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**Mar 23 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

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Appellate Case No. 2026-000674  
Circuit Court Case No. 2026-CP-23-01193  
Magistrate Court Case No. 2026CV2310100266

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Dwana Sullivan, Appellant,

v.

Legacy Oaks II, Respondent.

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**RESPONDENT’S RETURN TO EMERGENCY MOTION FOR STAY PENDING  
APPEAL AND REQUEST FOR CIRCUIT COURT HEARING TO SET  
APPROPRIATE BOND**

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NOW COMES the Respondent, Legacy Oaks II d/b/a Parklyn Apartments, by and through their undersigned counsel, and hereby responding to Appellant’s Emergency Motion for Stay Pending Appeal and Request for Circuit Court Hearing to Set Appropriate Bond (hereinafter referred to as “Motion”) in that the Motion fails to satisfy the legal requirements for a stay under South Carolina Appellate Court Rule 241 and misstates applicable South Carolina law.

**I. Appellant is Not Entitled to Stay Under South Carolina Appellate Court Rule 241**

A stay pending appeal in an eviction proceeding is not automatic. South Carolina Appellate Court Rule 241(b)(10) provides an exception to the general rule that the filing of an appeal operates as a stay of an order of ejectment under South Carolina Code § 27-40-800. As such, Appellant has

filed this Motion presumably with the goal of ensuring that the order of the magistrate court's writ of ejectment is not carried out against her; however, not only are there no grounds to stay the writ of ejectment, but Appellant has also failed to follow the requirements as outlined in Rule 241 of the South Carolina Rules of Appellate Procedure.

## **II. Appellant Cannot Show Likelihood of Success**

Appellant's appeal to the Circuit Court was dismissed for her failure to pay the bond as ordered by the magistrate court. Failure to comply with a bond order is proper grounds for the dismissal of the appeal. Appellant's Motion admits she did not pay the bond by the court-ordered deadline but instead requested an extension via text message from someone with no authority to grant such extension and/or otherwise modify an order of the court. As such, the Circuit Court's dismissal of her appeal was proper. Not only is a stay not warranted, but this appeal is likewise not based on appealable grounds and should be dismissed.

Appellant's due process argument fails as a matter of law. Appellant was provided with a bond hearing before the magistrate to set the bond for her appeal, and she was given a clear deadline for payment of her bond. Due process requires notice and opportunity to be heard – not repeated opportunities after willful noncompliance. No additional hearing was required before dismissal for failure to comply with a court-ordered condition.

## **III. Irreparable Harm is Insufficient Without Merit**

While eviction is serious, alleged harm alone cannot justify a stay absent a likelihood of success. Appellant argues that her family will suffer irreparable harm if her ejectment is not stayed. Although lack of housing is something that Respondent does not take lightly and seriously hopes to avoid, Appellant is under a duty pursuant to the Lease Agreement between the parties to pay rent. Appellant has had several months to secure alternative housing as this eviction was initially

filed in January 2026. Prior to filing, Appellant was served with notice of non-payment, alerting her to her outstanding balance and requesting payment of same prior to the eviction proceeding ever being filed. After the magistrate court found that Respondent was entitled to possession of the premises underlying eviction, Appellant was served with the writ of ejectment in February 2026. Considering Appellant has had more than ninety (90) days to secure alternative housing for her and her family since the eviction was filed against her, she is not entitled to a stay of the writ of ejectment based on the argument that she will suffer irreparable harm if the writ of ejectment is carried out.

#### **IV. Respondent will be Prejudiced by a Stay**

Contrary to Appellant's assertion, a stay would prejudice Respondent as it would allow Appellant to stay in continued possession of the Premises at issue without payment of rent. It is Respondent's position that the order of the magistrate court in finding for the Respondent is proper (therefore entitling Respondent to possession of the premises) and as such, a stay would only delay the enforcement of a valid judgment. Furthermore, this Respondent and all future landlords in this similar circumstance would be prejudiced as lifting the stay would undermine the statutory eviction process as outlined in South Carolina law. The statutory bond requirement for eviction appeals exists to prevent this very harm which Appellant seeks to avoid. As such, it is clear that Respondent will be prejudiced by the entry of a stay in this action in further delaying Respondent's right to possession of the Premises and Appellant's continued possession of the premises without payment of rent (and/or bond).

