

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

SHARON CLARK,

Appellant,

v.

HABITAT 2000 LLC,

Respondent.

IN THE COURT OF COMMON PLEAS

2022-CP-21-01276

COMMON PLEAS CASE NO.

2021CV2110104298

MAGISTRATE CIVIL CASE NO.

**ORDER DENYING STAY AND
ORDERING EJECTMENT**

RECEIVED

Feb 10 2023

SC Court of Appeals

ELECTRONICALLY FILED - 2023 Jan 11 11:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

THIS MATTER comes before the Court subsequent to an appeal of Appellant Sharon Clark ("Appellant") from the entry of a Writ of Ejectment in favor of Respondent Habitat 2000, LLC ("Respondent") as well as a monetary judgment against Appellant in Respondent's favor for Two Thousand and no/100 (\$2,000.00) Dollars. The operative facts and applicable law before the Court are set forth hereinbelow:

Operative Facts

1. On December 28, 2021, Respondent filed a Rule to Vacate action pursuant to that certain Apartment Lease (the "Lease") by and between Respondent and Appellant under which Respondent exercised its option not to renew the Lease with Appellant. After issuing the non-renewal, Appellant has refused to leave Respondent's apartment complex.
2. Resultantly, the Magistrate Courts set an initial hearing date for February 9, 2022, prior to which Appellant made a request for continuance, which the Magistrate Court granted.
3. The Magistrate Court eventually held a trial in June 20, 2022 during which, after hearing the facts of the case, a jury found in favor of Respondent and a Writ of Ejectment was thereafter issued. In addition, the jury found that Appellant was acting in bad faith and without merit in

her defense of the matter and in filing counterclaims, thereby awarding attorney's fees in favor of Respondent for Two Thousand and no/100 (\$2,000.00) Dollars.

4. Appeal was taken June 24, 2022 by Appellant to the Circuit Court. A hearing on the matter was scheduled for August 22, 2022. In turn, Appellant filed a Motion for Continuance. That matter was in fact continued due to a medical emergency occurring immediately before the hearing involving an immediate family member of Respondent's counsel. Another hearing on the matter was scheduled for November 10, 2022. Again, in return, Appellant filed another Motion for Continuance on the evening immediately preceding the hearing.
5. On November 10, 2022 this Court held an appeal hearing and appearing for Respondent was Charles Epps (Charlie) Ipock, Esq. This Court afforded Appellant notice of the hearing on October 20, 2022, and counsel for Respondent also provided notice of the hearing on October 24, 2022.
6. Despite being provided two separate notices, Appellant failed to appear and the Court attempted to reschedule the hearing for later in the day but Appellant refused to attend at any point during the day. The November 10, 2022 hearing proceeded and Appellant's appeal was dismissed and denied by The Honorable Judge Clifton Newman. Notwithstanding, on November 21, 2022, Appellant filed a Notice of Appeal to the South Carolina Court of Appeals. Resultantly, the Magistrate Court has declined to execute the ejectment of Appellant on the grounds that such ejectment must be stayed pending the appeal to the South Carolina Court of Appeals.
7. To enforce the ejectment of Appellant, on November 23, 2022, Respondent filed a Motion to Execute Ejectment on the grounds that Appellant has no right to a stay given the facts and circumstances of the instant action.

ELECTRONICALLY FILED - 2023 Jan 11 1:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

Applicable Law

8. As a general matter proffered under Rule 241 of the South Carolina Appellate Court Rules, service of notice of appeal in a civil matter automatically stays matters and relief ordered in the corresponding, appealed judgment, which generally continues for the duration of the appeal. S.C. App. Court R. 241.
9. There are, however, exceptions to the general rule under which the issuance of a stay is not automatic. One such exception exists for “judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. 18-9-170.” SCACR 241(b)(4).
10. Namely, as stated in S.C. Code Ann. §18-9-170, “If the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.” S.C. CODE ANN. §18-9-170.
11. The Court also acknowledges that, in the context of real property possession, the issuance of a stay also falls under the purview of Title 57 of the South Carolina Code of Laws. Moreover, Title 57, Chapter 40—the Residential Landlord Tenant Act (the “Landlord Tenant Act”)—provides as follows: “Upon appeal to the Supreme Court or to the court of appeals, it is sufficient to stay execution of a judgment for ejection that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit

court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking." S.C. CODE ANN. §27-40-800.

