

BRIEF OF RESPONDENT
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
In the Court of Common Pleas

Shannon M. Phillips, Special Circuit Court Judge

Case No. 2023-000852

Chris Klein,

Appellant,

v.

Kay Family Investments LLC,

Respondent.

RECORD ON APPEAL

Hub City Law, LLC
Tatyana S. Ustimchuk
496 W Main St
Spartanburg, SC 29301
(864) 727-0117
Attorney for Respondent

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SC Court of Appeals

INDEX

Form 4, Judgement in Civil Case, filed May 17, 2023..... 2-5

Magistrate’s Return, filed April 10, 2023..... 6

Disposition Notice, dated March 30, 2023..... 7

Writ of Ejectment, dated March 30, 2023..... 8

Application for Ejectment, filed on March 7, 2023..... 9

Certificate of Appellant..... 10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-42-01229

Chris Klein

Kay Family Investments

APPELLANT(S)

RESPONDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- 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), SCRCPP; Rule 41(a), SCRCPP (Vol. Nonsuit); Rule 43(k), SCRCPP (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCPP; 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:

This matter came before the Court on May 15, 2023 at 9:30 for a WebEx hearing on Chris Klein's Appeal from Magistrate Court. Klein and Kay Family Investments attended *pro se*.

"When a judgment is rendered by a magistrate court ... the appeal shall be to the circuit court of the county wherein the judgment was rendered ..." S. C. Code Ann. Section 18-7-10. "The appellant, within thirty days after written notice of judgment has been given him ... shall serve a notice of appeal stating the grounds upon which the appeal is founded." *Id.* Section 18-7- 20. "The appeal shall be heard by the court upon all the papers in the case ... and the grounds of exception made, without examination of witnesses in court." *Id.* Section 18-7-130. "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all parties and for errors of law or fact." *Id.* Section 18-7-170.

The Parties mentioned multiple related cases. Klein argues the underlying issues in this case were subject to a settlement agreement in another case, and for numerous reasons, a new case could and/or should not be opened to enforce a settlement in the other case. *See Appellant's Memorandum* (May 5, 2023). A party is not required to file a motion to enforce a settlement agreement in the same case. *See Vista Antiques and Persian Rugs, Inc. v. Noaha, LLC et al.*, 425 S.C. 413 (S.C. Ct. App. Oct. 17, 2008) (discussing breach of contract claim based on alleged breach of settlement agreement).

2

Appellant further argues this matter should not be dismissed because he is a month-to-month tenant. See *Appellant's Memorandum* (May 5, 2023). It appears from the Return from Magistrate's Court that Appellant raised this argument, and agreed he was provided the required 30-day notice to vacate the premises. This admission is dispositive. In his appeal hearing, Klein did not deny this notice was provided.

Upon review of the record and the presentation made at the hearing on appeal, this court finds that the judgment of the Magistrate Court is supported by the law and evidence appearing in the record of this case. There appearing no error of law or fact, the JUDGMENT of the magistrate court should be and IS therefore AFFIRMED and the APPEAL is DISMISSED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

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.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
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.

Shannon M. Phillips, Special Circuit Court Judge	3087	05/16/2023
	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:

Chris Klein
120 Dogwood Lane Unit A
Duncan, SC 29334
APPELLANT PRO SE

Kay Family Investments
2536 Boiling Springs Road
Boiling Springs, SC 29316
RESPONDANT PRO SE

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), SCRPC.

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.

4



Spartanburg Common Pleas

Case Caption: Chris Klein VS Kay Family Investments
Case Number: 2023CP4201229
Type: Order/Form 4

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2023-05-16 11:04:44 page 4 of 4

ELECTRONICALLY FILED - 2023 May 17 9:54 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201229

5

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Kay Family Investments, LLC,)
)
PLAINTIFF)

v.)

MAGISTRATE'S RETURN

2023-CP-42-1229
(2023-CV-42-101-1730)

Chris Klein &)
Elizabeth Jordan)
DEFENDANTS.)

This matter was originally filed as a rule to vacate or show cause on March 7, 2023, with the plaintiff seeking to eject the tenant/defendant because the term of tenancy or occupancy had ended. The defendant requested a hearing which was conducted on March 30, 2023.

At the hearing, the defendant acknowledged that he was a month to month tenant and that the plaintiff had given him the proper thirty days notice of non-renewal and notice to vacate the premises. The court then inquired what legal right the defendant had to stay in the premises. The defendant explained that he had an earlier case pending on appeal and that the plaintiff should be prevented from evicting the defendant until appeal on the first case is resolved. I explained that this was a separate action from the earlier case. The earlier case was 2022CV421017516 (2023CP42360). The previous case was filed alleging defendant's failure to pay rent. The previous case was ended by settlement agreement of the parties.

This court then determined that because a separate and distinct cause of action was involved in this case and because the defendant acknowledged proper notice to vacate being given, the plaintiff was entitled to an eviction of the defendant. Accordingly, the court found in favor of the plaintiff and issued a writ of ejectment. The defendant then appealed this matter to the Court of Common Pleas.

