fire code violations, all of which were dismissed, constitute “dangerous criminal activity.” However the Court chooses to characterize the 17 municipal violations, the Magistrate found them sufficient to establish the Appellant as a “public nuisance” and ordered ejectment. However, while that decision was under judicial review, on or about March 22, 2019, Harris Investment Holdings, L.L.C. decided to take matters into its own hands and bulldoze the building and its contents to dust. This act prevented this Court from reviewing the ejectment decision because the destruction mooted the issue since Appellant could no longer obtain meaningful relief to possess a building that no longer existed. This mootness conclusion is *res judicata* by the un-appealed decision of Judge Curtis and by the holding of the Supreme Court in *Skydive Myrtle Beach, Inc. v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020). Judge Curtis' un-appealed June 11, 2019, finding is the law of the case: “The magistrate court judge's award of attorney fees is affirmed. All other issues in this appeal are now moot as the subject property has been demolished.” R.O.A. page 49, attached here as Exhibit 2 for the Court's convenience.

One further misstatement requires correction. On page 6 of its Return, the Respondent asserts that the Appellant has unnecessarily delayed justice by stating incorrectly: “HIH is

nowhere near being able to enforce its judgment.” Return at page 6. Respondent fails to acknowledge two irrefutable legal principles:

First, money judgements are never stayed by appeal. Rule 241(b)(1) *South Carolina Appellate Court Rules*. Of course, executing on a money judgment while a case is on appeal is a risky proposition, but then Harris Investment Holdings has demonstrated repeatedly it is not adverse to risky behavior.

Second, the Respondent knows that Appellant is of modest financial strength against whom an execution on its judgment is not practical because of Appellant’s modest circumstances. Reading between the lines, Respondent is really complaining that David will not stop throwing stones and get out of the path of Goliath. (For a measure of financial disparity, consider that the Landlord’s requested attorney’s fees at a half-day, non-jury, Magistrate Court trial were \$54,340.58. R.O.A. page 126. Tenant incurred \$2,500.00 for the same trial. For the mathematical reader, that disparity is just short of a 22-fold difference.)

In summary, the Respondent is correct: it will be prejudiced by consolidation, but not by the kind of **legal prejudice** that defeats consolidation.

Legal Prejudice. Legal prejudice which will defeat plaintiff’s motion to dismiss is such as deprives defendant of substantive rights of property, or concerns his defense, which will not be available or may be endangered in a second suit. *Black’s Law Dictionary*, 5th ed. See also *Prime Medical Corp. v. First Medical Corp.*, 291 S.C. 296, 353 S.E.2d 294 (S. C. App. 1987): “. . . First Medical failed to carry its burden of showing legal prejudice. The only reasons appearing in the record for the administrative law judge to deny the motion were that the case was the oldest on the docket and that First Medical was ready for trial.”

Here Respondent offers no evidence of legal prejudice to consolidation. Instead, it resists consolidation to hinder the Court’s ability to review the full spectrum of its conduct and to wear down the Appellant with its superior financial strength. Not to put too fine a point it, Respondent weaponizes the judicial system and is hardly the first to do so. Second, consolidation shines a bright light on the Respondent’s conduct in destroying the building and its contents while the

appeal was pending, and in the annals of South Carolina jurisprudence, there is no record of a landlord charting the route taken by Harris Investment Holdings, L.L.C. Harris Investments has the temerity (chutzpah in Yiddish¹) to invoke Rule 1 of the *South Carolina Rules of Civil Procedure*, a *reductio ad absurdum* where Respondent redefines “just” and “speedy” and “inexpensive” into their opposites. Two separate appeals in the place of one is the opposite of “speedy” and the opposite of “inexpensive,” and does not become more “just” than a streamlined resolution. Thus, while Respondent is correct in asserting the two appeals are from different orders, it is misleading to omit the fact the two appeals involve the same parties, the same subject matter, the same transaction, and neither appeal can be understood without reference to the other. In fact, the Records on Appeal are substantially overlapping. Thus the “prejudice” to Harris Investment Holdings L.L.C. is not the type of legal prejudice that defeats consolidation; rather, it is credibility prejudice it suffers from having its conduct examined in the full spectrum of its actions as opposed to piecemeal defenses. If Respondent believes that the rules of court “shall be construed to secure the just, speedy, and inexpensive determination of every action” (Return at page 6, quoting Rule 1 of the *South Carolina Rules of Civil Procedure*), then it cannot possibly have a sincere objection to consolidation.

