

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

JAN 21 2021

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

James Smith, Jr.

Respondent

RECORD ON APPEAL
(amended)



Rufus Rivers, pro se
1429 Legrand Smoak Street
Cordova, South Carolina 29039
803-218-9573

Kathleen McDaniel, Esq.
Sarah J.M. Cox
P.O. Box 1929
Columbia, South Carolina 29202

Attorneys for Respondent



Merle Rivers, pro se
1429 Legrand Smoak Street
Cordova, South Carolina
803-218-9573

INDEX

ORDERS

FORM 4 Order denying appellants' Motion For Reconsideration, dismissing and remanding appellants' case filed February 21, 2020.....1-3

Order on Appeal filed January 6, 2020.....4-9

PLEADINGS

Summons and Complaint with expedited Motion For Injunctive Relief filed Aug. 6, 2018..10-20

Appellants' Motion For Reconsideration and appellants' opposition to Judges order.....21-24

Defendants' Reply to Rule to Show Cause and Incorporate cases in Circuit Court. 9/17/18...24

TRANSCRIPT

Transcript of October 18, 2019.....25-44

OTHER DOCUMENTS

Certified mail receipts.....45

Appellants' Notice of Intent to Appeal to the Court of Common Pleas.....46

Notice Of Appeal to Court of Appeal.....47-48

Rule to Show Cause or Vacate/Application For Ejectment.....50-51

Bond Undertaking and Order.....52-53

CERTIFICATE OF APPELLANTS

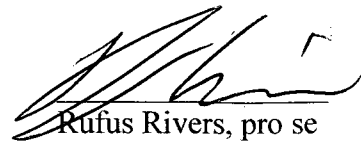
The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

January 14, 2121

RECEIVED

JAN 21 2021

SC Court of Appeals


Rufus Rivers, pro se


Merle Rivers, pro se

PLAINTIFF(S)

DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

After careful consideration of this appeal, the Court DENIES the Appellant's motion for reconsideration and opposition to Judge's order. Based on the Court's previous ruling and order, this case is DISMISSED and REMANDED to the Magistrate's court for compliance with the Magistrate's order.

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 02/21/2020 .

Rufus Rivers for Rufus Rivers
 James Smith for James Smith, Jr.
 James Smith, Jr. for James Smith
 Rufus Rivers for Rufus Rivers
 Merle Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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

LY FILED - 2020 Feb 21 10:24 AM - ORANGEBURG - COMMON PLEAS - CASE#2018CP3801339



Orangeburg Common Pleas

Case Caption: Rufus Rivers , plaintiff, et al VS James Smith Jr.
Case Number: 2018CP3801339
Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-02-21 10:14:29 page 3 of 3

COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
Rufus Rivers and Merle Rivers,	)	C/A No.: 2018-CP-38-01339
Appellants,	)	
v.	)	ORDER ON APPEAL
James Smith, Jr.,	)	
Respondent.	)	

This appeal came before the court on October 18, 2019, for a hearing on Rufus and Merle Rivers' appeal from an Eviction Order of the Orangeburg County Magistrate's Court. Present at the hearing were Kathleen McDaniel, Esq., counsel for Respondent, and Appellant Rufus Rivers. This case concerns an eviction from the property located at 1429 LeGrand Smoak Street in the County of Orangeburg, South Carolina. For the reasons set forth below, I affirm the decision of the Magistrate's Court.

STATEMENT OF THE CASE

On July 2, 2018, James Smith, Jr. wrote to Rufus and Merle Rivers giving them 30 days to vacate the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the "Property").

On August 6, 2018, the Rivers initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Smith's ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner.

On August 8, 2018, Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate's Court.

On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas, alleging that Smith used an invalid Power of Attorney to convey the Property from his mother Jessie Mae Smith, the previous owner of the Property, to himself. The Rivers also alleged in the Amended Complaint that Ms. Smith, at some point during her life, had orally given or promised the Property to the Rivers. The case was referred to the Master in Equity.

At the eviction hearing on September 18, 2018, the Magistrate's Court ruled that Smith is the current and lawful owner of the Property and that the Rivers were unlawfully occupying the premises. The Rivers objected to this ruling by way of a Motion for Reconsideration filed on October 1, 2018. Following a hearing on October 16, 2018, the Magistrate's Court denied the Rivers' Motion for Reconsideration and authorized the issuance of a Writ of Ejectment.

On October 17, 2018, the Rivers filed a Notice of Intent to Appeal and a Corrected Notice of Appeal on October 18, 2018.

On November 2, 2018, a hearing was held in the Magistrate's Court on the issue of rental payments required to be paid by the Rivers during the pendency of this appeal. The Magistrate's Court determined appropriate rent to be \$700.00, to be paid into the Court each month as bond.

The Rivers appealed the imposition of rental payments, and on April 8, 2019, a hearing was held in this Court on the issue of whether the monthly rent amount to be paid by the Rivers into court was proper. This Court issued its ruling on April 18, 2019, affirming the amount of bond set by the Magistrate's Court.

On May 20, 2019, a hearing was held on the appealed Magistrate's Court eviction action. The Rivers contended that title to the property was still in question because of their pending lawsuit. On May 21, 2019, Judge Gibbons issued an Order continuing the hearing on this appeal until such time as the Master in Equity could rule on the issues raised in the Rivers' Amended Complaint.

On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed the Rivers' Amended Complaint for failure to state a cause of action upon which relief could be granted. The Rivers did not appeal that decision.

On October 14, 2019, this Court took up again the Rivers' appeal from the Magistrate's Court's eviction decision.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is that "[u]pon 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." S.C. Code Ann. § 18-7-170. 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 the parties and for errors of law or fact. *Hadfield v. Gilchrist*, 343 S.C. 88, 92, 538 S.E.2d 268, 270 (Ct. App. 2000).

DISCUSSION

The Rivers state three grounds for this appeal:

1. That the Rivers had filed an Amended Complaint in Circuit Court regarding ownership of the property.

2. That the Rivers provided a written reply to Rule to Show Cause that was not entered into the record as evidence.
3. That there was no landlord-tenant relationship between the parties.

I. Pending Circuit Court Case

The Rivers contended in their Corrected Notice of Appeal that this appeal should not proceed while there was pending before the Master in Equity a case that the Rivers claimed brought into doubt the ownership of the Property. On August 28, 2019, the Master in Equity dismissed the Rivers' Amended Complaint pending before him for the Rivers' failure to state a claim. The Rivers did not appeal that decision. Thus, that matter is no longer pending before the Master in Equity or any other court.

II. Reply to Rule to Show Cause

The Rivers contend in their Corrected Notice of Appeal that they provided a written reply to the Rule to Show Cause that was not "entered into the record as evidence." The Rivers provided no explanation to this Court how this fact, if true, would show that the Magistrate's Court erred in its ruling on the issues in this case. Therefore, I find no error on the part of the Magistrate's Court in regard to this ground for appeal.

