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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2024-CP-43-000366

Randal K. Freeman, Appellant,

v.

David Bryan Trapp, Respondent.

APPELLANTS ANSWER AND OPPOSITION OF DISMISSAL

I Randal K. Freeman, the Appellant, hereby moves that the Court reject and deny the respondents Motion to Dismiss in its entirety.

INTRODUCTION

On April 3, 2023, an Application of Ejectment was filed against the Appellant in Sumter County Summary Court as Case No. 2023-CV-43-10101594. The application alleged that the parties term lease that began February 1, 2022, had expired. The appellant filed a Verified Answer on April 27, 2023, containing a copy of the lease in his possession set to expire February 1, 2024. At the time the Appellant was seeking discovery and was still gathering additional evidence for the matter to be heard August 11, 2023. During the period prior to the pre-trial hearing, the original sale agreement of 8 Warren Ct and the Lease Extension and Modification dated December 13, 2022 was identified during discovery and prepared as evidence for trial under SC Rule 26 and SC Rule 401. At the pretrial hearing pursuant to S.C. Code Ann. 27-40-790 on August 11, 2023 Judge Bryan K. Griffin failed to make any order from the bench formal or informal and announced he will provide said order to both parties after careful review. No such order was signed or entered by the clerk pursuant to SC Rule 58(a) SCRCP or S.C Code Ann. 27-40-790.

On November 21st, 2023 on a motion from Respondents attorney, Judge Bryan Keith Griffin issued a Writ of Ejectment pursuant to S.C. Code Ann 27-37-160 stating the Appellant failed to post bond November 2023. The Appellant appealed said order, and cited SC Rule 58(a) SCRCP and lack of any formal order per S.C. 27-40-790. On January 30th, 2024, Judge R. Ferrell Cothran, Jr. in the Court of Common Pleas Case No: 2023-CP-4301865 held a hearing and remanded the matter back to Sumter Summary Court for a finding of facts and cited a lack of any order dated prior to the December 7, 2023, pursuant to S.C. 27-40-790 and SC Rule 58(a). On February 14th, 2024, the Summary Court hearing was held, and Judge Bryan Keith Griffin stated in open court, that due to Judge R. Ferrell Cothran Jr., providing generic Form 4 response that he would proceed with a finding of facts hearing of the November 2023 bond payment. On February 22, 2024d Judge Bryan Keith Griffin ruled that Appellant Randal K Freeman failed to post a timely bond as previously ordered. The Appellant appealed this as per the Summary Court Record no order exists pursuant to S.C. 27-40-790 and nor was a bond pending trial ordered and signed by Judge Bryan Keith Griffin and or Clerk in Summary Court of Sumter Case No. 2023-CV-43-10101594. Judge R. Ferrell Cothran, Jr dismissed the appeal stating the matter had already been heard and remanded and as such the magistrates was affirmed without reviewing the facts, and in direct violation of the right to appeal S.C. 18-7-10.

ARGUMENT

The Appellant denies any purposeful and frivolous attempt to delay said Ejectment from the property. He reaffirms that per attached Lease Modification Document the justiciability and legal standing under S.C. Code 32-3-10(4) tenancy was extended per the document till August 1st, 2025. Making the tenancy a valid legal controversy in the jurisdiction of the Court of Appeals.

At the Time of the Appellants Verified Answer only documents provided were by his Attorney Willie Brunson. Discovery for trial was on going and counsel shared documents as they were discovered, and stated only the original lease was needed to proceed to trial. At this time the extension was considered additional evidence that would be brought to trial as it showed direct change to sale and property modification approved by the Respondent. On February 14th, 2024

Judge Griffin and Respondents counsel was provided a second copy of the Lease Extension and Modification for Sale by Willie H. Brunson in chamber discussions prior to the hearing. *See Exhibit A* As the attached "Exhibit A" clearly shows a signed and witnessed extension of said lease and being witnessed by a Notary Public of State of S.C. the Appellant as a legal right to remain in the property. Judge Griffin in his order February 22, 2024 does not dismiss the case based of no valid lease, however rules that Appellant failed to post bond per court order. As previously stated in the appeal to Court of Common Pleas no order for bond is signed or entered by Clerk per SC Rule 58(a). As such the appellant is entitled to fair trial. The only order was for bond during appeal to be posted for November 2023, December 2023 and January 2024 dated December 7th, 2023. Proof of said order and its posting was provided in said Common Pleas Case No. 2023-CP-4301865 and Case No. 2024-CP-43-000366. Pursuant to S.C. Code 32-3-10(4) said document is legally binding and shows practical live controversy and justiciability enforced under South Carolina Law. As such the previous remand and review by Judge R. Ferrel Cothran Jr., places said jurisdiction of appeal under this court pursuant to S.C. 14-3-330. Making the Respondents motion for dismissal based of moot controversy, without merit and in confliction of justiciability.

