

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2605267

25th Avenue LLC
PLAINTIFF(S)

Carol Ann Honeycutt
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before this 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.
- 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 BEING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

On January 11, 2024, this Court was notified by the Clerk of Court's office that there was a Motion to Vacate filed by Defendant on June 6, 2023. This Court's previous Form 4 Order filed on May 24, 2023 still stands. Defendant's Motion to Vacate is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

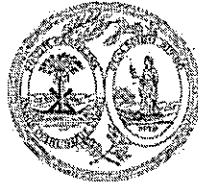
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/11/2024.

Carol Ann Honeycutt for Carol Ann Honeycutt
Carol Ann Honeycutt for Carol Ann Honeycutt

RECEIVED
JAN 31 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Jan 11 4:53 PM - Horry - COMMON PLEAS - CASE#2020CP2605267



Horry Common Pleas

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt

Case Number: 2020CP2605267

Type: Order/Electronic Form 4

So Ordered

Debra R. McCaslin

Electronically signed on 2024-01-11 15:32:15 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2020-CP-26-05267

25th Avenue, LLC,
Plaintiff,

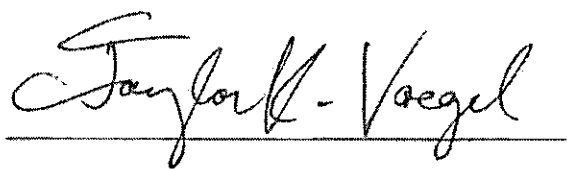
vs.

Carol Ann Honeycutt,
Defendant.

CERTIFICATE OF SERVICE

I, Taylor K. Voegel, an employee of Burr & Forman LLP, certify that on this 12th day of January 2024, the Court's Form 4 Order Denying Defendant's Motion to Vacate and Notice of Withdrawal of Counsel, were served on *pro se* Defendant, *via email and by placing a copy in the U.S. Mail, postage prepaid and affixed* thereto, addressed as follows:

Carol Ann Honeycutt
Post Office Box 8574
Myrtle Beach, SC 29578
Email: auso2@southcarolina.usa.com



Myrtle Beach, South Carolina

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

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2020CP2605267

Official File Stamp: 01-11-2024 04:53:31 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt

Document(s) Submitted: Order/Electronic Form 4-Motion to Vacate is Denied.

Filed by or on behalf of: Debra Mccaslin

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

-

The following people were served electronically:

Henrietta U. Golding for 25th Avenue LLC

Joseph Salvatore Schillizzi for 25th Avenue LLC

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

Carol Ann Honeycutt for Carol Ann Honeycutt

Carol Ann Honeycutt for Carol Ann Honeycutt

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2605267

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

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Carol Ann Honeycutt for Carol Ann Honeycutt
Carol Ann Honeycutt for Carol Ann Honeycutt

RECEIVED
JAN 31 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2023 Apr 27 4:35 PM - HORRY - COMMON PLEAS - CASE#2020CP2605267

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

25th Avenue, LLC,

Plaintiff

vs.

Carol Ann Honeycutt,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2020CP2605267

ORDER ON PLAINTIFF'S MOTIONS TO DISMISS
COUNTERCLAIMS AND FOR SUMMARY
JUDGMENT

RECEIVED
JAN 31 2024
SC Court of Appeals

BACKGROUND AND PROCEDURAL HISTORY

This matter came before the Court on April 24, 2023, for a hearing on Plaintiff's Motions to Dismiss Counterclaims and for Summary Judgment. Taylor Voegel and Henrietta Golding were present at the hearing on behalf of the Plaintiff, and the Defendant represented herself. This case arises out of an ejectment action for failure to pay rent. The matter was originally filed in Magistrate's Court and was transferred to Circuit Court on September 10, 2020. On June 8, 2021, the case was remanded back to Magistrate's Court and subsequently transferred back to Circuit Court on June 24, 2021. On June 30, 2022, Judge Kristi Curtis signed an Order granting Plaintiff's Motion for an Ejectment Hearing, ordering that a writ of ejectment be issued. She signed that writ of ejectment on July 18, 2022. Defendant filed two motions to vacate Judge Curtis's June 30th Order. Both were denied, and Defendant was evicted from the property. On July 25, 2022, Defendant filed an Amended Complaint which included counterclaims for Fraud, Breach of Contract, Loss of Rental Income, "Deny the Plaintiff's Complaint," Incomplete Sale of Dwelling,

and Defamation of Character.¹ Plaintiff now seeks dismissal of these counterclaims on a variety of grounds and summary judgment on any remaining counterclaims and on the issue of back-rent.

Additionally, on August 11, 2022, Defendant filed a Notice of Appeal to Judge Curtis's June 30th Order. However, Defendant never ordered a transcript as required by Rule 207, SCACR. Therefore, the appeal was dismissed, and the matter was sent back to the Circuit Court. As Plaintiff points out, the failure to perfect this appeal solidifies the June 30th Order and corresponding Writ of Ejectment as the law of the case which is not subject to further dispute.