III. Landlord-Tenant Relationship

The Rivers contend in their Corrected Notice of Appeal that there was no landlord-tenant relationship between them and Respondent Smith. Under South Carolina law, a "landlord" is defined as "the owner, lessor, or sublessor of the premises." S.C. Code Ann. § 27-40-210(6). An "owner" is defined as "one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises." S.C. Code Ann. § 27-0-210(8). A "tenant" is defined as "a person entitled under a rental agreement to

occupy a dwelling unit to the exclusion of others." S.C. Code Ann. § 27-40-210(15). A "rental agreement" is defined as "all agreements, written or oral, and valid rules and regulations adopted under § 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises." S.C. Code Ann. § 27-40-210(12). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code § 27-40-310(d). All that is required to terminate a month-to-month tenancy is written notice to the tenant thirty days before the termination date in the notice. S.C. Code § 27-40-770(b).

Smith owns the Property at issue here. Smith holds recorded title to the Property, proof of which he presented to the Magistrate and which is included in the Magistrate's Court Return for Appeal. Although the Rivers attempted to challenge Smith's title to the Property, this challenge was dismissed by the Master in Equity for failure to state a claim upon which relief could be granted. There is no evidence in the record that would indicate that Smith is not the owner of the Property.

Until July 2, 2018, Smith permitted the Rivers to occupy the Property without a written lease, to the exclusion of others, without a definite term. Thus, the Rivers are the tenants of Smith. The Magistrate's Court properly determined there was a landlord-tenant relationship between the parties.

THEREFORE, IT IS HEREBY ORDERED, that the decision of the Magistrate's Court is hereby affirmed, and the Writ of Ejectment should be issued. I further order the rental payments currently held in the Orangeburg County Magistrate's Court's registry be disbursed to Smith James Smith, Jr. at the earliest possible date.

IT IS SO ORDERED.

The Honorable Edgar W. Dickson.
Presiding Judge

 , South Carolina
December , 2019.

2019 -CP- 39 -01016

VS.

James Smith, Jr.

Defendant(s)

Submitted By: Rodius RiviereAddress: 1429 Levee Road Smack Street
Condonia, SC 29038

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) <u>Breach of Fiduciary</u> |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: [Signature]Date: 8-6-2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act. S.C. Code Ann. §15-36-10 et. seq.

ATTEST: TRUE COPY

Winnifia B. ClarkCLERK OF COURT
ORANGEBURG COUNTY, SCFILED FOR RECORD
WINNIFIA B. CLARK

10

January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to a Court Order dated November 12, 2015.

THE COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.



STATE OF SOUTH CAROLINA] IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG] THE FIRST JUDICIAL CIRCUIT

RUFUS RIVERS]

CASE NO. 2018 - CP-36 - 01010

MERLE RIVERS]

Plaintiffs]

CERTIFICATE OF SERVICE

Vs.]

JAMES SMITH, JR]

Defendant]

CLERK OF COURT
ORANGEBURG, SC

2018 AUG - 6 AM 10: 41

FILED FOR RECORD
WINNIE B. CLARK

We certify that on this date, we served a copy of Summons and Complaint, with Motion for Injunctive Relief in this action, dated 8-6-2018, on 8-6-2018 by mailing it to him at his last known address, by Depositing it in the U.S. Mail, in an envelope with sufficient postage affixed addressed as follows:

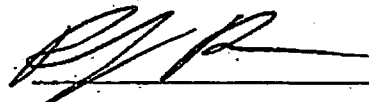
James Smith, JR.

66 Thomas Street

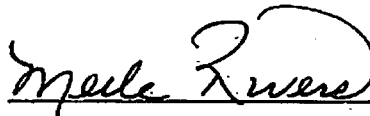
Brentwood, New York 11717

8-6-2018

Date



Rufus Rivers



Merle Rivers

ATTEST: TRUE COPY
Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

12

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

RUFUS AND MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

SUMMONS

Case # 2018-CP-38-01010

TO THE REFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you,

and serve a copy of your answer to this Petition upon the subscriber, at the address shown below within 30 days after

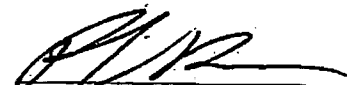
service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgement by default will be rendered against you for the relief demanded in the petition.

Orangeburg, South Carolina

1429 Legrand Smoak Street

Cordova, SC 29039

Dated: 8-6-2018


Rufus Rivers, PRO SE

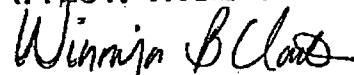

Merle Rivers, PRO SE

CLERK OF COURT
ORANGEBURG, SC

519 AUG 6 AM 10:11

FILED FOR RECORD
WINNIE B. CLARK

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SC

13

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RUFUS RIVERS

MERLE RIVERS

Plaintiffs

VS.

JAMES SMITH, JR

Defendant

IN THE COURT OF COMMON PLEAS

THE FIRST JUDICIAL CIRCUIT

CASE #

BREACH OF FIDUCIARY DUTY

EXPEDITED INJUNCTIVE RELIEF

ComPLAIN T

CLERK OF COURT
ORANGEBURG, SC

2018 AUG - 6 AM 10:41

FILED FOR RECORD
WINNIE B. CLARK

CAUSE OF ACTION

(breach of fiduciary duty)

(Jurisdiction)

1. Plaintiffs, are and at all times herein mentioned, domiciled in and a citizen of the State of South Carolina. Defendant, James Smith, Jr., is and was at all times herein mentioned, domiciled and a citizen of the State of New York.
2. Plaintiffs allege that on/or about July 1, 2013, in the State of New York defendant executed an invalid Power-of-Attorney(POA). Defendant used that very POA to execute an invalid quitclaim deed to himself one year later on September 19, 2014 transferring property that was gifted to plaintiffs but not recorded with the County of Orangeburg.
3. Defendant through a real estate attorney in Charleston, South Carolina, then recorded the documents with the Orangeburg County Register of Deeds on October 10, 2014.
4. The property at 1429 Legrand Smoak Street in Cordova, South Carolina was gifted to plaintiffs by Jessie Mae Smith, the principal. The defendant was well aware of the transaction.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT

the property , plaintiffs believes she would have signed it over to the defendant rather than having documents prepared in another state and having them mailed to her in New York to be executed when she was already in the appropriate jurisdiction. This type of transaction creates suspicion and allows for mischief. This is the perfect scenario for unauthorized self-dealing. Defendant was well aware of the gift, and never once chose to bring it up in the presence of Jessie Mae Smith, whom could have cleared up the issue. In hind-sight, plaintiffs desire not to create confusion was their mistake. Plaintiffs' understanding was any part of an agreement performed makes it a contract. Plaintiffs also, alleges that the signatures on the POA does not match Jessie Mae Smith's signatures.

SECOND CAUSE OF ACTION

(Negligence)

12. Defendant breached duty of care, and breach was the actual and proximate cause of plaintiffs' eminent injury and not advising plaintiffs of his actions when transferring property to himself while knowing that Jessie Mae Smith gifted property to plaintiffs.

