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**Jan 14 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Appellate Case No. 2024-002058

Cloisters Investment, LLC,

Respondent,

v.

Kimberly Alford and Fausto Collado

Appellants.

MOTION FOR CLARIFICATION AND MODIFICATION OF ORDER

**PLEASE TAKE NOTICE** the (upon information and belief, erroneously named) Respondent, by and through undersigned counsel, will move before this Court, for an Order clarifying the right of Respondent to seek relief granted by the Horry County Circuit Court in this matter, and/or an Order modifying this Court's Order, published on December 6, 2024, which ordered the Horry County Circuit Court to conduct an expedited hearing on Appellant's motion to stay and determination of appeal bond. In support of this Motion, Respondent presents to the Court as follows:

**PROCEDURAL HISTORY**

1. On or about October 24, 2024, the Horry County Magistrate Court issued a Writ of Ejectment after Appellants failed to appear for the eviction hearing Appellants elected to have (Case No.: 2024CV261092990).

2. On or about November 4, 2024, Appellants filed a Notice of Appeal in the Horry County Circuit Court (Case No.: 2024CP2607556).
3. On or about November 5, 2024, Appellants filed a Motion to Stay Eviction Proceedings with the South Carolina Court of Appeals (Appellate Case No.: 2024-002058).
4. On or about November 14, 2024, a bond-to-stay-hearing was conducted in Horry County Magistrate Court, resulting in an order requiring Appellants to post bond in the amount of \$8,345.00 by 5:00 PM on November 19, 2024, and to make subsequent payments of \$1,519.00 on the first of each month, beginning on December 1, 2024.
5. On or about December 6, 2024, the South Carolina Court of Appeals issued an Order temporarily granting Appellant's motion to stay the eviction, and remanded the case to Circuit Court for an expedited hearing on the motion and determination of an appeal bond under S.C. Code Ann. § 27-40-800(f)(1).
6. On or about December 9, 2024, the Court of Appeals' Order was filed with the Horry County Circuit Court.
7. On or about December 11, 2024, the Magistrate Court issued an Order of Non-Compliance, finding that Appellants had failed to post the required bond in the amount of \$8,345.00.
8. On or about December 13, 2024, the Horry County Circuit Court issued a Form 4 Order dismissing Appellants' appeal based on the Magistrate Court's Order of Non-Compliance.
9. On or about January 13, 2025, a hearing was scheduled in the Horry County Circuit Court in accordance with the South Carolina Court of Appeals' Order for a bond-to-stay hearing; however, was dismissed as a result of the Magistrate Court's Order of Non-Compliance.

## **STANDARD OF REVIEW**

South Carolina Code § 18-7-10 “Appeals from inferior courts; supersedeas,” states, “[w]hen a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered[.]” S.C. Code Ann. § 18-7-10. Under Rule 18(a) of the South Carolina Rules of Magistrates Court, “[a]ll appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered.” Rule 18, SCRMC.

According to the South Carolina Residential Landlord and Tenant Act (“Landlord and Tenant Act”), when a tenant files an appeal of the magistrates’ court ruling, it shall first be heard in the circuit court, “consistent with other appeals from the magistrates’ court[.]” S.C. Code Ann. § 27-40-800(a). Under the Landlord and Tenant Act, upon appeal to the Circuit Court, the execution of judgment rendered by the magistrates’ court is effectively “stayed,” by way of setting bond, through what is commonly referred to as a “bond-to-stay hearing.” S.C. Code Ann. § 27-40-800(b)-(c). The Landlord and Tenant Act also recognizes a bond-to-stay hearing upon appeal to the Court of Appeals or Supreme Court, if a tenant appeals the Circuit Court’s ruling under Section 27-40-800(f)(1). However, the Landlord and Tenant Act does not provide a mechanism for a tenant to appeal a magistrates’ court order directly to the Court of Appeals or Supreme Court without first appealing the judgment to the Circuit Court in the county where the magistrates’ court is located. *See generally* S.C. Code Ann. § 27-40-10.

