

THE STATE OF SOUTH CAROLINA

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In the Court of Appeals

DEC 01 2023

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

In the Circuit Court

Greenville County Civil Action Number 2022-CP-23-00922

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No.: 2022-000741

Mercedes BoydAppellant

v.

Triangle Palisades at the Park, LLC d/b/a Palisades at the Park.....Respondent

RESPONDENT’S REPLY TO RETURN

I. Respondent did not receive a copy of Appellant’s Return to Respondent’s Motion to Dismiss.

Appellant’s certificate of service reflects that she mailed the Return to the Respondent’s Motion to Dismiss to the Respondent’s attorney at PO Box 4216, Columbia, SC 29250 by certified mail number 7022041000126675384. (Emphasis added) Respondent did not receive the mailing as the ZIP Code utilized by Appellant is inaccurate and incorrect. Respondent’s mailing address is PO Box 4216, Columbia, SC 2940. (Emphasis added) Attached hereto as Exhibit A is the USPS tracking report which reflects that certified mail number 7022041000126675384 was returned to sender “because it could not be delivered as addressed.”

II. The copies of the rental payments attached to Appellant’s Return to the Respondent’s Motion to Dismiss are reflected in the affidavit of Sara James and the accompanying tenant ledger.

In the affidavit of Sara James, Regional Manager for Southwood Realty, the managing agent of Respondent, which was attached to Respondent's Motion to Dismiss, she averred that the last payment received from Appellant was in November 2022 in the amount of \$1000.00 and that the court ordered bond amount has not been paid for the months of November and December 2022 and January through September 2023.

The copies of seven rental payments attached to Appellant's Return reflects seven payments: two on September 3, 2022; one on October 6, 2022; one on October 5, 2022; two on October 5, 2022, and two on November 5, 2022. No other proof of payment is provided.

These payments are corroborated on the tenant ledger and no other payments are reflected. The seven rental payments attached to Appellant's Return confirm the accuracy of the tenant ledger and the statements in the affidavit of Sara James. Appellant has failed to offer any evidence to show that additional bond payments have been made.

III. No Accord and satisfaction was or could have been reached between Appellant and Respondent regarding the court ordered appeal bond.

After the eviction hearing on February 14, 2022, the Appellant appealed to the Circuit Court on February 17, 2022. At the bond hearing of March 9, 2022, the monthly appeal bond was set at \$1410. By order filed June 2, 2002, the Court of Appeals granted the Appellant's petition for supercedeas and stayed the eviction based on the undertaking of the Appellant that she would "continue to pay the rent of 1410 on or before the 5th of each month during the execution of the stay." The amount of the required statutory undertaking was reiterated by Order filed September 18, 2023, signed by the Hon. William Keesley, Circuit Judge.

In sum, therefore, Appellant was under a court order to maintain the appeal bond throughout the duration of the appeal to stay eviction. Appellant contends that the seven bond payments she submitted as reflected in her Exhibit A, B, C, and D to her Return each carried a restrictive endorsement "paid in full" or "upon receipt of this in full satisfaction of the claims. Paid in full." This, Appellant contends, created an accord and satisfaction between Appellant and Respondent by which Appellant's requirements to post the bond were satisfied. This is in error.

South Carolina recognizes that an accord and satisfaction occurs," where there is (1) an agreement to accept in discharge of an obligation something different from that which the creditor is claiming or is entitled to receive; and (2) payment of the consideration expressed in the new agreement. *Mercury Marine Division of Brunswick Corp. v. Costas*, 288 S. C. 383, 342 S.E. 2d 632 (Ct. App 1986).

