

regarding Defendant's allegation that it owns an interest in the Property. In the Common Pleas Dispute, the parties entered into a neutral TRO which allowed for the Plaintiff to seek a writ of ejectment against Defendant from the Property. (Plaintiff and Defendant, collectively, the "Parties").

Plaintiff filed an Amended Application for Ejectment on September 14, 2022 (the "Eviction") against Defendant to eject Defendant from the Property for being in breach of the Lease Agreement between the Parties. Supporting the Eviction was the Affidavit of Christopher Riley, the sole member of Plaintiff, One Helms, LLC, dated August 24, 2022 (the "Riley Affidavit"). The Eviction and the Riley Affidavit were used in concert to request the following relief: i) ejectment of Defendant from the Property, and ii) recovery of past dues amounts owed under the Lease by Defendant to Plaintiff, including, but not limited to, unpaid rent and real estate property taxes. (see Eviction and Riley Affidavit, Exhibit A). The Eviction was labeled under Case No. 2022-CV-40-11100228 and was assigned to the Eastover Magistrate in Richland County, with the Honorable Donald Jeffrey Simons as the Presiding Judge.

An initial bench trial on the Eviction was held on October 5, 2022 (the "First Hearing"). The First Hearing resulted in arguments by the Parties' counsel, including references to exhibits provided by the Parties. Per the transcript of the First Hearing (see Exhibit B), the Parties by and through their counsel i) neither requested nor were denied any sworn testimony by any witness, or ii) were denied that the neutral TRO in the Common Pleas Dispute did not allow for the Eviction to go forward.

The First Hearing led to a second bench trial hearing (the "Second Hearing") that took place on November 14, 2022. As evidenced by the transcript of the Second Hearing (see Exhibit C), the Parties, by and through their counsel i) neither requested nor were denied any sworn

testimony by any witness, or ii) were denied that the neutral TRO in the Common Pleas Dispute did not allow for the Eviction to go forward. Exhibits provided during the Second Hearing included but were not limited to, the amount of unpaid rent and real estate property taxes owed to the Plaintiff. Counsel for the parties spent time addressing the amounts due with the presiding judge, as evidenced by its transcript.

The Second Hearing resulted in an Order signed by the Presiding Judge dated November 14, 2022 (the "First Order"), ordering that i) Plaintiff was entitled to possession of the Property, ii) a judgment for the amount of unpaid rent and real estate taxes, totaling \$79,932.30, shall be paid by Defendant to Plaintiff; and iii) Defendant vacate the Property no later than December 14, 2022 (see Exhibit D).

On November 18, 2022, Defendant filed a Notice of Appeal from the Magistrate Court Judgement (see Exhibit E). The First Appeal was to appeal the First Order and was filed in the Richland County Court of Common Pleas and labeled under Case No. 2022-CP-40-06107.

On November 22, 2022, Plaintiff requested a bond be posted by Defendant under SC Code §27-37-130 and the Presiding Judge heard the matter on November 23, 2022. On November 23, 2022, an Order Setting Bond (the "Bond Order") (see Exhibit F) was issued by the Presiding Judge requiring Defendant to i) post a bond in the amount of \$443,618.19 by the close of business on December 1, 2022, ii) pay Plaintiff \$9,502.33 by the close of business on December 1, 2022 and on the first of each month thereafter during the pendency of the First Appeal, and iii) provide proof of casualty insurance on the Property by the close of business on December 1, 2022. The Bond Order further stated that if Defendant failed to abide by the Bond Order, it would result in the "dismissal of its appeal."

On or about December 1, 2022, Defendant attempted to partially amend its First Appeal by withdrawing its Motion to Stay on the execution of eviction (this is intrinsically intertwined with the First Appeal), where Defendant agreed to voluntarily leave the Property. Defendant argued that by withdrawing, the Bond Order and its requirements would become moot, and the First Appeal would retain the Defendant's right to appeal the \$79,932.30 judgement awarded against Defendant in the First Order.

On December 2, 2022, the Presiding Judge issued an Order Dismissing Appeal [sic the First Appeal] (the "First Appeal Dismissal") (see Exhibit G) per SC Code §27-37-130 as a result of Defendant's failure to meet the Bond Order requirements. The First Appeal Dismissal effectively disallowed Defendant to maintain an open appeal on its claim that the \$79,932.30 judgment against the Defendant per the First Order.

On January 6, 2023, Defendant filed a Notice of Appeal from the Magistrate Court Judgement (see Exhibit H). The Second Appeal was to appeal the First Appeal Dismissal. The Second Appeal was filed in the Richland County Court of Common Pleas and labeled under Case No. 2023-CP-40-000075.