## **ARGUMENT**

After review of the procedural history of the filed pleadings, appeals, and the orders issued by the Horry County Magistrate Court, Horry County Circuit Court, and South Carolina Court of Appeals, it is evident that Appellants improperly filed a motion/appeal with the South

Carolina Court of Appeals before allowing the Horry County Circuit Court to issue its ruling on Appellants' filed appeal. Respondent respectfully submits that the South Carolina Court of Appeals' acceptance of Appellants' appeal of the Magistrate Court's order contradicts the applicable statutes and court rules cited above, which require that the appeal be fully adjudicated in the Circuit Court before a party has the right to file a motion/appeal with the Court of Appeals. In summary, Appellants' duplicative filings in both the Circuit Court and the Court of Appeals have resulted in overlapping procedural issues that have unnecessarily complicated resolution of this matter to the detriment of Respondent.

Out of an abundance of caution and in deference to this Court, Respondent respectfully requests an order clarifying Respondent's right to enforce the Writ of Ejectment originally issued by the Horry County Magistrate Court in this matter. As outlined above, on December 6, 2024, the South Carolina Court of Appeals issued an order directing the Horry County Circuit Court to conduct "an expedited hearing on Appellant's motion to stay and determination of any appeal bond," (a bond-to-stay hearing). However, this hearing never occurred due to Appellants' non-compliance with the bond order issued by the Horry County Magistrate Court, authorized by the terms of that order and the Landlord and Tenant Act. *See* S.C. Code Ann. § 27-40-800(e).

In light of these circumstances, Respondent seeks confirmation that the Writ of Ejectment remains enforceable and that the procedural directive to the Horry County Circuit Court to conduct a bond-to-stay hearing under the Court of Appeals' Order, published on December 6, 2024, is no longer necessary.

**[SIGNATURE OF FOLLOWING PAGE]**

Respectfully Submitted,

**BROWNLEE WHITLOW & PRAET, PLLC**

s/ Eric G. Pettis

Eric G. Pettis, SC Bar No. 105832

Thomas I. Howard, Jr., SC Bar No. 101252

Sean M. Tropea, SC Bar No. 102385

Chase M. Cooke, SC Bar No. 104618

Morgan R. Dunn, SC Bar No. 105610

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**Attorneys for Respondent**

January 14, 2025  
North Charleston, SC

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PROOF OF SERVICE

I certify that I have served the Motion for Clarification and Modification of Order on Appellants by depositing a copy of it in the United States Mail, postage prepaid, on February 14, 2025, addressed to Kimberly Alford and Fausto Collado, 2006 Silvercrest Drive, Unit A, Myrtle Beach, SC 29579, and electronically, by way of email, to [kalfordnboyz@outlook.com](mailto:kalfordnboyz@outlook.com).

**[SIGNATURE OF FOLLOWING PAGE]**

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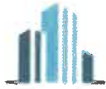
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**Attorneys for Respondent**

January 14, 2025  
North Charleston, SC



**Brownlee Whitlow & Praet**

Eric G. Pettis  
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Licensed in PA and SC  
epettis@bwpf-law.com  
Phone/Fax: (843) 213-6835

**January 14, 2025**

**By First-Class Mail and email (kalfordnboyz@outlook.com)**

Kimberly Alford and Fausto Collado  
2006 Silvercrest Drive, Unit A,  
Myrtle Beach, SC 29579

**Re: *Kimberly Alford and Fausto Collado v. Cloisters Investment, LLC***  
**Case No.: 2024-002058**  
**Our File No: 30827-00002**

Dear Kimberly and Fausto,

Greetings. I represent Cloisters Investments, LLC, the Respondent in the above-referenced action. Enclosed, please find a copy of Respondent's Motion for Clarification and Modification of Order, which is being filed today in the South Carolina Court of Appeals.

Please notify me of any questions. Thank you.

With sincere appreciation,

**BROWNLEE WHITLOW & PRAET, PLLC**

Eric G. Pettis

EGP  
Enclosures as stated

**North Charleston Location:**  
4000 Faber Place Drive, Suite 100  
N. Charleston, SC 29405

**Mailing Address:**  
P.O. Box 62975  
N. Charleston, SC 29419

**Contact: 843.628.7120**  
**BWPF-Law.com**

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