THIRD CAUSE OF ACTION

(Conversion)

13. Defendant did not act in the best interest of principal or carry out principal's wishes allowing plaintiffs to take rightful ownership of the gifted property, when he used his authority through Power-of-Attorney to acquire property that was intended for plaintiffs.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

14. Defendant used Power-of-Attorney to benefit himself through self-dealing.

FIFTH CAUSE OF ACTION

(Invalid Owner)

15. Defendant is an invalid owner and plaintiffs incorporate all allegations and causes of action.

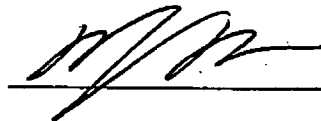
Wherefore, plaintiffs pray for judgment against defendant as follows:

On the causes of actions:

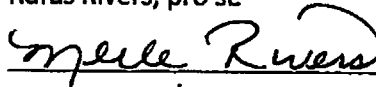
1. For judgment by voiding quitclaim deed.
2. For cost of this action.
3. For such other relief as the court deems just.
4. For the court to undo transactions conducted by the Power-of-Attorney.

We declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed this 14th day of August 2018, at Orangeburg, South Carolina.



Rufus Rivers, pro se



Merle Rivers, pro se

Refus & Merle Rivers
Plaintiff,
vs.
James Smith, Jr
Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>PRO SE</u> , Bar No. _____ Address: <u>1429 Legrand Street, Conway, SC</u> Phone: <u>215-9577</u> Fax _____ E-mail: <u>river578@gmail.com</u> Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☒ YES ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>[Signature]</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted <u>8-5</u> , 20 <u>18</u>	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

ATTEST: TRUE COPY
Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

18

THE STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RUFUS RIVERS
MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

IN THE COURT COMMONPLEAS

THE FIRST JUDICIAL CIRCUIT

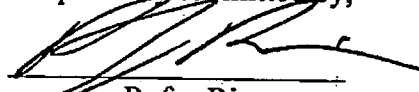
Case # 2018-CP-38-01016

MOTION FOR INJUNCTIVE RELIEF
EXPEDITED REVIEW REQUESTED

Plaintiffs, Rufus and Merle Rivers, moves this court for Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure staying in further action by defendant in the above-referenced matter. The reasons supporting this motion are set forth in the attached memorandum.

Dated: 8-6-2018

Respectfully submitted by,

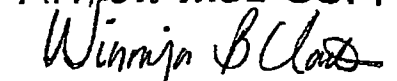

Rufus Rivers, pro se


Merle Rivers, pro se

2018 AUG -6 AM 10:41
CLERK OF COURT
ORANGEBURG, SC

FILED FOR RECORD
WINNIE B. CLARK

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SC

18

MEMORANDUM

This court should immediatrly issue an injunction order staying any further action pertaining to the aforementioned case until the court rules upon petitioners' civil complaint. Petitioners' rights to possession/ownership to property at 1429 Legrand Smoak Street, Cordova, SC 29039. Petitioners were gifted property and moved into the property September, 2009 by Jessie Mae Smith(aunt). Petitioners relocated to the referenced address with all of their belongings understanding that the property was theirs. Recently, petitioners were notified by defendant that he was going to sell the property and was given a 30 day notice. Defendant had executed a Power-of-Attorney and Quitclaimed the property to himself. Plaintiffs gave up everything to take possession of the property and harm is unjustifiably imminent. 1. Defendant has violated his fiduciary obligation by self-dealing. 2. Defendant's violation voids the property transfer. This court should grant these plaintiffs' emergency motion because plaintiffs will be displaced and deprived of the gift that was granted them through the mischief of the defendant. No third party will be unjustifiably harmed if the injunction is granted, and the public interest will be served, therefore, affordingly, allowing plaintiffs opportunity to meaningfully challenge the Power-Of-Attorney and ultimately the Quitclaim Deed through their civil complaint.

In conclusion , an injunction should be issued because:

1. Petitioners are likely to succeed on the merit of the petition.
2. An injunction is necessary to provide petitioners an opportunity to meaningfully challenge respondent's breach of fiduciary duties.
3. Petitioners will suffer irreparable harm if respondent is permitted to proceed.

ATTEST: TRUE COPY
Winnina B. Clark
CLERK OF COURT
ORANGEBURG COUNTY SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

RUFUS RIVERS
MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Case #

ORDER
GRANTING INJUNCTIVE RELIEF

In view of these findings, Plaintiffs is entitled to a preliminary injunctive relief until the court issues a determination of the merits of Plaintiffs' petition or until further order of the court.

Accordingly, for good cause shown, Plaintiffs' motion is granted, further, the court finds that no bond is necessary because no third party will suffer no monetary damages should it be decided that the injunctive relief should not have been granted.

Date:


Rufus Rivers, pro se

JUDGE


Merle Rivers, pro se

ATTEST: TRUE COPY

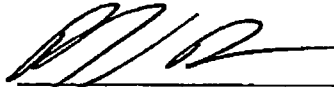
CLERK OF COURT
ORANGEBURG COUNTY, SC

21

4. By granting petitioners expedited injunctive relief, no third party will be harmed.

8-6-2018

Date



RUFUS RIVERS, pro se

8-6-2018

Date



MERLE RIVERS, pro se

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
RUFUS RIVERS AND MERLE RIVERS
APPELLANTS
VS.
JAMES SMITH, JR
APPELLEE

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

CASE NUMBER 2018-CP-38-01339

APPELLANTS MOTION FOR
RECONSIDERATION AND
APPELLANTS' OPPOSITION TO
JUDGE'S ORDER

FILED IN RECORD
CLERK
2020 JAN 18 AM 9:34
ORANGEBURG, SC

Appellants, pro se, hereby opposes Judge Dickson's order and moves this court for a reconsideration hearing pursuant SCRCP 59(e), as soon as reasonably possible. The judge's order lacks facts as they relate to Appellant's appeal and fails to explicitly address issues of the appeal. The order misrepresents the facts in this matter and are outlined explicitly for the purpose of being eligible for review upon appeal as follows:

I. This initial improper eviction hearing was held on 10/18/2018 in magistrate's court and now before the Circuit Court on Appeal. This matter was barred from adjudication by the magistrate's court pursuant to SCRCP 22-3-20, "no magistrate shall have cognizance of any civil action where question to real property shall come in to question except as provided in Article 11 of this same chapter." The magistrate's court lacked subject matter jurisdiction in this matter and violated this rule blatantly after being reminded on numerous occasions. See Brown v. Brown 2012-UP-300, "We hold the magistrate's court did not lack subject matter jurisdiction. See S.C Code Ann 22-3-20(2)(2007) (No magistrate shall have cognizance of a civil action...[w]hen the title to real property shall come in question..."). "The magistrate's order did not include a finding of who holds title to any real property. Accordingly, the magistrate's court did not violate section 22-3-20(2)". The magistrate court in this matter did make a finding of who owns real property. Aside from being barred by SCRCP, the Judicial Branch, (B)(1) Jurisdiction Magistrate's law in civil actions regarding 22-3-20 is clear that this can not be consented to by the parties or waived by a higher court, and yet it has been waived. It was the magistrate's obligation

rules by staying with summary ejectment and not over reaching into circuit court matters by determining who owns real property. It was clear that legal action was pending alleging Mr. Smith's fraudulent transfer of real property to himself and evidenced by documents filed August 6, 2018 and certified receipts on August 14, 2018. The case number and package tracking number were also texted to Mr. Smith immediately after filing. Once the issue was raised, it was the court's duty to follow procedure as outlined in the SCRCF 22-3-1110 through 22-3-1180 which was totally ignored. This violated Appellants' rights to due process. Appellee filed their eviction papers with the magistrate on August 20, 2018, after Mr. Smith had been served the initial summons and complaint by certified mail which opposing counsel contends was never served, one of a number of inconsistencies in opposing counsel's filings that needs to be examined more closely due to their exculpatory value to the entire proceedings.