LEGAL ANALYSIS

As an initial matter, Defendant's counterclaims for Loss of Rental Income, Deny the Plaintiff's Complaint, and Incomplete Sale of Dwelling are not recognized causes of action and are therefore dismissed.

"To establish a claim of fraud, [the claimant] must show by clear and convincing evidence (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Schnellmann v. Roettger*, 368 S.C. 17, 22-23, 627 S.E.2d 742, 745 (Ct. App. 2006) (citation omitted). Defendant has failed to allege these elements in her counterclaim. The allegations are focused on the propriety of Judge Kristi's June 30th Order, which, as previously established, is indisputably the law of the case. Since Defendant has failed to allege facts sufficient to support a cause of action for fraud, that counterclaim is dismissed.

¹ Defendant brought an amended set of counterclaims to Court for the hearing. However, those counterclaims are not properly before the Court since Defendant would need leave to amend her Answer and Counterclaims further.

To establish a claim for defamation, the claimant must show “(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *McNeil v. S.C. Dep’t of Corr.*, 404 S.C. 186, 195, 743 S.E.2d 843, 848 (Ct. App. 2013). It appears that the alleged defamatory statement was the posting of the eviction notice. As previously established, the Writ of Ejectment and underlying findings are not subject to further dispute. Therefore, Defendant has failed to allege any false statements which the Plaintiff made. Even if that were not the case, she has further failed to allege special harm. Therefore, this counterclaim is dismissed.

Defendant’s counterclaim for Breach of Contract pleads facts sufficient to withstand Plaintiff’s Motion to Dismiss. However, after considering the arguments of the parties, it is clear that no genuine issue of material fact exists and summary judgment should be granted to Plaintiff on the Breach of Contract claim. The law of the case establishes that Defendant was behind on rent. Therefore, Defendant’s claims that Plaintiff breached the contract by depriving her of all rights to the dwelling are unfounded. It is clear from the contract language that Defendant was not given unfettered access to the property without any obligations or conditions. The fact that she violated a material term by failing to pay rent or purchase and move the house establishes Plaintiff’s basis for sending letters of eviction. Therefore, there was no breach of contract as a matter of law, and summary judgment is granted to Plaintiff on this cause of action.

Lastly, Plaintiff asks for summary judgment on its own outstanding causes of action: ejectment and back-rent. The ejectment action is moot since Defendant has already been evicted from the property. No further arguments may be heard on this issue. As it pertains to back rent, though, the law of the case establishes that the Defendant failed to pay rent. However, the

Defendant contests the amount of rent that has not been paid. There remains a genuine issue of material fact regarding how much rent remains unpaid. Therefore, summary judgment is not appropriate.

CONCLUSION

For the foregoing reasons, Defendant's counterclaims are dismissed. The only outstanding issue that remains is the amount of back-rent owed by the Defendant.

IT IS SO ORDERED.

Lexington, SC
April __, 2023

Debra R. McCaslin
Circuit Court Judge



Horry Common Pleas

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt
Case Number: 2020CP2605267
Type: Order/Form 4

So Ordered

Debra R. McCaslin

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STATE OF SOUTH CAROLINA
COUNTY OF Horry
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JUDGMENT IN A CIVIL CASE

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 Affirmed; Reversed; Remanded;
 Other

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter comes before the Court upon 3 motions filed by the parties. Plaintiff 25th Avenue, LLC, filed a motion to alter or amend requesting that complete summary judgment be granted and that the contract be declared null and void, or, in the alternative, that a damages hearing be scheduled for the next available term of court. Defendant Carol Ann Honeycutt filed a motion to vacate the same order and an additional motion to deny Plaintiff's motion to alter or amend. After reviewing the arguments of the parties, the record in this case, and the relevant law, this Court holds as follows: (1) complete summary judgment is not appropriate. Despite a prior order in the case, Plaintiff's testimony that she had paid at least some of the rent alleged to be due presents an issue of fact for the jury.

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This order ends does not end the case.

See Page 2 for additional information.

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Carol Ann Honeycutt for Carol Ann Honeycutt
Carol Ann Honeycutt for Carol Ann Honeycutt

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(2) However, it is clear that some amount of rent was not paid for a substantial time. Therefore, the prior order of this Court is amended to reflect that summary judgment is granted for Plaintiff's Breach of Contract cause of action, and the contract is accordingly declared null and void. (3) Defendant's motions are denied for the reasons stated in the prior order and because the prior order was not the result of fraud or mistake. (4) A damages hearing shall be set in this matter for the next available term of court.



Horry Common Pleas

Case Caption: 25th Avenue LLC VS Carol Ann Honeycutt
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So Ordered

Debra R. McCaslin

Electronically signed on 2023-05-24 12:24:29 page 3 of 3