Respectfully submitted,

July 18, 2022

/s/ Thomas R. Goldstein
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ATTORNEYS FOR APPELLANT

¹ Chutzpah is sometimes defined by the defendant charged with murder of his parents seeking mercy on the ground he is an orphan.

EXHIBIT 1

(Revised March 13, 2018)

DATE	DEFENDANT	CHARGE
Hanahan Municipal Court		
(1) August 20, 2016 Ticket No. 4102P0213362—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		
(2) October 1, 2016 Ticket No. 2007—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		
(3) October 2, 2016 2008—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		
(4) October 2, 2016 Ticket No. 2009	Benjamin F. Reyna	Public Nuisance
Consolidated Bench Trial—dismissed (Nuisance = Violation of § 4-2)		
(5) October 2, 2016 Ticket No. 2010	Benjamin F. Reyna	Disorderly House
Jury Trial—dismissed		
(6) October 2, 2016 Ticket No. 2011	Benjamin F. Reyna	Unsafe Building (Occupancy)
Case re-opened, No contest plea Feb. 16, 2018 \$50.00 fine		
(7) October 23, 2016 Ticket No. 52737GT	Aracelis Santos Gomez	Assault & Battery 3d degree
Dismissed		
(8) October 29, 2016 Ticket No. 2012	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—trial in absence—on appeal (same as (6))?		

(9) November 5, 2016 Nicole Lynn Franz After Hours Consumption
4102P0213823—Officer Dodd

Consolidated Bench Trial

(10) November 5, 2016 Agustin Torres-Sanchez After Hours Consumption
4102P0213825—Officer Dodd

Consolidated Bench Trial (?)

(11) November 5, 2016 Guillermina Anastacio- After Hours Consumption
4102)0213828—Officer Dodd Eleuterio

Consolidated Bench Trial (?)

(12) November 5, 2016 Angela Hernandez After Hours Consumption
4102P0213829—Officer Dodd

No Contest Plea Feb. 16, 2018. \$50.00 fine

(13) November 5, 2016 Arelia Santos Gomez After Hours Consumption
4102P0213830—Officer Dodd

Consolidated Bench Trial

(14) November 5, 2016 Cruz Torres After Hours Consumption
4102P0213824—Officer Dodd

Consolidated Bench Trial (?)

(15) November 5, 2016 Juan Balderas After Hours Consumption
(No ticket number)—Officer Dodd

Consolidated Bench Trial

(16) November 5, 2016 Gisel Gonzales Cruz After Hours Consumption
4102P0213827—Officer Dodd

No Contest Plea Feb. 16, 2018 \$50.00 fine

(17) November 6, 2016 Arelis Santos Gomez Unlicensed Sales
4102P0213834

Deferred Prosecution for 90 days from Feb. 16, 2018

(18) November 11, 2016 Arelis Santos Gomez After hours Consumption
Ticket No. 4102P0213835—Officer Dodd

No Contest Plea Feb. 16, 2018 \$50.00 fine

(19) November 16, 2016 Benjamin F. Reyna Disorderly Conduct
Ticket No. 52738GT

Dismissed by Court Order

(20) November 16, 2016 Benjamin F. Reyna After Hours Consumption
Ticket No. 52739GT

Dismissed by Court Order

(21) November 26, 2016 Brandon Leroy Washington-Brown After Hours Consumption
Ticket No. 4102P0214311—Officer Dodd

No Contest Plea Feb. 16, 2018 \$50.00 fine

(22) December 10, 2016 Leroy Washington-Brown Operating w/o license
Ticket No. 4102P0214334

Dismissed

(23) December 10, 2016 Leroy Washington-Brown After Hours Consumption
4102P0214335—Officer Dodd

No Contest Plea Feb. 16, 2018 \$50.00 fine

(24) December 10, 2016 Leroy Washington-Brown Noise Ordinance
4102P0214336

Chief Turner reviewing

(25) December 24, 2016 Anthony Dale Foster After Hours Consumption
4102P0214347—Officer Dodd

Consolidated Bench Trial—dismissed

(26) January 7, 2017 Arelis D. Santos Gomez After Hours Consumption
4102P0214411—Officer Dodd

Consolidated Bench Trial

(27) January 7, 2017 Arelis D. Santos Gomez Operating w/o business
4102P0214412—Officer Dodd license

Dismissed

(28) January 7, 2017 Arelis D. Santos Gomez Interfering with City
4102P0214413—Officer Dodd employees

Dismissed by Court Order (Judge Stokes)

(29-42)

