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Aug 30 2022

SC Court of Appeals

August 30, 2022

Re: 25th Avenue LLC v. Carol Ann Honeycutt
Appellate Case No. 2022-001130

Ms. Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street
Columbia, South Carolina 29201

Dear Ms. Kitchings,

On Monday, August 29, 2022, I spoke with Mr. Tyler about submitting the order and the written notice of entry of the order from which this appeal is taken. He instructed me to submit the following documents:

- (1) The Order of June 30, 2022.
- (2) The final written notice of entry of the Order, dated August 19, 2022.

That order, and the final written notice of the entry follow this letter and are emailed to you today. A paper copy will be placed in the mail today and sent to your attention.

Additionally, Mr. Tyler said that I am late on submitting an order for the transcript. I misunderstood the timing. He stated that I need to make a motion to the Appeals Court to accept the late ordering of the transcript. Mr. Tyler did not know the form of the motion. If it is possible, could you provide a reference for the form for this motion. He said the filing fee for the motion is fifty dollars.

Today, I have requested instructions for ordering a transcript from the office which handles Webex transcripts: transcripts@sccourts.org. The hearing was a Webex hearing. I will order the transcript as soon as I receive the order information.

Thank you for your continued help. Please let me know if there are any additional steps to be completed at this time.

Sincerely,


Carol Ann Honeycutt
843-254-5951
Auso2@southcarolina.usa.com

cc: Henrietta U. Golding, atty.
Taylor Kay Voegel, atty.
@ Burr and Foreman

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Appellate Case No: 2022-001130

Aug 30 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-26-05267

25th Avenue, LLC,
Plaintiff,
vs.
Carol Ann Honeycutt,
Defendant.

ORDER GRANTING
PLAINTIFF'S MOTION FOR
EJECTMENT HEARING AND
PLAINTIFF'S MOTION TO
AMEND
(Not Ending the Action)

During a non-jury term of court held via Webex, this Court heard, on May 31, 2022, two outstanding motions: Plaintiff's Motion for Ejectment Hearing filed October 20, 2020; and Plaintiff's Motion to Amend its Petition for Ejectment filed September 17, 2021. Based upon Plaintiff's Motions, accompanying exhibits, the Affidavits of Richard Williams, Defendant Carol Ann Honeycutt's Answer and accompanying exhibits, and arguments of the parties, the Court grants Plaintiff's Motion for Ejectment Hearing and Plaintiff's Motion to Amend.

I FIND AS FOLLOWS:

1. Defendant currently resides at the property located at 400 25th Avenue South, Myrtle Beach, South Carolina ("the Property"). This Property is subject to a commercial "Lease and Contract of Sale" agreement dated December 9, 2005 ("the Contract"). Pursuant to the Contract, Defendant is obligated to pay \$2,000.00 per month in rent. Defendant admitted she has not paid rent since December 2019.

2. On February 5, 2020, Plaintiff filed an Application for Ejectment with the Myrtle Beach Magistrates Court. Defendant was served with a Rule to Vacate or Show Cause on June 16, 2020, and thereafter filed a Request for Hearing to Show Cause. A bench trial was scheduled

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to be held on July 23, 2020, but Defendant first requested a continuance of the hearing and then requested a jury trial. On July 20, 2020, the Magistrates Court issued a Bond to Stay Execution, which required that Defendant pay a bond of \$14,000.00 and pay rent of \$2,000.00 per month. At a hearing that same day, Defendant withdrew her demand for a jury trial, and consequently, a bench trial commenced on July 23, 2020. However, the next day, the Magistrates Court transferred the action to the Circuit Court, followed by a written Order, dated September 1, 2020.

3. On June 8, 2021, the Circuit Court remanded the case back to Magistrates Court by Form 4 Order, noting there was no specified reason as to why the case was transferred to the Circuit Court. Later that month, on June 24, 2021, the Magistrates Court transferred the case to the Circuit Court a second time, noting the Magistrates Court lacked subject matter jurisdiction to determine the dispute over real property.

4. South Carolina Code Section 27-37-150 states in part:

After the commencement of ejectment proceedings by the issuance of a rule to vacate or to show cause as herein provided, the rental for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises, at the same rate as prevailed immediately prior to the issuance of such rule, and the tenant shall be liable for the payment of such rental....”

5. Section 27-37-155(A)(1) states in relevant part:

In any action involving a commercial lease where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the lease agreement:

(1) 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....

(Emphasis added.)

6. Section 27-37-155(B)(3) provides that if the tenant has failed to comply with Sections 27-37-150 and -155, the court “shall issue a warrant of ejectment and the

landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.”

7. Similarly, Subsection 27-37-155(B)(5) provides that if a court orders the tenant to pay all rent due and accruing as provided by Sections 27-37-150 and -155, but the tenant fails to make such payment, “the tenant’s failure to comply entitles the landlord to execution of the judgment for possession and, upon application of the landlord,” the court must issue a warrant of ejectment and place the landlord in full possession of the premises by the sheriff, deputy, or constable.

8. Defendant admitted at this hearing that she had not made a payment of rent since on or about December 7, 2019, and Plaintiff’s Affidavits of Richard Williams confirm Plaintiff has not received any rent payment from Defendant since December 2019. Thus, I find no additional hearing on this issue is necessary. It is therefore,

ORDERED that the Defendant is to be ejected from the Property within ten (10) days of the date of this Order and that Plaintiff’s Motion to Amend to add a claim for breach of contract is granted.

Based on the foregoing, it is ORDERED, that a Writ of Ejectment be issued against Defendant and Plaintiff’s Motion to Amend is granted. This Order does not end the action.

IT IS SO ORDERED.

_____, 2022

The Honorable Kristi F. Curtis
Presiding Judge of the 15th Judicial Circuit



Horry Common Pleas

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt

Case Number: 2020CP2605267

Type: Order/Other

So Ordered

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2605267

25th Avenue LLC
PLAINTIFF(S)

Carol Ann Honeycutt
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:

Appellant Honeycutt's First and Second Motion to Vacate the Order of June 30, 2022 are hereby DENIED. Honeycutt's Motion requesting recusal is hereby DENIED. Honeycutt has failed to set forth any legal grounds to either vacate the court's previous order or any legally sufficient grounds in support of her motion for recusal.

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 08/18/2022 .

Carol Ann Honeycutt for Carol Ann Honeycutt
Carol Ann Honeycutt for Carol Ann Honeycutt

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SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Horry Common Pleas

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt
Case Number: 2020CP2605267
Type: Order/Electronic Form 4

So Ordered

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

Electronically signed on 2022-08-18 16:57:01 page 3 of 3



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP2605267

Official File Stamp: 08-19-2022 10:34:10 AM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt
Document(s) Submitted: Order/Electronic Form 4 - Appellant Honeycutt's First & Second Motion to Vacate Order of 6-30-22 are DENIED.
Filed by or on behalf of: Kristi F. Curtis

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Henrietta U. Golding for 25th Avenue LLC
Joseph Salvatore Schillizzi for 25th Avenue LLC
Taylor Kay Voegel for 25th Avenue LLC

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Carol Ann Honeycutt for Carol Ann Honeycutt
Carol Ann Honeycutt for Carol Ann Honeycutt