

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jul 15 2022

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

Bentley D. Price, Circuit Court Judge

Civil Court Appeal Case No. 2021-CP-08-00513

Appellate Case No. 2021-000768

Aracelis Santos, Appellant,

v.

Harris Investment Holdings, LLC, 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, LLC is..... Respondent.

Kristi F. Curtis, Circuit Court Judge

Rad S. Deaton, Magistrate Judge

Civil Court Appeal Case No. 2018-CP-08-00266

Civil Court Appeal Case No. 2018-CP-08-01008

Appellate Case No. 2019-001169

Aracelis Santos, Appellant,

v.

Harris Investment Holdings, LLC, Respondent.

**RESPONDENT’S RETURN TO APPELLANT’S
MOTION TO CONSOLIDATE APPEALS**

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Respondent Harris Investment Holdings, LLC (“HIH”) submits this return in opposition to the motion to consolidate appeals filed on June 23, 2022, by Appellant Aracelis Santos (“Santos”). Santos seeks to consolidate her initial appeal (Appellate Case No. 2019-001169, the “First Appeal”) of the lower court orders ejecting her from the subject premises, and awarding HIH its attorneys’ fees, with her subsequent appeal (Appellate Case No. 2021-000768, the “Second Appeal”) of a circuit court’s order that dismissed her tort claims against HIH a separate lawsuit Santos brought against HIH and the City of Hanahan. The Court should deny Santos’ motion because she fails to satisfy the requirements for consolidation under Rule 214, SCACR, and consolidation of these appeals would prejudice HIH.

BACKGROUND

I. The First Appeal (Appellate Case No. 2019-001169)

The First Appeal is from an action for ejectment filed by HIH against Santos. Santos leased commercial property located at 5901 Loftis Road, Hanahan (the “Property”) from HIH. Santos and her boyfriend, Benjamin Reyna (“Reyna”), operated a nightclub on the Property known as “El Alamo.” After receiving reports from Hanahan authorities of repeated dangerous criminal activity at El Alamo, on November 14, 2016, HIH filed an application in the magistrate’s court to eject Santos from the Property.

Following a bench trial on October 11, 2017, the magistrate ruled that Santos created a public nuisance at the Property in breach of the lease and granted HIH’s application for ejectment. (12/7/2017 Order, R. p. 6.) The magistrate concluded that “Santos has maintained El Alamo as a place where the laws are publicly, repeatedly, persistently, and intentionally violated, thus disturbing the public peace.” (12/7/2017 Order, R. p. 27.) Via order entered on February 9, 2018,

the magistrate also awarded HIH attorneys' fees in the amount of \$34,608.00 and legal costs in the amount of \$104.73. (2/8/2017 Order, R. p.36.)

On February 8, 2018, Santos appealed the magistrate's orders to the circuit court (Case No. 2018-CP-08-00266).¹ She continued to occupy the Property while her appeal was pending. On June 6, 2019, the circuit court affirmed the magistrate's ruling. (6/6/2019 Orders, R. p. 77.) On July 15, 2019, Santos' appealed the lower court rulings to this Court. The First Appeal is currently on the preliminary list for oral argument.

II. The Second Appeal (Appellate Case No. 2021-000768)

The Second Appeal, commenced two years after the First Appeal, is from an order dismissing tort claims that Santos asserted against HIH in a different lawsuit after HIH retook possession of the Property after expiration of the lease agreement.

On November 30, 2018, while the First Appeal remained pending in the circuit court, the lease agreement for the Property expired according to its terms. HIH sent Santos multiple notices via certified mail directing her to vacate the Property and remove her belongings by midnight on November 30. When Santos failed to vacate the Property as required by the Lease, HIH retook possession of the Property pursuant to the express terms of the Lease. On or about March 22, 2019, while officers of the Hanahan Police Department were present, contractors retained by HIH demolished the building in accordance with a permit obtained from the Town of Hanahan.

On March 2, 2021, Santos filed a tort suit in circuit court, in which she alleged that HIH wrongfully repossessed and demolished the building and conspired to do so with the City of

¹ Santos subsequently filed a second civil appeal of the magistrate's rulings in the circuit court (Case No. 2018-CP-08-1008). With Santos' consent, the circuit court ordered her to dismiss this second action without prejudice. When she failed to comply, the circuit court dismissed the action on its own. (6/6/2019 Order, R. 72.)

Hanahan and its police department. On April 2, 2021, HIH filed a Motion to Dismiss Santos' Complaint for failure to state causes of action against HIH. HIH argued that it was entitled to retake possession under the express terms of the Lease and South Carolina law and that Santos' individual causes of action were legally deficient.

Following a hearing on HIH's Motion to Dismiss on June 3, 2021, the circuit court issued an order on June 14, 2021, granting HIH's Motion to Dismiss *in toto*, thereby dismissing HIH as a party to the action. On June 15, 2021, Santos filed a Motion for Reconsideration, which the circuit court denied via written order entered on June 29, 2021. Santos appealed these two orders in the Second Appeal, which was filed exactly two years after the First Appeal. The Second Appeal remains in the briefing stage.

ARGUMENT

I. The Court should deny Santos' motion because the requirements in Rule 214, SCACR are not met.

Rule 214, SCACR states as follows: "Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." The Rule permits this Court to exercise its discretion to consolidate appeals in two situations: 1) where there are multiple appeals from the *same order*; or 2) where multiple appeals in different cases involve the *same question*. Neither situation exists here.

The First Appeal and the Second Appeal are from different orders. The First Appeal relates to the magistrate's court orders ejecting Santos from the Property and awarding HIH its attorneys' fees, and the circuit court orders affirming the magistrate's rulings. The Second Appeal arises from a different lawsuit that Santos filed against HIH and the City, and a different order, in which the

court dismissed Santos' tort claims related to HHH's repossession of the Property upon expiration of the lease.

Moreover, the two appeals concern completely different issues. The First Appeal concerns whether the magistrate properly awarded HHH its attorneys' fee in the Ejectment Action, while the Second Appeal concerns whether HHH had the right to repossess the Property after Santos' refusal to vacate. Accordingly, the requirements for consolidation are not satisfied here. *See* Rule, 214, SCACR.


II. The Court should not consolidate the appeals because consolidation would prejudice HHH.

Even if Rule 214 permitted consolidation of these appeals, which it does not, Santos' motion should be denied because HHH would be prejudiced by the likely delay consolidation would entail. HHH obtained its award of attorney's fees nearly four and a half years ago, but due to Santos' delays in the lower courts and in this Court, HHH is nowhere near being able to enforce its judgment. While the First Appeal has been pending for three years, and is currently on the preliminary list for oral argument, the Second Appeal remains in the briefing stage. Consolidation would therefore only delay resolution of the First Appeal and further delay HHH's ability to collect its judgment. This Court should not further delay resolution of the First Appeal where, as here, there is no compelling reason to do so. Rule 1, SCRCR (stating the rules of court "shall be construed to secure the just, speedy, and inexpensive determination of every action").

CONCLUSION

For the foregoing reasons, this Court should deny Santos' motion to consolidate appeals.

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By:  _____

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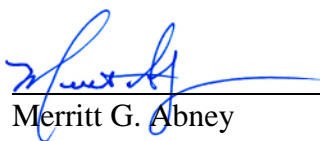
PROOF OF SERVICE

I hereby certify that I have served a copy of **Respondent’s Return to Appellant’s Motion to Consolidate Appeals** on counsel for Appellant Aracelis Santos in this action by mailing a copy of the same by United States Mail, postage prepaid, and via electronic mail, to the following AIS information address(es):

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