II. The reply to the to Rule to Show Cause was Appellants' remedy provided by law and the magistrate disregarded it as insignificant. The magistrate kept on file every other document the Appellants provided except the document that mattered. The magistrate placed her finger on the scales and created this unlawful situation deliberately. Overall, opposing counsel presented issues in her proposed order that were not explicitly addressed at the hearing, while they were outlined in the appeal. Appellants, ask this court to dismiss this matter and allow appellee to pursue whatever remedies provided him by law, and release Appellants' funds being absconded and guised as an alleged rental payment bond. On April 8, 2018 this court made a ruling upholding the magistrate's court decision to demand rental payments and Appellants filed a motion for reconsideration promptly on April 11, 2019 with no response from the court which has been a pattern. Appellants made a motion for dismissal on May 17, 2019 with this court which was never ruled upon, which addressed numerous

issues that needed thorough examination. Opposing counsel wants to emphasize all of her prevailings, Appellants can also reflect on August 6, 2018, when Appellants initiated there summons and complaint with Motion for injunctive relief inside, that was never ruled upon or, at the very least, addressed. Opposing counsel stated that she had been advised by the court that no summons and complaint ever existed, and now acknowledges and contend that the case should no longer be addressed since it has now been dismissed.

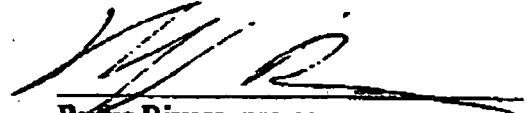
III. The court then added insult to injury by ordering rental payments when there was no established landlord-tenant relationship other than opposing counsel stating that Appellants were tenants-at-will, which is absurd because that is not a landlord-tenant relationship. Tenants-at-will means what it always meant, a tenant whose term has terminated and there is no written or oral agreement. In other words, you can't take a term and make it fit your scenario as a landlord-tenant relationship. Therefore, when the magistrate adjudicated the matter the entire case became tainted. The magistrate failed to make a finding that a landlord-tenant relationship existed. Pursuant to the Judicial Branch's Magistrate Law in Civil Actions, it provides over 14 areas of civil jurisdiction and adjudicating real property cases is not included. The Appellants were blind-sided by the magistrate's court decision to impose a rental bond instead of accepting a bond undertaking as outlined in SCRCF 22-3-1110 through 22-3-1180. Unfortunately, the appellee would be rewarded with rental payments without renting out the property. If this is not an injustice, then, what is?

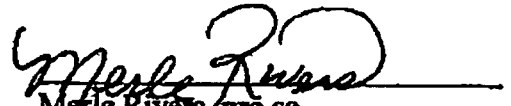
Appellants argued that the magistrate court case should not have proceeded until civil case number 2018-CP-38-01016 had been decided, and not allow the eviction hearing to proceed improperly. This only allowed the magistrate's decision to stand until the summons and complaint was dismissed. The eviction matter should not have ever begun until the circuit court case was decided. In this case the eviction case was heard and determined before the circuit court case was heard, and then

the appeal was placed on hold until the circuit court was decided or dismissed, thus, leaving the appeal case to be determined without due process and the appellee not filing his own summons and complaint as he should.

In Summary, opposing counsel got it wrong. The only issue the magistrate court judge could properly address was what the SCRCP allowed, and this matter was not allowed. The magistrate's court Judge did not have jurisdiction over this real property matter, therefore, any testimony, decisions and documents provided by Appellee is fruit from the "poisonous tree" and this case should be dismissed and appellants' money returned.

January 12, 2020


Rufus Rivers, pro se


Merle Rivers, pro se

EX A-1

STATE OF SOUTH CAROLINA

IN THE MAGISTRATES COURT

COUNTY OF ORANGEBURG

CASE NO. 2018CV1810702780

JAMES SMITH, JR.

REPLY: TO RULE TO SHOW CAUSE

Plaintiff

REQUEST TO INCORPORATE CASES IN

VS

COURT OF COMMON PLEAS

RUFUS RIVERS RUFUS AND MERLE RIVERS

Defendants

*Case to magistrates
She gave it back
opposing attorney Lee Cooper*

2018 APR 10 PM 4:40
FILED
2:45 pm
RECORD
CLERK
ORANGEBURG SC

Now comes the defendants replying and denying any and all allegations:

1. Defendants were never a part of any valid lease or rental agreement with plaintiff.
2. Defendants never resided at 1428 Legrand Smoak Street, Cordova, South Carolina, 29039

Defendants have a pending Complaint with Motion for Injunction filed with the Court Of Common Pleas, in the First Judicial Circuit Orangeburg, South Carolina, dated and filed August 6, 2018 With proof of mailing bearing the same date.

Defendants are requesting this court's actions be dismissed and defendants be permitted to incorporate this matter and proceed in the Court Of Common Pleas case #2018-CP-38-01016, where defendants will also be seeking damages for retaliation. The plaintiff and his attorney knew or should have known about the pending action regarding the validity of plaintiff's ownership of said property. Instead, plaintiff through his attorney, attempted unethical behavior while using this court to facilitate an unlawful eviction. In addition, defendants request a restraining order against plaintiff. Due to defendant's pending action in circuit court and plaintiff's attempt to use this court to facilitate an unlawful eviction, defendants see no need for any bond.

Dated: 09/17/2018


Rufus Rivers, pro se

To: Plaintiff Attorney: Kathleen M. McDaniel

24

Office Box 1929

Columbia, SC 29202

Merle Rivers
Merle Rivers

A-7

LED FOR
INMIA B. C.
2019 APR 10 PM 4:40
CLERK OF COURT
ORANGEBURG, SC

25

TO: RUFUS RIVERS
1429 LEGRAND SMOAK STREET
CORDOVA, SC 29039

IN RE: RIVERS VS. SMITH
CASE NO: 2018-CP-38-1339
CASE HEARD: OCTOBER 18, 2019

17	Pages	@	4.25 ORIGINAL.	\$72.25
	Pages	@	1.00 COPY.	\$
DEPOSIT AMOUNT:				\$89.25
OTHER: Postage				\$10.00
TOTAL DUE:				\$82.25
AMOUNT REFUNDED:				\$ 7.00

Thanko!!
MAY 22, 2020

KATHERINE A. SPIRES, RPR

P.O. BOX 1286

SWANSEA, SC 29160

**NOTE: Pursuant to Rule 607(h) (1) (B), SCACR, "A COURT
REPORTER SHALL RECEIVE THE FEE OF \$.75 PER PAGE FOR
FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."**

All requests for copies of the attached transcript from
opposing party or non-parties should be sent to me at
the above address. Thank you.