Spartanburg, S.C.
April 10, 2023

James D. Willingham II
Magistrate Judge

CLERK OF COURT
SPARTANBURG COUNTY
AMY M. COX

2023 APR 10 AM 10:35

FILED

6

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

2023CV4210101730
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

DISPOSITION NOTICE

Kay Family Investments
2536 Boiling Springs Rd
Boiling Springs, SC 29316
(864) 578-7520

PLAINTIFF(S)

Plaintiff(s) Attorney

Vs

Chris Klein & Elizabeth Jordan
120 Dogwood Ln Unit A
Duncan, SC 29334

DEFENDANT(S)

Defendant(s) Attorney

Date Filed: March 3, 2023
 Civil Action Type: Rule to Vacate \$45
 Counterclaim Date: _____
 Suit Amount: _____
 Find for Plaintiff
 Case Settled
 Action Dismissed
 Order Of Dismissal
 Voluntary non-suit with Prejudice
 Voluntary non-suit w/o Prejudice
 Other

Date Served: _____
 Answered Date: _____
 Counterclaim Served Date: _____
 Counterclaim Amount: _____
 Find for Defendant
 Ended in Bankruptcy
 Transfer to Other Court
 Stipulation of Dismissal
 Default Judgment
 Summary Judgment for Plaintiff (Defendant failed to appear)
 Summary Judgment for Defendant (Plaintiff failed to appear)

It is so ordered and adjudged: See Attached Order Statement of judgment by the court

Amount: \$ _____
 Cost: \$ _____
 Atty. Fees: \$ _____

Interest: _____
 Other: _____
 Total: _____

Dated at Spartanburg Magistrate, SC, this _____ day of _____

This judgment was entered on the _____ day of _____, _____, and a copy mailed first class this _____ day of _____.

Summary Court Judge
 (Clerks Initials)

[Signature] 3/30/23

Remarks: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
)
)

2023CV4210101730
CIVIL CASE NUMBER

NW

IN THE MAGISTRATE'S COURT
WRIT OF EJECTMENT

Kay Family Investments
2536 Boiling Springs Rd
Boiling Springs, SC 29316
(864) 578-7520

3/30/23

PLAINTIFF(S)

Vs
Chris Klein & Elizabeth Jordan
120 Dogwood Ln Unit A
Duncan, SC 29334

4/5/23 @ 1:10 pm notified
Per CAROL PATRICK Sheriff
~~Plaintiff~~ Tiled an Appeal
Defendant

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the 30th day of March, 2023, you are hereby Ordered to proceed to the premises located at **120 Dogwood Ln Unit A Duncan, SC 29334.**

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty four (24) hours to voluntarily vacate** the premises. If the premises appear **unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

March 30, 2023

[Signature]
Spartanburg Magistrate

T. Roberts, being duly sworn state that:

- I personally served a copy of this Writ on _____, an occupant of the rental unit
- On 4/4 20 23, at 12:35 pm the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.
- On _____ 20 _____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- Informed by Plaintiff that case is settled.

Date: _____, 20 _____

T. Roberts
Sheriff/Deputy Sheriff/Constable

Appealed
not Executed

20 CV42101
1730

\$45

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

KAY FAMILY INVESTMENTS
PLAINTIFF(S)

VS.

CHRIS KLEIN & ELIZABETH JORDAN
DEFENDANT(S)

APPLICATION FOR
EJECTMENT
(Eviction)

I, KAY FAMILY INVESTMENTS, plaintiff in this action, state that I am the
landlord-lessor of premises within the jurisdiction of Magistrate _____
which is described as: (address and description of premises - apartment, house, etc.)
120 DOGWOOD LN UNIT A, DUNCAN, SC 29334

I further state that, with regard to the above described premises, a landlord-tenant relationship
exists between myself and the defendant _____, the tenant-lessee,
as evidenced by the following: (Attach lease papers or other written proof.)

Grounds for this ejectment are one or more of the following:

- The tenant fails or refuses to pay the rent when due or when demanded; or
- The term of tenancy or occupancy has ended; or
- The terms or conditions of the lease have been violated as follows: _____

Sworn to before me
this 3rd day of March, 2023
CB Hall
Magistrate or Notary Public for South Carolina
My Commission expires July 28th 2030

[Signature]
PLAINTIFF (or his attorney)
2536 Bailing Springs Rd.
Bailing Springs, SC 29316
864-578-7520
eastcoastgranite.billing@gmail.com

SCCA/732 (Amended 05/2008)

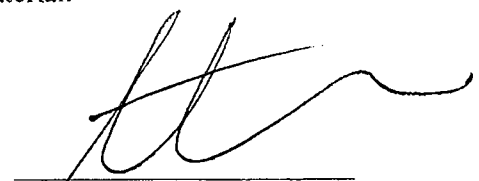
BRANDI HALL
Notary Public - State of South Carolina
My Commission Expires July 28, 2030

RECEIVED
JAN 31 2024
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 25, 2024



Tatyana S. Ustimchuk
496 W Main St
Spartanburg, SC 29301
(864) 727-0117
Attorney for Respondent