Acceptance of a check for less than the amount due does not indicate assent to the lesser sum and satisfaction of the full sum due, unless acceptance of the lesser sum is intended by both parties as an accord and satisfaction". *Florence City-County Airport Commission v. Air Terminal Parking Co.* 283 S.C. 337, 322 S.E. 2d 471(Ct. App.1984) "Stated another way, an accord and satisfaction, like any other contract, requires a meeting of the minds." *Redmond v. Strange et al.* 203 S.C. 35, 26 S.E. 2d 16 (1943) "Just as importantly, the creditor must accept payment with the intention that it shall operate as satisfaction. Without an agreement to discharge the obligation it can be no accord and without an accord it can be no satisfaction." *Mercury Marine, supra*

Not only must the debtor intend the payment is a satisfaction and extinction of the original claim but that intention must be made known to the creditor in some unmistakable manner and the creditor must accept the thing given or agreed with the intention that it shall operate in court with accordance with the debtor's intention of the satisfaction. "Both the giving and the acceptance and satisfaction are thus essential requisites, and if either be lacking there can be no accord and satisfaction" *Redmond, supra*

In the present case, Appellant was under a court order to maintain the monthly appellant bond in order to stay the eviction. The parties lacked the ability to change the terms of that order and therefore could not consent to an accord and satisfaction relieving appellant from the obligation of making the monthly bond payments. There was no meeting of minds and Respondent never agreed to accept the limited payments as full compliance with the bond.

IV. Conclusion

Appellant has failed to maintain the supersedeas bond. The appeal should be dismissed by the Clerk pursuant to §§27 – 37 – 130 and 27 – 40 – 800 (e), S.C. Code of Laws Anno.

Respectfully submitted,

s/Theodore von Keller
Theodore von Keller, SC Bar No. 5718
Crawford & von Keller, LLC
Post Office Box 4216
Columbia, South Carolina 29250
(803) 764-7444
ted@crawfordvk.com

December 1, 2023

Tracking Number:

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70220410000126675384

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Return to Sender

COLUMBIA, SC 29240

November 17, 2023, 12:00 pm

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November 15, 2023

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Mercedes BoydAppellant

v.

Triangle Palisades at the Park, LLC d/b/a Palisades at the ParkRespondent

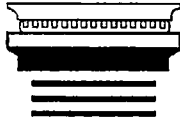
PROOF OF SERVICE

The undersigned certifies that he has served Respondent’s Reply to Return by depositing a copy of it in the United States Mail, postage prepaid, postage prepaid on December 1, 2023, addressed to the party of record to the below address:

Mercedes Boyd
805 Mauldin Road, Apt. 2306
Greenville, South Carolina 29607

Respectfully submitted,

s/Theodore von Keller
Theodore von Keller, SC Bar No. 5718
Crawford & von Keller, LLC
Post Office Box 4216
Columbia, South Carolina 29250
(803) 764-7444
ted@crawfordvk.com



CRAWFORD & VON KELLER, LLC

SOUTH CAROLINA
B. Lindsay Crawford, III *
Theodore von Keller
B. Lindsay Crawford, IV**

NORTH CAROLINA
Benjamin A. Barco
Arielle Womack
Brittany T. Morrison**

Charley S. FitzSimons
Jason M. Hunter
Lawrence W. Johnson, Jr.* - Special Counsel

* Certified Specialist in Bankruptcy
and Debtor-Creditor Law in SC.

**Admitted in South Carolina and North Carolina

RECEIVED

December 1, 2023

DEC 01 2023

Hand-Delivery
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

SC Court of Appeals

**RE: Mercedes Boyd vs. Triangle Palisades at the Park, LLC d/b/a Palisades at the Park
Appellate Case No.: 2022-000741**

Dear Sir/Madam:

Enclosed please find Respondent's Reply to Return and Proof of Service regarding the above referenced matter. I ask that you please file it accordingly.

I have only learned of the Appellant's Return yesterday as the certified copy she mailed to me was never received as it was misaddressed and returned to sender.

Sincerely,

CRAWFORD & VON KELLER, LLC

Theodore von Keller, Esquire
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorney for Respondent

TVK/tdd
Enclosure

Cc: Mercedes Boyd
805 Maulding Road, Apt. 2306
Greenville, South Carolina 29607

WE ARE A DEBT COLLECTOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

P.O. Box 4216, Columbia, SC 29240 • 1640 St. Julian Place, SC 29204 • 803-790-2626 • Facsimile 803-790-1277
1017 Ashes Drive, Suite 106, Wilmington, NC 28405 • 910-363-1637 • Facsimile 910-363-1652