25

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF ORANGEBURG) COMMON PLEAS
4

5 RUFUS RIVERS,)
6 Plaintiff,)
7 Vs) CASE NO. 2018-CP-38-1339
8 JAMES R. SMITH JR,)
9 Defendant)
10

11 OCTOBER 18, 2019
12 ORANGEBURG, SOUTH CAROLINA
13

14 HONORABLE EDGAR W. DICKSON, JUDGE
15

16 A P P E A R A N C E S:

17 The Plaintiff appeared pro se
18 BY: KATHLEEN M. MCDANIEL, ESQUIRE
19 Attorney for the Defendant
20
21
22

23 KATHERINE A. SPIRES
24 REGISTERED PROFESSIONAL REPORTER
25

1 THE COURT: This is Case Number 2018-CP-38-01339.
2 Rufus Rivers and Merle Rivers, Appellants verses James
3 R. Smith, Appellee.

4 Mr. Rivers, you are representing yourself on this?

5 MR. RIVERS: Yes, sir.

6 THE COURT: Okay. And, Mr. Rivers, I have your
7 memorandum in support of motion --

8 MR. RIVERS: Yes, sir.

9 THE COURT: -- of your motion? And you oppose --
10 and we're dealing with -- let me just make sure.
11 Ms. McDaniel, did you file a Motion to Dismiss this
12 appeal?

13 MS. MCDANIEL: Your Honor, the procedural matter is
14 a little bit complicated. If I may give -- do that for
15 a minute.

16 THE COURT: Okay. And, Mr. Rivers, she's going to
17 tell me just the procedural outline. If she tells me
18 something that's incorrect, I'm going to let you correct
19 it. Okay?

20 MR. RIVERS: Thank you, sir.

21 THE COURT: All right.

22 MS. MCDANIEL: So, Your Honor, this was -- is an
23 appeal from an eviction matter. We had the eviction
24 started. And Mr. Rivers, he and his wife, filed
25 contemporaneously either just before or just after the

1 eviction was noticed, filed a lawsuit in the Court of
2 Common Pleas contending that they actually own the
3 property that my client is trying to evict them from.

4 We went forward with the eviction proceeding. The
5 magistrate granted the eviction. And we -- Mr. Rivers
6 then appealed that to this court, so that's the appeal
7 that we're on now. We had a hearing on that appeal
8 several months ago. And at the time the matter in the
9 Court of Common Pleas, which had been transferred to the
10 Master-In-Equity, was still pending. And the judge who
11 heard it continued this appeal until after the
12 Master-In-Equity had made his determination on
13 Mr. Rivers's lawsuit.

14 That lawsuit has now been dismissed. The purpose of
15 that lawsuit was, Mr. Rivers claimed that they owned the
16 property. That lawsuit has been dismissed. Now we can
17 proceed with this appeal.

18 THE COURT: Okay. And you said you already had the
19 eviction hearing and Mr. Rivers appealed the eviction
20 hearing?

21 MS. MCDANIEL: Yes, Your Honor. This is his appeal
22 from the eviction.

23 THE COURT: Okay. And, Mr. Rivers, let me make
24 sure, I need for you to stand up if you don't mind,
25 please, sir.

1 MR. RIVERS: Yes, sir.

2 THE COURT: That's okay. Let me just make sure. I
3 guess Mr. Smith filed an eviction notice against you and
4 your wife?

5 MR. RIVERS: Yes, sir.

6 THE COURT: Okay.

7 MR. RIVERS: But -- excuse me. May I finish?

8 THE COURT: Go ahead.

9 MR. RIVERS: It was not in the manner in which she
10 states.

11 THE COURT: Okay. Well, that's what I'm going over
12 -- that's what I'm trying to go over with you right now
13 just make sure I get it straight.

14 MR. RIVERS: Yes, sir.

15 THE COURT: Okay. And around the same time you
16 filed the eviction, you and your wife filed a lawsuit in
17 Common Pleas --

18 MR. RIVERS: We filed a lawsuit in Common Pleas
19 prior to them filing the eviction.

20 THE COURT: Okay. But, nevertheless, you filed
21 saying that you and your wife own this property; is that
22 correct?

23 MR. RIVERS: I didn't say that we owned it. We
24 filed alleging that Mr. Smith fraudulently did a Power
25 of Attorney and transferred the property to himself

1 after the property was -- we were granted possession by
2 his mother. And we had been there since 2009.

3 THE COURT: Okay. All right. And the magistrate
4 went ahead and ordered an eviction; is that correct?

5 MR. RIVERS: Yes, sir.

6 THE COURT: And then you appealed the eviction?

7 MR. RIVERS: Yes, sir.

8 THE COURT: Okay. Then you had the hearing in front
9 of the Master-In-Equity?

10 MR. RIVERS: Yes, sir.

11 THE COURT: Okay. And you and your wife appeared at
12 that hearing?

13 MR. RIVERS: Yes, sir. The second one.

14 THE COURT: Okay. The second one. And were you --
15 you and your wife able to testify at that hearing?

16 MR. RIVERS: Yes, sir.

17 THE COURT: Okay. Now, it's my understanding the
18 Master-In-Equity determined that the property was
19 Mr. Smith's?

20 MR. RIVERS: No, sir, he didn't determine that.
21 Matter of fact, he dismissed it. Saying that we didn't
22 have any legal standing.

23 THE COURT: He dismissed your lawsuit?

24 MR. RIVERS: Yes, sir.

25 THE COURT: Saying that you didn't have any legal

1 standing?

2 MR. RIVERS: Yes, sir.

3 THE COURT: Okay. All right. And so now we're here
4 on the eviction?

5 MR. RIVERS: The eviction.

6 THE COURT: Yes, sir.

7 MR. RIVERS: And my thing is that the eviction
8 shouldn't have never taken place in the first place.
9 And how it turned out, why it ended up being, is that
10 when the eviction was done, it should not have been held
11 pursuant to magistrate's jurisdiction and procedures.
12 Because there were pending action in Circuit Court at
13 the time of that eviction.

14 THE COURT: Okay. All right. So what you're saying
15 is the eviction hearing should have taken place after
16 the master had his hearing?

17 MR. RIVERS: After the Circuit Court's hearing; yes,
18 sir.

19 THE COURT: Right. Is there anything else that the
20 magistrate did wrong legally from your prospective?

21 MR. RIVERS: Yes.

22 THE COURT: What was that?

23 MR. RIVERS: The main thing there was no never a
24 landlord/tenant relationship. She didn't find there was
25 existence of a landlord/tenant relationship. Which

1 actually should have, you know. The magistrate lacked
2 subject matter of jurisdiction for number one.