CONCLUSION

As stated above and within this response, the Court should DENY the motion for DISMISSAL by said Respondent. Appellant as provided proof of legal merit, standing and direct live controversy, making the matters not MOOT, but of standing. The appellant concludes all these matters fall within the jurisdiction of the Court of Appeals and provides question to the merits and laws as such pursuant to S.C. 14-3-330. The Lease Extension and Modification for sale dated December 13th, 2022 provides direct legal controversy, and proof that if judgment is rendered would have strong legal effect on multiple parties. The lease extension provided tenancy until August 1st, 2025, and in such shows multiples controversies. The respondent's attorney failed

to show an order compelling all evidence or requirement of the entirety of all evidence to be provided in an initial Verified answer. As such "Exhibit A" is admissible and a matter of fact in all the cases prior and in this appeal. If the court was to dismiss this appeal it would allow unjust enrichment by the respondent and violate the Appellant right to appeal under S.C. 14-3-330.

April 8th, 2024

s/ Randal Freeman

Randal K Freeman

8 Warren Ct

Sumter, South Carolina 29150

(224) 407-1660

Other Counsel of Record:

J. Benjamin Cahill

Cahill Law Firm

693 Guignard Dr.

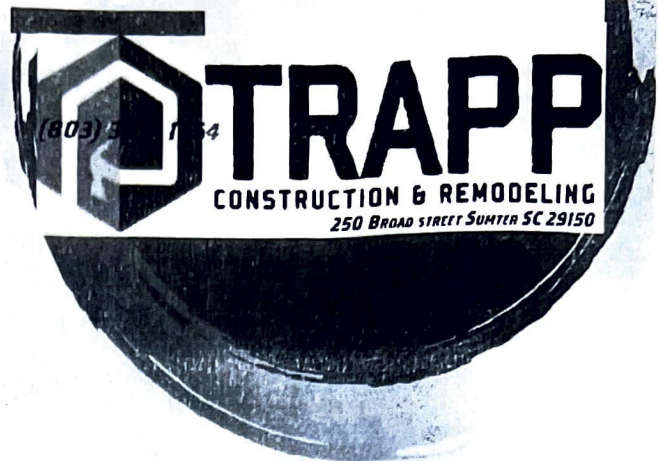
Sumter SC 29150

(803) 500-5072

Attorney for
Respondent

Exhibit A

Randal Freeman
8 Warren Ct
Sumter, SC 29150
randal@trappcon.com
(224) 407-1660
12/13/2022



David Trapp
Trapp Construction & Remodeling LLC
250 Broad St
Sumter, SC 29150
davidt@trappcon.com
(803) 305-1654

Re: Lease Extension Agreement & Modification for Sale

Dear Trapp Construction & Remodeling LLC and David Trapp,

This Lease Extension Agreement ("Agreement") is made and entered into on 12/13/2022, by and between Randal Clint Freeman ("Tenant") and David Trapp- CEO of Trapp Construction and Remodeling LLC ("Landlord").

1. ****Property****: The property subject to the original lease agreement dated 02/01/2022 and expiring on 02/01/2024 is located at 8 Warren Ct, Sumter SC 29150.
2. ****Extension Term****: The Tenant and Landlord agree to extend the lease term for an additional 18 months unless sold to Randal K Freeman and Jenna B Freeman with a "Clear and Marketable Title, commencing on 02/01/2024 and ending on 08/01/2025.
3. ****Rent****: The monthly rent during the extended term will be \$1600.00 and shall be payable on the 1st of each month. The first extended term rent payment is due on 02/01/2024.
4. ****Repairs and Tenant Obligations****: The Tenant and Landlord agree to modify the terms under the previous lease section titled "Tenant Obligations" and remove all other terms and conditions in said section of the original lease . The Landlord now agrees to assume ALL FINANCIAL responsibility for routine maintenance, and minor or major repairs. The tenant WILL NOT be required to attain permission for repairs or modifications to allow for customization of the residence in preparation of the sale. The Landlord agrees to reimburse the Tenant for reasonable and necessary expenses incurred from repairs, modifications and all necessary changes for the final sale to the above tenant of the property of: 8 Warren Ct, Sumter SC 29150. The Tenant and Landlord agree that all property, modifications, and items purchased in advance of the sale will NOT become the property of the Landlord.
5. ****Other Terms and Conditions****: Except as expressly modified by this Agreement, all other terms and conditions of the original lease agreement shall remain in full force and effect.
6. ****Acknowledgment****: Both parties acknowledge and agree to the terms of this Lease Extension Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Extension Agreement dated 13th day of December, 2022 in the county of Sumter, South Carolina.

John Moriarty

[Signature]

David Trapp

Signature of Tenant

Signature of Landlord

Randal Freeman
Tenant

David Trapp
Landlord