12. Resultantly, while both Title 18 and the Landlord Tenant Act govern stays in the context of real property possession, as is the case here given the issue before the Court is that of ejection, an apparent facial discrepancy appears to exist between the two authorities regarding when the issuance of a stay is appropriate. That is, while Title 18 requires execution of a written document with two sureties along with provision of a fixed payment set by the court, the Landlord Tenant Act simply requires a promise to pay rent while the appellate proceeding pends. Despite this seeming inconsistency, whether the provisions Title 18 or the Landlord Tenant Act shall apply is dependent upon the rationale and reasoning for the ejection that is the subject of the pending appeal. In addition, the Landlord Tenant Act still requires an "order of the Judge of the circuit court" as to bond requirements and a resultant stay.

13. As stated in Section 24-40-20, one of the primary purposes of the Landlord Tenant Act is to govern the rights and obligations of both landlords and tenants. S.C. CODE ANN. §24-40-20. When a lease agreement has been effected, as is the case here, the principal obligation imposed upon a tenant is the requirement to pay rent. *See, e.g.* S.C. CODE ANN. §24-40-310. Further, the Landlord Tenant Act explicitly provides a landlord with remedies and specific proceedings in which it may engage when a tenant fails to pay rent. Resultantly, in accordance with the Legislature's purpose in enacting the Landlord Tenant Act, the Court interprets the language of Section 27-40-800—whereby a tenant must agree to pay rent to warrant a stay—as principally applicable to evictions for nonpayment of rent. S.C. CODE ANN. §27-40-800. Such an interpretation is consistent with the rationale behind Section 27-4-800, as it is equitable to

- require a tenant for whom a landlord seeks eviction for nonpayment of rent to affirmatively pledge to pay all such outstanding rent while an appeal is pending.
14. Of critical importance here, however, is that the grounds of Appellant's eviction are not premised on nonpayment of rent but, rather, centered solely on the Appellant's noncompliance with security protocol set forth in the Lease and accompanying documentation. Namely, as Respondent has set forth for the record, the nonpayment of rent has never been an issue, but rather the issues include, without limitation, Appellant's refusal to comply with safety protocol. Such issues, as evidenced by Florence County Magistrate Judge Frank White in that certain Return on Appeal, prompted a jury to "conclude that the defendant should be ejected, and that her defense was without merit . . ." *Return on Appeal*, (July 20, 2022).
15. Given the facts before the Court are not premised on a nonpayment dispute, the Court adopts and applies the governing language of Title 18 as the more appropriate terms relevant to the determination as to whether a stay may be issued. Moreover, per S.C. Code Ann. §18-9-170, the judgment from which Appellant has appealed directs the removal of Appellant from a portion of Respondent's real property in direct alignment with Title 18's provisions. Resultantly, this eviction proceeding shall not be stayed unless Appellant moves that this Court allow her to present a written undertaking, executed by Appellant and with two sureties, affirmatively pledging not to commit waste and agreeing to pay for the value of use and occupation of the instant tenant space from the deliverance of such written undertaking until judgment is rendered. S.C. CODE ANN. §18-9-170.
16. This is consistent with S.C. CODE ANN. §27-40-800 which requires an Order of this Court, of which Appellant has failed to seek.

ELECTRONICALLY FILED - 2023 Jan 11 11:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

Ruling

17. In view of the length between the proceedings and events hereto, and considering ramifications thereof with respect to prejudice of the parties and in the interest of justice, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Appellant having failed to obtain an order of this Court under S.C. CODE ANN. §27-40-800 nor under S.C. CODE ANN. §18-9-170 there is not in place any stay and the Florence County Magistrate Court is directed to eject Appellant and that the eviction, writ, and/or set-out move forward against Appellant not sooner than February 6, 2023.

_____, 2023

By: _____
Judge H. Steven DeBerry, IV



Florence Common Pleas

Case Caption: Sharon Clark VS Habitat 2000 LLC
Case Number: 2022CP2101276
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2023-01-11 12:28:56 page 7 of 7

ELECTRONICALLY FILED - 2023 Jan 11 11:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

Certificate of Electronic Notification

Recipients
Charles Ipock - Notification transmitted on 01-11-2023 01:11:09 PM.
Pierce MacLennan - Notification transmitted on 01-11-2023 01:11:09 PM.

ELECTRONICALLY FILED - 2023 Jan 11 11:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

ELECTRONICALLY FILED - 2023 Jan 11 11:11 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101276

A filing has been submitted to the court RE: 2022CP2101276

Official File Stamp: 01-11-2023 01:11:03 PM

Court: CIRCUIT COURT

Common Pleas

Florence

Case Caption: Sharon Clark VS Habitat 2000 LLC

Document(s) Submitted: Order/Denying Stay and Ordering Ejectment
Order/Other

Filed by or on behalf of: H. Steven Deberry, IV

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

The following people were served electronically:

Pierce Talmadge MacLennan for Habitat 2000 LLC

Charles Epps Ipock for Habitat 2000 LLC

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

Sharon Clark for Sharon Clark

Sharon Clark for Sharon Clark