3 THE COURT: Okay. Now tell me why the magistrate
4 lacked subject matter jurisdiction to determine an
5 eviction.

6 MR. RIVERS: I'm just going by the South Carolina --
7 I mean, jurisdiction and procedures of the magistrate,
8 the things they can and cannot do. And the thing is,
9 based on Chapter 22-3-20, and no matter should have
10 cognizance of any civil action when title to real estate
11 should come into question. And it doesn't say that, you
12 know, the magistrate determines who -- whether the title
13 is in question or not. It says that under no
14 circumstances should she be able to adjudicate a case
15 pertaining to realty -- real property.

16 And we're saying at that particular time the case
17 should have been discontinued.

18 THE COURT: It should have been continued until
19 after the Circuit Court decided -- until after the
20 master made his decision.

21 MR. RIVERS: No, sir. I'm not saying that.

22 THE COURT: Okay. What are you saying?

23 MR. RIVERS: Is that what you're saying?

24 THE COURT: Well, that's what I'm saying. I was
25 trying to find out what you were saying.

32

1 MR. RIVERS: What I'm saying is that the master -- I
2 mean, the Circuit Court decision should have been made
3 before they even held the eviction is what I'm saying.

4 THE COURT: Okay.

5 MR. RIVERS: She didn't have jurisdiction over the
6 matter at the time that she adjudicated the case; is
7 what I'm saying.

8 THE COURT: Okay. Yeah, that was the first thing
9 you said too and we're just getting back to that again.

10 MR. RIVERS: Yes, sir.

11 THE COURT: Okay. Well, let me ask you a question,
12 now that the master has heard the case, okay?

13 MR. RIVERS: Yes, sir.

14 THE COURT: Is there anything different that would
15 be presented to the magistrate regarding the eviction?

16 MR. RIVERS: Just the fact that she adjudicated a
17 case that she should not have.

18 THE COURT: Right.

19 MR. RIVERS: Just saying, there was no
20 landlord/tenant relationship.

21 THE COURT: Well, now, have you -- since you have
22 appealed this, are you still on the property?

23 MR. RIVERS: Yes, sir.

24 THE COURT: Okay. Because you filed an appellate
25 bond?

1 MR. RIVERS: Yes, sir.

2 THE COURT: Okay. Anything other than the fact that
3 the magistrate should have waited until after the
4 Master-In-Equity ruled to go forward with the eviction?
5 Anything else?

6 MR. RIVERS: I'm trying to be clear on what you're
7 asking me.

8 THE COURT: Well, what -- okay. Your first argument
9 is -- or the main argument, I'm taking it, is that the
10 magistrate should have not addressed the eviction until
11 after the Master-In-Equity ruled on the ownership of
12 your lawsuit? Until they ruled on your lawsuit; is that
13 correct?

14 MR. RIVERS: Partially, yes, sir.

15 THE COURT: Okay. What's the other part?

16 MR. RIVERS: I'm saying that the magistrate should
17 not have ruled on the eviction period not until a
18 Master-In-Equity ruled. Because at the time we didn't
19 know that the Master-In-Equity would be handled until
20 the Circuit Court had, had a chance to show whose
21 ownership. Because the magistrate court doesn't have
22 jurisdiction to determine who owns the property.

23 THE COURT: Right. Okay.

24 MR. RIVERS: I'm just going by what the procedures
25 say.

1 THE COURT: No, I understand exactly what you're
2 saying. Just out of curiosity, Mr. Rivers, do you have
3 any -- have you ever worked in law before?

4 MR. RIVERS: I took a few courses. No, sir.

5 THE COURT: You prepared your memorandum and like
6 that yourself?

7 MR. RIVERS: Yes, sir.

8 THE COURT: Okay. You did good work.

9 MR. RIVERS: Thank you.

10 THE COURT: All right. Anything else you want to
11 tell me?

12 MR. RIVERS: Other than I request the Court to
13 dismiss the action and let the Plaintiff -- I mean,
14 Mr. Smith, proceed in the manner that it was designed to
15 proceed. Him filing his own Summons and Complaint.

16 THE COURT: Okay. All right. Thank you, sir.

17 MR. RIVERS: Yes, sir.

18 THE COURT: All right. Ms. McDaniel?

19 MS. MCDANIEL: Yes, Your Honor. Your Honor, the
20 eviction proceedings certainly proceeded properly.
21 Mr. Rivers brought up the question of ownership at the
22 magistrate's hearing on the eviction. And at that time,
23 in the record that has been returned to this court,
24 you'll see that we presented to the magistrate a copy of
25 the deed, deeding the property from Ms. Smith to James

37

1 Smith documenting his actual ownership of the property.

2 In addition, we provided the magistrate with a copy
3 of the Power of Attorney giving Mr. Smith the authority
4 to make that conveyance. Those are the types of
5 documents that any magistrate would need to look at to
6 make sure that the person who claims they own the
7 property actually does in fact own the property.

8 Mr. Rivers presented no evidence contradicting the
9 validity of the deed or the validity of the Power of
10 Attorney.

11 And for that reason, the magistrate, Judge Stephanie
12 McKune-Grant, she issued -- she granted the request for
13 the eviction. And there was no question of who owned
14 the property. There was no question of title. The
15 magistrates' court definitely had jurisdiction of this.
16 If any person who is seeking to be evicted from a piece
17 of property could come into court and just allege that
18 they owned the property thereby stopping the eviction,
19 we would have no eviction process in this state because
20 everyone would do that.

21 And that's all that Mr. Rivers had done. They
22 simply came into the magistrates' court and had no
23 evidence to contradict the ownership -- the true
24 ownership of the property.

25 THE COURT: Ms. McDaniel, just out of curiosity, did

1 Mr. McDaniel [verbatim] file his lawsuit over the
2 ownership issue with Mr. Smith prior to the eviction?

3 MS. MCDANIEL: Your Honor, it's my understanding
4 that it was after. We filed the eviction -- we send the
5 eviction notice -- let's see, we filed the Rule to
6 Vacate or Show Cause on August 8, 2018.

7 THE COURT: August 8, 2018, was your eviction?

8 MS. MCDANIEL: That's correct, Your Honor. And
9 let's see if I have the -- I may not have the
10 Master-In-Equity pleadings with me in this notebook.

11 THE COURT: Just for the record, the
12 Master-In-Equity proceedings appear to be
13 2018-CP-38-01016.

14 MS. MCDANIEL: I believe that's correct, Your Honor.

15 MR. RIVERS: Yes, sir.

16 THE COURT: And that hearing before the master was
17 on April 17, 2019?

18 MS. MCDANIEL: That's correct, Your Honor.

19 THE COURT: Okay.

20 MS. MCDANIEL: And I do have a copy of the Master's
21 order if you would like that.

22 THE COURT: No, I've got a copy of the Master's
23 report. I was just trying to find when Mr. Rivers'
24 Complaint was filed.

25 MR. RIVERS: I have it right here if you need a copy

1 of it.

