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Jul 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Judge

Case No. 2022-CP-04-01976
(Appellate Case No. 2023-000045)

Danny L. Ivester, Sr.Appellant,

v.

EYZC Re, LLC,Respondent.

RESPONDENT’S MOTION TO DIMISS APPELLANT’S APPEAL

COMES NOW Respondent EYZC Re, LLC, by and through its undersigned counsel, and hereby moves this Honorable Court to dismiss the above captioned Appeal.

The underlying action involves the ejectment of Appellant from real property located in Anderson, South Carolina that is owned by Respondent. On January 6, 2022, the Respondent initiated the action by filing an Application for Writ of Ejectment in the Anderson County Magistrates Court. Magistrate Judge Mary Frances Cole issued an Order on September 20, 2022, granting Respondent’s Motion for Judgment on the Pleadings, or in the alternative, Summary Judgment, resulting in the issuance of a Writ of Ejectment against Appellant. Appellant then filed an Appeal with the Anderson County Court of Common Pleas.

On January 4, 2023, the Honorable R. Lawton McIntosh issued an Order affirming the Magistrates Court's September 20, 2022, Order. Thereafter, Appellant filed the instant Appeal along with an assortment of other, mostly unintelligible filings.

On March 14, 2023, the Respondent filed a 'Motion Requesting Defendant/Appellant Post a Bond Pending Appeal' with the Anderson County Court of Common pleas in accordance with to S.C. Code § 27-40-800, *et seq.* On or around May 25, 2023, the Honorable R. Lawton McIntosh issued an Order granting the Respondent's Motion, requiring Appellant post a bond by paying into the Anderson County Clerk of Court the amount of One Thousand Seven Hundred and 0/100th Dollars (\$1,700.00) per month beginning June 1, 2023 through the duration of the instant appeal. The May 25, 2023, Order is attached hereto and incorporated herein by reference as "**Exhibit A**".

The Appellant failed to make any bond payments in accordance with the May 25, 2023, Order. So, on July 14, 2023, the Honorable R. Lawton McIntosh issued a subsequent Order ruling, in pertinent part, as follows:

Defendant/Appellant's Appeal shall be forthwith dismissed. Furthermore, the Defendant/Appellant shall immediately remove all personal property from the subject Property, vacate the subject Property along with all other occupants, and the Defendant/Appellant shall be considered on trespass notice. Within seventy-two (72) hours from the filing of this Order, the Anderson County Sheriff's Office shall be authorized to immediately remove the Defendant/Appellant and any occupants from the subject Property, and to perform a set-out if necessary. Should the Defendant/Appellant and/or any other occupants fail to abide by this Order, the Defendant/Appellant and/or any other violators shall be subject to sanctions which may include imprisonment and/or fines, in addition to any criminal charges which may be sought by the Anderson County Sheriff's Office.

See July 14, 2023, Order (a copy of which is attached hereto and incorporated herein as "**Exhibit B**").

Therefore, Appellant respectfully requests this Honorable Court dismiss the instant Appeal. This Motion is based upon South Carolina statutory and common law, the law of this case, and upon such supporting memorandum(s) and/or arguments that may be presented in connection herewith at a future time.

Respectfully submitted this 26th day of July, 2023.

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

s/ M. Stokely Holder

M. Stokely Holder (SC Bar #73892)
Raford W. Bussey, Jr. (SC Bar #103943)
Jonathan G. Abrams (SC Bar #105711)

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Attorney for Respondent

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2022-CP-04-01976

ELECTRONICALLY FILED - 2023 May 25 2:25 PM - ANDERSON - COMMON PLEAS - CASE#2022CP0401976

DANNY L. IVESTER
PLAINTIFF(S)

EYZC RE LLC
DEFENDANT(S)

Submitted by: Attorney for : [] Plaintiff [] Defendant or [] Self-Represented Litigant

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.
[X] 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. [] See Page 2 for additional information.
[] 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) [X] Statement of Judgment by the Court:

ORDER INFORMATION

RESPONDENT'S MOTION FOR BOND IS GRANTED. APPELLANT SHALL PAY \$1,700 PER MONTH TO THE ANDERSON COUNTY CLERK OF COURT BEGINNING JUNE 01, 2023 THROUGH THE DURATION OF THE APPEAL. APPELLANT HAS THIRTY DAYS TO APPEAL. MR. JONATHAN ABRAMS, ESQ. TO PREPARE A FORMAL ORDER WITHIN TEN DAYS.

This order [] ends [X] does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Rows show \$ amounts.

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Danny L Ivester Sr VS Eyzc Re Llc

Case Number: 2022CP0401976

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	Magistrate Case No.: 2022-CV-0410700014
)	Appellate Case No.: 2022-CP-04-01976
EYZC RE, LLC,)	
)	
Plaintiff/Respondent,)	
vs.)	
)	ORDER
Danny L. Ivester, Sr.,)	
)	
Defendant/Appellant.)	
)	
)	
)	

This matter came before the Court on Plaintiff/Respondent’s ‘Motion Requesting Appellant Post a Bond Pending Appeal’. For the reasons that follow, the Motion is GRANTED.

