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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Circuit Court Judge

Appellate Case No. 2023-001068
Case No. 2023-CP-42-01755

Shaneka S. Flournoy,

Appellant,

v.

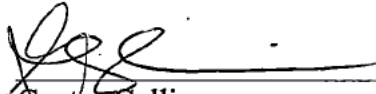
River Run,

Respondent,

RESPONDENT'S MOTION TO DISMISS

Now comes the Respondent, River Run (hereinafter "River Run"), by and through its counsel, Gentry Collins of Brownlee Whitlow & Praet, PLLC, and respectfully requests this Honorable Court to dismiss Appellant's Appeal filed July 3, 2023. In support of its motion, River Run has included a Memo in Support of Respondent's Motion to Dismiss.

Respectfully submitted this 19th day of July, 2023.



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Attorney for Respondent

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Respondent.

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

Respondent, River Run I Apts, LLC d/b/a River Run Apartments (hereinafter "Respondent"), by and through its counsel, Gentry Collins, in support of its motion to dismiss appeal would show unto this Honorable Court:

1. Respondent is the Landlord/Owner of that certain residential real property located at 2301 Meridian River Run, Spartanburg, South Carolina 29301 (hereinafter "Premises").

2. Appellant (hereinafter "Lessee") entered into an Apartment Lease Contract with Respondent for the rental of the Premises with a monthly rental amount of \$1,238.00 per month, due on or before the first (1st) day of each month, and is considered late if not paid by the fifth (5th) day of the month.

3. On or about April 18, 2023, an Application for Ejectment was filed by Respondent due to Lessee's breach of the Lease for failure to pay rent when due or demanded.

4. A Rule to Show Cause hearing was held on May 12, 2023, for the Lessee to show good cause of why she should not be evicted.

5. A judgment for the Respondent was entered on or about May 12, 2023, granting Respondent's request for a Writ of Ejectment.

6. On or about May 16, 2023, Lessee filed a Notice of Civil Appeal with the Court of Common Pleas for Spartanburg County, bearing Case Number 2023CV4201755 (hereinafter the "Appeal").

7. Pursuant to South Carolina Code Ann. § 27-40-800, a Bond to Stay hearing was conducted at the Spartanburg Magistrate Court on or about May 18, 2023, whereby Lessee executed an undertaking to pay \$1,300.00 within four (4) days, and said undertaking made the amount due by Monday, May 22, 2023, by 4:30 PM. Subsequent monthly rent payments were thereafter due on the first (1st) day of each month until the conclusion of the Appeal.

8. The Bond to Stay Execution on Appeal to Circuit Court also provided that "[i]f Tenant fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant."

9. A Motion for Appeal hearing was scheduled in the Court of Common Pleas on or about June 19, 2023, with the Honorable Shannon M. Phillips presiding.

10. On or about June 22, 2023, an Order Dismissing Appeal with Prejudice was filed with the Spartanburg County Court of Common Pleas, dismissing the Appeal pursuant to

statements by the Lessee that she had failed to pay rent when due to the Respondent, and as a result of Lessee's failure to present testimony and evidence to the Court which supports a mistake of law or fact by the lower court.

11. On or about July 3, 2023, Lessee filed a Notice of Appeal in the Court of Appeals for the State of South Carolina appealing the Circuit Court's ruling/dismissal of her appeal for failure to pay rent and asking for the Court of Appeals to stay the eviction action.

12. On or about July 5, 2023, the South Carolina Court of Appeals issued a letter identifying certain and specific deficiencies within Lessee's Notice of Appeal which were to be corrected no later than ten (10) days from the date of the letter, on or before July 15, 2023.

13. On or about July 5, 2023, the South Carolina Court of Appeals issued a letter identifying certain and specific deficiencies within Lessee's Motion to Stay which were to be corrected no later than ten (10) days from the date of the letter, on or before July 15, 2023.

14. Lessee has failed to correct the listed deficiencies as required by the South Carolina Court of Appeals. Lessee failed to pay the requisite filing fees for the Motion to Stay, and has failed to properly serve the Respondents with both the Motion to Stay and Notice of Appeal.

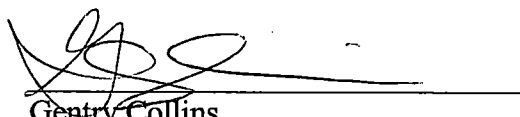
15. Further, SCACR Rule 241(b)(10) requires that Lessee meet a condition precedent to continue with her appeal by executing a bond or undertaking under South Carolina Code Ann. § 27-40-800 to keep her rent current while the appeal is pending.

16. Lessee failed to pay rent for the month of July 2023 and continues to reside at the Premises.

Therefore, Respondent respectfully requests this Honorable Court dismiss Lessee's appeal to the South Carolina Court of Appeals as Lessee has failed to meet conditions precedent by failing to comply with the terms of the aforementioned bond to stay, and has failed to cure deficiencies

within her Appeal as noted by this Court. Respondent intends to move forward with the execution of the Writ of Ejectment and set out, and Respondent believes that the failure to cure deficiencies and maintain current monthly bond payments makes the appeal moot and makes a dismissal proper.

Respectfully submitted this 19th day of July, 2023.



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Attorney for Respondent

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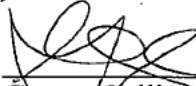
Respondent,

PROOF OF SERVICE

I certify that I have served **Respondent's Motion to Dismiss** by depositing a copy of it in the United States Mail, postage prepaid and via certified mail, on **July 19, 2023**, addressed to the following parties:

Shaneka Flournoy
2301 Meridian River Run
Spartanburg, South Carolina 29301

Respectfully submitted this 19th day of July, 2023.


Gentry Collins

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Brownlee Whitlow & Praet
PROPERTY SOLUTIONS LAW

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July 19, 2023

Via First Class USPS Mail

South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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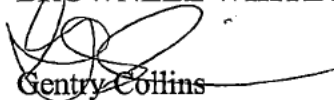
Re: Shaneka S. Flournoy v. River Run (2023-001068)

To Whom it May Concern:

Please find enclosed for your signature an original and six (6) copies of the Respondent's Motion to Dismiss, Proof of Service, and Memorandum in Support of Motion to Dismiss in the above matter. Please also find enclosed a self-addressed, stamped envelope.

Thank you in advance for your attention in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,
BROWNLEE WHITLOW & PRAET, PLLC


Gentry Collins

CC: Appellant – with enclosures.

Charlotte Location:
1850 E. Third Street, Suite 100
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Contact: 704.247.4998
BWPF-Law.com