2 THE COURT: You've got a copy of -- a clocked in
3 copy?

4 MR. RIVERS: Yes, sir.

5 THE COURT: Okay. Would you mind showing it to
6 Ms. McDaniel before you hand it up to me. Thank you,
7 sir. Hold on and I will give it right back to you.

8 All right. Mr. Rivers, this is a copy of -- and I
9 see it's of your Complaint and you drew up this
10 Complaint as well?

11 MR. RIVERS: Yes, sir, I did. It was time stamped
12 August 6th.

13 THE COURT: Well, actually it's stamped May 8th.

14 MR. RIVERS: That's because I came back in. It
15 wasn't included in the appeals court file. So I came
16 back in and asked the clerk to enter it into this
17 particular files.

18 THE COURT: I see. I've got three different stamps
19 on this.

20 MR. RIVERS: Yes. August 6th is the initiating day.

21 THE COURT: Okay. August 6, 2018?

22 MR. RIVERS: Yes, sir. And the magistrate's
23 ejectment notice was not filed until August 23rd.

24 THE COURT: Well, now, you told me it was August
25 8th; is that correct?

40

1 MS. MCDANIEL: Yes, Your Honor. In the magistrate's
2 order, return of the civil appeal, you will note that it
3 says on August 8th respondent James R. Smith filed the
4 rule to vacate or show cause for eviction.

5 MR. RIVERS: And I was served on August 23rd and my
6 document showed August 20th is when the magistrate judge
7 signed the document.

8 THE COURT: Okay.

9 MS. MCDANIEL: Your Honor, I don't really see how
10 that matters.

11 THE COURT: I understand. I was just -- all right.
12 Ms. McDaniel, anything else you want to tell me?

13 MS. MCDANIEL: Your Honor, the timing of when the
14 eviction verses the lawsuit was filed, really has no
15 bearing on this case. The eviction and the lawsuit are
16 two separate proceedings. The magistrate had the deed,
17 had the Power of Attorney in front of her that showed --
18 confirmed the ownership in Mr. Smith at the time that
19 she made the decision. There was no cloud on the title.
20 There was no evidence presented that would have called
21 the title into question.

22 The Rivers' certainly, you know, fought hard and
23 filed a separate lawsuit. But that case has been
24 dismissed, so there is no question but that Mr. Smith
25 owns the property and owned it at the time that the

41

1 eviction was proceeding. And we would ask Your Honor to
2 dismiss the appeal and issue a writ of eviction. Thank
3 you.

4 THE COURT: Okay. All right. Mr. Rivers, anything
5 in reply?

6 MR. RIVERS: Yes, sir.

7 THE COURT: Yes, sir.

8 MR. RIVERS: Ms. McDaniel made reference to the fact
9 that nothing matter other than who owned the property.
10 But in the magistrates' court, it's not the magistrate's
11 decision to determine or make a finding of who owns the
12 property. That's left to the superior courts.

13 And with her lacking subject matter jurisdiction,
14 then when the appeal came about, then that makes the
15 Circuit Court a superior court lacks subject matter of
16 jurisdiction as well and the case should be dismissed.
17 Pursuant to Hargrove and Cox. It's a Supreme Court
18 decision. This case is on point with that.

19 THE COURT: Okay. Yeah, I noticed you picked a
20 North Carolina case.

21 MR. RIVERS: That's the only one that I could find
22 at the time.

23 THE COURT: Okay. But you do realize we're not in
24 North Carolina?

25 MR. RIVERS: Yes, sir, I do.

1 THE COURT: Okay. Just want to make sure.

2 MR. RIVERS: I do understand that it is precedent.

3 I know we don't have to use it here. But, I mean, I
4 wanted to bring that to the attention of the court.

5 THE COURT: No, I appreciate it. I've never read
6 Hargrove, so I'll look at it. Okay.

7 What I'll do is, let me read over and -- the filings
8 and like that, and I'll get back to y'all with my
9 decision. Okay?

10 MR. RIVERS: Yes, sir.

11 THE COURT: Thank y'all. Appreciate it.

12 MR. RIVERS: Thank you, Your Honor.

13 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

14

15

16

17

18

19

20

21

22

23

24

25

42

CERTIFICATE OF REPORTER

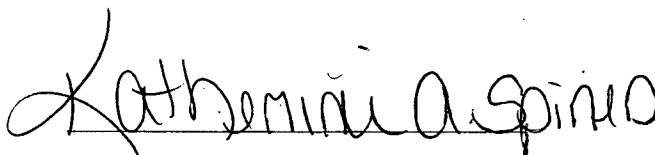
STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 18th of October, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 22, 2020



Katherine A. Spires

Registered Professional Reporter

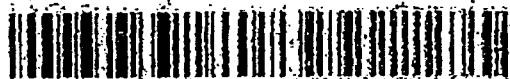
SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James Smith, Jr.
66 Thomas St
Brentwood, NY 11717



9590 9402 8325 7227 4500 02

2. Article

7018 0360 0000 3392 7807

A. Signature

James Smith, Jr.

☐ Agent

☒ Addressee

B. Received by (Printed Name)

JAMES SMITH JR

C. Date of Delivery

8/14/18

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

- ☒ Adult Signature
- ☒ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☒ Collect on Delivery
- ☒ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$3.45
\$ 67.75
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.42
\$ 7.62
Total Postage and Fees \$7.62

0115

10

Postmark
Here

08/06/2018

Sent To: James Smith, Jr.
Street and Apt. No. or PO Box No. 66 Thomas Street
City, State, ZIP+4® Brentwood NY 11717

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Exh. A

45

7018 0360 0000 3392 7807

STATE OF SOUTH CAROLINA	]	COMMON PLEAS NO. 2018-CP-38-01339
COUNTY OF ORANGEBURG	]	
RUFUS RIVERS AND MERLE RIVERS	]	MAGISTRATE COURT NO. 2018CV3810702780
APPELLANTS, PRO SE	]	
VS.	]	NOTICE OF INTENT TO APPEAL
JAMES SMITH, JR.	]	TO CIRCUIT COURT(CORRECTED)
RESPONDENT	]	

The Defendant's Rufus Rivers and Merle Rivers hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas in the County of Orangeburg.

This notice of appeal is made subsequent to personal notice of the judgment which was received on 17th day of October, 2018.

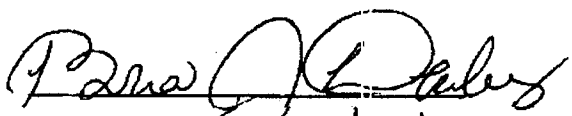
The appellants exceptions to the judgment of the magistrate are set forth as follows:

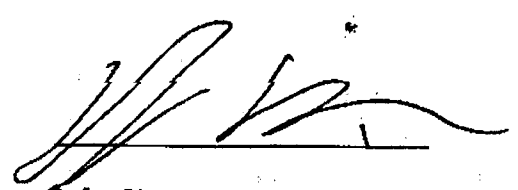
Pursuant Title 22 Chapter 3 section 20, Jurisdiction and Procedure in Magistrates' Court, and 22-3-1120 defense to questionable title in defendants' answer. Defendants believe the court erred when proceeding in deciding the case and rendering judgment in favor of Plaintiff because;

1. There no was no Landlord-Tenant relationship.
2. Defendants provided in writing to the court and Plaintiffs' attorney a written reply to Rule to Show Cause and it given back to the Defendants without being entered into the record as evidence.
3. Defendants had already filed a summons and complaint in Circuit Court regarding ownership of the property as of August 6, 2018, and that was provided in court as well.