The issue before the Court arises out of an Order granting the application for an Order for Writ of Ejectment filed by the Plaintiff/Respondent on January 6, 2022, seeking the ejectment of the Defendant/Appellant from the subject property, 211 Highway 17, Piedmont, South Carolina 29673 (the “Property”). The Plaintiff/Respondent filed a Motion for Judgment on the Pleadings, or in the alternative, Summary Judgment, and the Magistrate’s Court for Anderson County granted Summary Judgment on September 20, 2022 and issued a Writ of Ejectment against Defendant/Appellant. Thereafter, Defendant/Appellant filed a Notice of Civil Appeal with this Court on September 23, 2022.

By Order dated January 4, 2023, this Court affirmed the Magistrate’s Court’s September 20, 2022 grant of Summary Judgment and issuance of a Writ of Ejectment. On January 11, 2023 the Defendant/Appellant subsequently filed a Notice of Appeal, appealing this Court’s decision to the South Carolina Court of Appeals. Thereafter, the Plaintiff filed the subject Motion, which

was subsequently heard on May 24, 2023. Present at the hearing was Attorney Jonathan G. Abrams for Plaintiff/Respondent and Defendant/Appellant, *pro se*.

Pursuant to South Carolina Code Ann. § 27-40-800, Defendant/Appellant is entitled to a stay of the execution of ejectment should the Defendant/Appellant post a bond in an amount determined by order of the Judge of the Circuit Court, which may include, without limitation, amounts ordered to be paid periodically during the pendency of the appeal. As such, this Court retains authority to issue an order requiring a bond to stay the execution of the prior judgment.

At the hearing on this Motion, the Court ruled that the evidence presented supported a value for the use and occupancy of the Property at One Thousand Seven Hundred and 0/100ths Dollars (\$1,700.00) per month (the “Bond Amount”), which this Court ordered the Defendant/Appellant to pay into the Anderson County Clerk of Court on or before the first day of each month, beginning on June 1, 2023, and for each following month through the duration of the pending appeal. The Court further ordered that the Defendant/Appellant’s appeal will be dismissed if the Bond Amount is not paid. The Court subsequently filed a Form 4 Order further memorializing its ruling.

As of today’s date, June 7, 2023, the Defendant/Appellant has failed to pay the Bond Amount for the first applicable month – June, 2023.

THEREFORE, IT IS ORDERED that the Defendant/Appellant’s Appeal shall be forthwith dismissed. Furthermore, the Defendant/Appellant shall immediately remove all personal property from the subject Property, vacate the subject Property along with all other occupants, and the Defendant/Appellant shall be considered on trespass notice. Within seventy-two (72) hours from the filing of this Order, the Anderson County Sheriff’s Office shall be

authorized to immediately remove the Defendant/Appellant and any occupants from the subject Property, and to perform a set-out if necessary. Should the Defendant/Appellant and/or any other occupants fail to abide by this Order, the Defendant/Appellant and/or any other violators shall be subject to sanctions which may include imprisonment and/or fines, in addition to any criminal charges which may be sought by the Anderson County Sheriff's Office.

IT IS SO ORDERED!



Anderson Common Pleas

Case Caption: Danny L Ivester Sr VS Eyzc Re Llc

Case Number: 2022CP0401976

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

THE HONORABLE J. CORDELL MADDOX, JR., CIRCUIT JUDGE

Appellate Case No. 2023-000045
Circuit Court Case No. 2022-CP-04-01976

Danny L. Ivester, Sr..... Respondent.

v.

EYZC RE, LLC..... Appellant.

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Respondent EYZC RE, LLC, do hereby certify that I have served the Respondent’s Motion to Dismiss Appellant’s Appeal by depositing a copy of it in the United States Mail, postage prepaid, on July 26, 2023, addressed to Danny L. Ivester, Sr., 211 Highway 17, Piedmont, South Carolina, 29673. I also certify that I have served the Respondent’s Motion to Dismiss Appellant’s Appeal on the South Carolina Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on July 26, 2023, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, P.O. Box 11629, Columbia, SC 29211, and by electronic mail at: ctappfilings@sccourts.org.



M. Stokely Holder (SC Bar No.: 73892)
Raford W. Bussey, Jr. (SC Bar No.: 103943)
Jonathan G. Abrams (SC Bar #105711)
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Attorneys for the Respondent

July 26, 2023

Carolyn G. Denney

Reply to: Greenville
direct: 864.558.9440
fax: 864.248.4090
cdenney@hplplaw.com

July 26, 2023

Via U.S. Mail and Email

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

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Jul 26 2023
SC Court of Appeals


RE: Danny L. Ivester, Sr. v. EYZC RE, LLC
Circuit Court Case No.: 2022-CP-04-01976
Appellate Case No.: 2023-000045

Dear Ms. Kitchings:

Please find enclosed herewith for service upon the court and Appellant Respondent's Motion to Dismiss Appellant's Appeal, along with Certificates of Service for same. I have also included our firm's check in the amount of \$50.00 for the filing fee.

Should you have any questions or concerns, feel free to contact our office.

Regards,



Carolyn Denney
HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC
Paralegal

/cgd
Enclosures

cc: Danny L. Ivester, Sr.- 211 Highway 17, Piedmont, SC, 29673