January 7, 2017

3400	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3.1
3401	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3
3402	Arelis D. Santos Gomez	2015 IFC, 609.3.3.1
3403	Arelis D. Santos Gomez	2015 IFC, 509.1
3404	Arelis D. Santos Gomez	2015 IFC, 901.6
3405	Arelis D. Santos Gomez	2015 IFC, 315.3.3
3406	Arelis D. Santos Gomez	2015 IFC, 605.1
3407	Arelis D. Santos Gomez	2015 IFC, 605.3
3408	Arelis D. Santos Gomez	2015 IFC, 605.4
3409	Arelis D. Santos Gomez	2015 IFC, 605.5
3410	Arelis D. Santos Gomez	2015 IFC, 605.6
3411	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.1
3412	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.3.2.2
3413	Arelis D. Santos Gomez	2015 IFC, 110.1.1
3414	Arelis D. Santos Gomez	2015 IFC, 111.1

29-42: Dismissed

(43)

November 6, 2016

Ticket No. 4102P0210213836

Lance Grimes

Disorderly conduct

Dismissed

(44)

Ticket No. unknown

Evodio Hernandez Santos

Unlawful use of 911

Chief Turner reviewing—Clerk's Office says convicted

(45) Arelis Santos Gomez Assault & Battery 3d degree
Ticket No. 52737 GT

Dismissed. (Same as No. 7)

(46) Arelis Santos Gomez Unlawful Consumption
September 3, 2017 Ordinance 4-2
Ticket No. 4102P0216292

No Contest Plea Feb. 16, 18 \$50.00 fine

(47) Arelis Santos Gomez Unlawful Consumption
November 23, 17 Ordinance 4-2
Ticket 2251

Consolidated Bench Trial

Moncks Corner-Traffic Tickets- SLED

(48) Anthony Dale Foster Unlawful sale of beer/and
March 20, 2017 Operating w/o a permit
Ticket No. 26437 DB

No Contest Plea, fine \$50.00

(49) Arelis Santos Gomez Unlawful sale of beer/and
March 20, 2017 Operating w/o a permit
Ticket No. 26438 DB

Dismissed

(50) Arelis Santos Gomez Unlawful sale of beer
October 2, 2017
Ticket No. 86689 EF

Pending

(51) Benjamin Reyna Flores Unlawful sale of beer
October 2, 2017
Ticket No. 86690 EF

Pending

25 Dismissed
1 Deferred
8 No contest
16 pending

EXHIBIT 2

Aracelis Santos
PLAINTIFF(S)

Harris Investment Holdings, LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The magistrate court judge's award of attorney fees is affirmed. All other issues in this appeal are now moot as the subject property has been demolished.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/06/2019 .

Magistrate Court Goose Creek

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Berkeley Common Pleas

Case Caption: Aracelis Santos VS Harris Investment Holdings, LLC

Case Number: 2018CP0800266

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2019-06-06 11:28:07 page 3 of 3

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Aracelis Santos,Appellant,

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&

Case No. 2021-CP-08-00513
Appellate Case No.: 2021-000768

Aracelis Santos,Appellant,

vs.

Harris Investment Holdings, L.L.C.
City of Hanahan,
City of Hanahan Police Department,
John Doe #1 and John Doe #2
Employees of the City of Hanahan Police Department,Defendants,

of which

Harris Investment Holdings, L.L.C. is the.....Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return to Motion to Consolidate Appeals upon the Respondent, Harris Investment Holdings, L.L.C., by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2022, addressed to the attorneys of record for the Harris Investment Holdings, L.L.C., Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401-2239 (and to counsel for the City of Hanahan, *et. al.*, by depositing a copy of it in the United States Mail, postage prepaid the same date to Stafford J. McQuillin, III at P. O. Box 340, Charleston, S. C. 29402).

July 18, 2022

/s/ Thomas R. Goldstein

Thomas R. Goldstein, S. C. Bar # 2186

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July 18, 2022

Hon. Jenny A. Kitchings,
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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SC Court of Appeals

Re: Aracelis Santos v. Harris Investment Holdings, L.L.C., et. al.
Case Nos.: 2021-CP-08-00513

Dear Ms. Kitchings,

I enclose Appellant's Reply to Respondent's Return to Motion for Consolidation. By copy of this letter, I am providing a copy to opposing counsel. Please let me know if you require anything further.

I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

enclosure: Reply to Respondent's Return, Exhibit 1 and 2

cc:

Merritt Abney, Esq.
151 Meeting Street
Sixth Floor
Charleston, S. C. 29401
Stafford J. McQuillin, Esq.