#### **V. The Bond Is/Was Proper Under South Carolina Code §§ 27-40-790(b) and 27-40-800(b)**

The bond set by the Greenville County Circuit Court was proper under South Carolina Code § 27-40-790(b). South Carolina Code § 27-40-790 governs "any action where the landlord sues for

possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement: [ . . . ] (b) [t]he tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule [to vacate], provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and a cancelled check, or both, indicating that payment has been made to the landlord.” South Carolina Code § 27-40-790(b). As such, Appellant’s argument that her appeal bond was not proper is simply untrue. This provision provides the foundation for the bond to be set at the full outstanding balance as it states “all rent allegedly owed” – not just monthly rent accruing once the appeal is filed. Appellant’s bond was proper and legally set pursuant to South Carolina Code § 27-40-790(b).

Further, Appellant’s Motion mischaracterizes South Carolina Code § 27-40-800(b). The statute expressly authorizes the court to require sufficient security to protect the landlord’s interest during the appeal. When § 27-40-790(b) is read in conjunction with § 27-40-800(b), the landlord is entitled to both the outstanding balance as of the date of the entry of the writ of ejectment and, if/when the resident appeals, the monthly rent which shall accrue during the pendency of the appeal.

South Carolina courts specifically recognize (by direction of South Carolina Chief Justice Kittredge) that this obligation may include both past-due rent and ongoing rent obligations. **See Exhibit A attached.** Requiring payment of accrued unpaid rent is consistent with the purpose of the statute – to prevent tenants from retaining possession without payment of amounts owed. Appellant cites no binding South Carolina authority prohibiting the inclusion of such arrearages. In fact, the very directive of the South Carolina Supreme Court is to apply and enforce South Carolina Code § 27-40-790(b) as written in applicable cases.

Appellant’s appeal bond is/was proper under several sections of South Carolina law and does

not warrant the entry of a stay by this Court.

#### **VI. Appellant's Bond Noncompliance Defeats Equitable Relief Requested**

A stay is an equitable remedy by nature. A party seeking equity must also do equity. Here, Appellant failed to comply with a lawful court order setting the appeal bond and, in her Motion, Appellant admits that she did not pay any portion of the appeal bond and sought an informal extension outside of the court process via text message. Further, the person from whom she sought an extension from had no authority to modify the court's bond order or otherwise grant the extension. The dismissal order was entered by the Circuit Court for Appellant's failure to comply with the bond order. As such, Appellant is not entitled to the equitable relief she requests.

#### **VII. Remand is Not Warranted**

There is no legal basis to remand and/or otherwise involve the Greenville County Court of Common Pleas for a new bond hearing. The bond was set after a hearing, and Appellant simply failed to comply. South Carolina Code § 27-40-800(b) does not entitle the Appellant to multiple bond determinations after her noncompliance. To do so would be violative of public policy in that it would set a precedent that every appellant could disregard an order of the court and continue to appeal as a way to elude the procedural requirements to maintain the appeal.

#### **VIII. Conclusion**

Appellant has failed to demonstrate a likelihood of success on the merits, any legal error by the Circuit Court, and entitlement to equitable relief. The bond set by the Circuit Court is/was proper under South Carolina Code §§ 27-40-790(b) and 27-40-800(b). Appellant simply failed to comply with the bond order and as a result, the appeal was properly dismissed. Appellant's request this case be remanded to set a new bond is both unwarranted and without merit. Staying the writ of ejectment in this case would also be in violation of public policy as it would perpetuate attempts

to elude the procedural requirements of maintaining an appeal in circumstances such as these.

THEREFORE, Respondent respectfully requests that this Court DENY Appellant's Motion for Emergency Stay Pending Appeal and Request for Circuit Court Hearing to Set Appropriate Bond in its entirety.

March 23, 2026

/s/ Morgan R. Dunn  
Morgan R. Dunn, SC Bar #105610  
Brownlee Whitlow & Praet, PLLC  
P.O. Box 62975  
N. Charleston, SC 29419  
Tel./Fax (843) 410-5140  
Attorney for Respondent

**From:** Ward, Hannah L. <hward@sccourts.org>  
**Sent:** Wednesday, December 11, 2024 3:29 PM  
**Subject:** \*\*Bond to Stay Execution on Appeal (SCCA 657)  
**Attachments:** SCCA 657 (Bond to Stay Execution on Appeal) Revised 12.2024.docx; 2020 08 Directive re Bond to Stay Eviction on Appeal.pdf

**CAUTION:** This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

Dear Magistrates,

Upon direction of Chief Justice Kittredge, the directive issued in August 2020 regarding orders to stay the eviction on appeal is hereby rescinded. Specifically, S.C. Code § 27-40-790(b), requiring payment of back rent by the tenant, may be enforced in applicable cases. Attached is the amended Bond to Stay Execution on Appeal form (SCCA 657) to be used in lieu of the rescinded form. The amended form has not yet been added to CMS, so please use the attached form when handling these cases.