The magistrate's court lacked subject matter jurisdiction in the matter and the matter should have been dismissed.

Sworn before me this 18th day of October 2018


NOTARY PUBLIC 09/19/2024


Rufus Rivers, pro se


Merle Rivers, pro se

FILED FOR RECORD
WINNIE B. CLARK
2018 OCT 18 PM 2:04
CLERK OF COURT
ORANGEBURG SC

46

IN THE STATE OF SOUTH CAROLINA
In Thr Court Of Appeals
[In The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Administrative Judge

Case No. 2018-CP-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

James Smith, Jr.

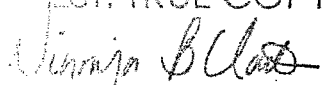
Appellee

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on James Smith, Jr. by depositing a copy of it in the United States mail, postage paid, on March 2, 2020, addressed to his attorney of record, Kathleen McDaniel, P.O. Box 1929, Columbia, South Carolina 29202 [by emailing to his attorney of record, Kathleen McDaniel at twolfe@burnetteshutte.law on March 2, 2020.

March 2, 2020


Rufus Rivers, pro se

TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC


Merle Rivers, pro Se

47

RECEIVED
MAR 12 2020
SC Court of Appeals

MAR 12 PM 12:42

92409

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
[The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas
Edgar W. Dickson, Circuit Court Judge

RECEIVED
MAR 12 2020
SC Court of Appeals

Case No. 2018-CP-38-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

V.

James Smith, Jr.

Respondent

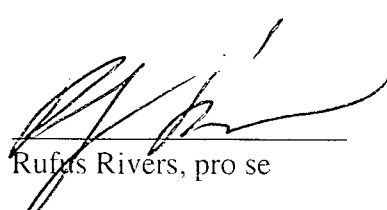
FILED FOR RECORD
WINNIE B. CLARK
2020 MAR 12 PM 12:42
CLERK OF COURT
ORANGEBURG, SC

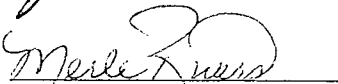
NOTICE OF APPEAL

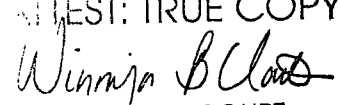
Rufus Rivers and Merle Rivers appeals the order[judgment] of the honorable Edgar W. Dickson dated February 21, 2020. Appellants received written notice of entry of this order [judgment] on February 24, 2020.

3-2-2020

Dated


Rufus Rivers, pro se


Merle Rivers, pro se

BEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

1429 Legrand Smoak Street
Cordova, SC 29039
803-218-9573

48

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

2018CV3810702780
CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

James F. Smith Jr)
Attorney Kathleen M McDaniel)
Post Office Box 1929)
Columbia, SC 29202)
(803) 850-0912)

PLAINTIFF(S))

VS.)
Rufus & Merle Rivers)
1429 Legrand Smoak Street)
Cordova, SC 29039)

DEFENDANT(S))

San # 270 8-23-18
RULE TO VACATE OR SHOW CAUSE
(Eviction)

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at **1429 Legrand Smoak Street, Cordova, SC 29039** because they say that:

- ☒ You have failed to pay rent when due or demanded in the amount of \$ _____.
- ☒ The terms of your tenancy or occupancy have ended.
- ☐ You have violated the terms or conditions of your lease by:

You, **Rufus & Merle Rivers**, the defendant and lessee of the premises listed above, **and all others** are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 OR to contact **Central Region Magistrate** located at **1540 Ellis Avenue, Orangeburg, SC 29115, PHONE: (803) 533-5843** within **ten (10) days** of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: August 20, 2018

Regina D. Foreman
MAGISTRATE JUDGE

Personally appeared before me, the undersigned deponent who, being duly sworn, says that s/he is a person over 18 years of age not a party or attorney in this action and that s/he attempted to serve the Rule to Vacate or Show Cause on [Defendant(s)] on the following dates/times:

	DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____

SWORN to and Subscribed before me)
This _____ Day of _____)

NOTARY PUBLIC OR JUDGE)

SIGNATURE OF SERVER

On _____, I deposited a copy of this document in the United States Mail in an envelope addressed to the Defendant(s) above with first class postage affixed thereto.

Rule to Vacate or Show Cause

Page 1 of 2

50

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

James F. Smith, Jr.

PLAINTIFF(S)

VS.

Rufus Rivers and Merle Rivers

DEFENDANT(S)

2018CV3810702780
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT
(Eviction)

I, Kathleen M. McDaniel, Esq., attorney for James F. Smith, Jr., plaintiff in this action, state that James F. Smith, Jr. is the landlord-lessor of premises within the jurisdiction of Magistrate located at 1540 Ellis Avenue, Orangeburg, SC 29116, which is described as: (address and description of premises – apartment, house, etc.)

1428 Legrand Smoak Street, Cordova, SC 29039

WRONG ADDRESS

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between the plaintiff James F. Smith, Jr. and the defendants Rufus Rivers and Merle Rivers, the tenant-lessees, as evidenced by the following: (Attach lease papers or other written proof.)

James F. Smith, Jr. permitted Rufus Rivers and Merle Rivers to occupy the dwelling unit located at 1428 Legrand Smoak Street without a written lease. The defendants have failed to pay rent and refused to vacate the premises upon proper written notice. The attached correspondence is the notice for Rufus Rivers and Merle Rivers to vacate the premises, which they have failed to do.

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 2nd day of Aug, 2018

Kathleen M. McDaniel
Magistrate or Notary Public for South Carolina

My Commission expires

1/8/2019

James F. Smith, Jr.
PLAINTIFF (or his attorney)

Ex. C

2018CV38107D2780

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

James Smith, Jr.

PLAINTIFF(S)

VS.

Rufus and Myrtle Rivers

DEFENDANT(S)

BOND UNDERTAKING
AND ORDER

FILED FOR RECORD
JENNIFER S. CLARK
CLERK OF COURT
ORANGEBURG, SC
2019 APR 10 PM 4:40

Rufus Rivers and Myrtle Rivers plaintiff/defendant (circle one) desires to give an undertaking for the purpose of:

Covering costs incurred if defendants don't prevail in the appeal.

as provided by Section 22-3-1120, Code of Laws (1976), in the amount of \$2000.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

Name

Name

Business Address

Business Address

Amount

\$2,000.00

Amount

2-2

I declare under penalty of perjury that the foregoing is true and correct.

FILED FOR RECORD
WYNNE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2019 APR 10 PM 4:40

(Signature of Surety)

(Signature of Surety)

ORDER

The above undertaking by surety(ies) is hereby approved by this court.

Dated: _____

MAGISTRATE

53