The First Appeal and Second Appeal were heard in front of the Honorable Judge Benjamin Culberson on September 6, 2024. Not applicable to the above was a Rule to Show Cause filed by Defendant against Plaintiff on the First Order which was dismissed by the Presiding Judge after a bench trial hearing on December 7, 2022.

LAW

Defendant T&S Real Estate's Appeal/Notice of Civil Appeal for Case No. 2022-CP-40-06107, and Defendant T&S Real Estate's Appeal/Notice of Civil Appeal for Case No. 2023-CP-

40-99975 and this Court's findings are based on certain South Carolina statutory law. After the tenant files a notice of appeal, the magistrate court will schedule a bond hearing to determine the amount of the monthly bond payment due by the tenant during the appeal process. Pursuant to S.C. Code Ann. § 27-40-130, an appeal in an ejectment case will not stay ejectment unless, at the time of appealing, the tenant posts an appeal bond, the amount of which is determined by the magistrate. Further, if the tenant fails to file the bond required within five days after service of the notice of appeal, the appeal shall be dismissed by the trial magistrate.

Plaintiff filed a Rule to Vacate on August 26, 2022, against Defendant to eject Defendant from the Property for being in breach of the Lease Agreement between the Parties. Plaintiff's evidence properly allowed for Plaintiff to seek past due rent and real estate taxes on the Property due and payable by Defendant. Plaintiff filed an Amended Application for Ejectment on September 14, 2022 (the "Eviction") against Defendant, and arguments were heard on October 5, 2022 and November 14, 2022. Defendant was ordered to pay a bond of \$79,932.30 and to vacate the premises. Evidence submitted by the Plaintiff properly supported the Court's decision after the First and Second Hearings.

At the Second Hearing, Defendant, by and through their undersigned counsel, did not request any sworn testimony from any witnesses nor did the Court deny any sworn testimony by any witnesses. In an appeal in which the transcript of record contains no testimony whatsoever, the burden of proof is on the appellant to argue that the lower was in error. To prove this, the appellant must offer sufficient testimony as a foundation for his argument. When there is no testimony on record, there isn't anything before the court that allows for the conclusion that the lower court should be reversed. *Conran v. Joe Jenkins Realty, Inc.*, 210 S.E.2d 309, 310 (S.C. 1974).

Defendant failed to object to not having live testimony, reflected in the transcription of the Second Hearing (see Exhibit C). Further, Defendant did not state that Defendant had witnesses to testify. Defendant fails to offer sufficient testimony as a foundation for its argument that the Magistrate Court was in error, as there is no testimony on record. The issue regarding live testimony is not preserved for appeal, as the transcript of the Second Hearing contains no testimony whatsoever.

Defendant filed a Notice of Appeal from the Magistrate's November 14, 2022 Order, and Defendant failed to post the bond, the amount of which was determined by the magistrate. Instead, Defendant attempted to partially amend its First Appeal by withdrawing its Motion to Stay on the execution of eviction, which did not stay the ejectment, requiring Defendant to continue to make monthly bond payments to Plaintiff. The Court issued an Order Dismissing the First Appeal and Defendant subsequently filed a Notice of Appeal from the Magistrate Court Judgement, appealing the First Appeal Dismissal.

This Court finds that the magistrate's dismissal of Defendant T&S Real Estate's Appeal for Case No. 2023-CP-40-99975, due to the appellant's failure to post a bond, is **AFFIRMED** as to the dismissal of the order for eviction and the dismissal of the appeal is **REVERSED** as to the appeal of the monetary judgment ordered against the Defendant T&S Real Estate. The Defendant's Motions are **GRANTED** in Part and **DENIED** in Part.

FINDINGS

The First Appeal and Second Appeal were heard in front of the Honorable Judge Benjamin Culberson on September 6, 2024. Judge Culberson ordered Plaintiff's counsel to draft this Proposed Order noting the following:

- i) The Court AFFIRMS the Magistrate's dismissal of the order for eviction in the First Appeal due to Defendant's failure to post bond;
- ii) The Court AFFIRMS the award of monetary judgment against the Defendant in the First Appeal; and
- iii) The dismissal of the Second Appeal is REVERSED as to the Magistrate's dismissal of the monetary judgment ordered against the Defendant, allowing Defendant to maintain its appeal against the \$79,932.30 judgment against the Defendant that was provided for in the First Order.

IT IS, THEREFORE, ORDERED that Defendant's **GRANTED**.

IT IS SO ORDERED!

The Honorable Judge Culbertson
Presiding Circuit Court Judge

Date: _____
Dorchester, South Carolina



Richland Common Pleas

Case Caption: T&S Real Estate VS One Helms Llc

Case Number: 2022CP4006107

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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