I have also attached a copy of the August 2020 directive for your reference.

Should you have questions concerning this matter, please contact this office.

Sincerely,

Hannah Ward Pacheco  
Summary Court Staff Attorney  
South Carolina Court Administration  
(803) 734-1844

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**Ward, Hannah L.**

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**From:** Baughman, Michelle  
**Sent:** Tuesday, August 11, 2020 4:27 PM  
**To:** Baughman, Michelle  
**Subject:** Order to Stay the Eviction on Appeal  
**Attachments:** 657-Bond to Stay Execution on Appeal (002) Fillable.doc; 657-Bond to Stay Execution on Appeal (002).pdf

Dear Magistrates,

Upon specific and immediate direction of Chief Justice Beatty, all magistrates are to immediately cease ordering a tenant to post past due rent in a residential eviction in order to stay the eviction on appeal.

Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered. Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal.

Code § 27-40-790 is not applicable to a residential eviction appeal as it is inconsistent with Code § 27-40-800. Likewise, Code §27-37-130 is not applicable to residential landlord tenant matters as it is also inconsistent with 27-40-800 and applies only to commercial landlord tenant evictions.

Please find attached an amended form Bond to Stay Ejectment On Appeal to be used in lieu of the current form contained in CMS. The attached form removes the language regarding posting of bond for back to rent and requires that the tenant pay rent as it becomes due, or within five days thereafter, pending the outcome of appeal. The current form will be removed from CMS.

Should you have questions concerning this matter, please contact this office.

Sincerely,

Bob McCurdy, Deputy Director  
SC Court Administration



SOUTH CAROLINA  
JUDICIAL BRANCH

STATE OF SOUTH CAROLINA )  
COUNTY OF \_\_\_\_\_ )  
 )  
\_\_\_\_\_)  
Landlord )  
 )  
v. )  
\_\_\_\_\_)  
Tenant(s). )

IN THE MAGISTRATES COURT

BOND TO STAY EXECUTION  
ON APPEAL

Civil Case No. \_\_\_\_\_

TO: Circuit Court

Now comes the Tenant(s) in the above-entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on \_\_\_\_\_, 20\_\_\_\_, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of \$\_\_\_\_\_, per month, due on the \_\_\_ day of each month. Payments are to be made by cash, cashier's check, or money order to \_\_\_\_\_, located at \_\_\_\_\_.

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejection until this matter is heard on appeal and decided by the Circuit Court.

**Bond: \$\_\_\_\_\_, due within five (5) days of today's date. Rent in the amount of \$\_\_\_\_\_, is due on the 1<sup>st</sup> day of the month and is late after the 5<sup>th</sup> day of the month. All monies are due via certified funds until the appeal is resolved. All litigants must comply with the Bond to Stay until the appeal is resolved.**

Dated on \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
Tenant(s)

Upon execution of the above bond, execution on the judgment of Ejectment is hereby stayed until the action is heard appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed, and the Sheriff may dispossess the Tenant(s).

Dated on \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
JUDGE

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Dwana Sullivan,

Appellant,

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Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the RESPONDENT'S RETURN TO EMERGENCY MOTION FOR STAY PENDING APPEAL AND REQUEST FOR CIRCUIT COURT HEARING TO SET APPROPRIATE BOND on Dwana Sullivan by depositing a copy of it in the United States Mail, Postage Prepaid, on March 23, 2026, addressed to her at 740 Woodruff Road #6305 Greenville, SC 29607 and via email at [Dwanasullivan09@gmail.com](mailto:Dwanasullivan09@gmail.com).

March 23, 2026

/s/ Morgan R. Dunn  
Morgan R. Dunn, SC Bar #105610  
Brownlee Whitlow & Praet, PLLC  
P.O. Box 62975  
N. Charleston, SC 29419  
Tel./Fax (843) 410-5140  
Attorney for Respondent