

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
Civil Action No.: 2013-CP-26-00694

Garth Holmes d/b/a Creekside MHP )  
Management, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AJP Group, LLC, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

**ORDER ON MOTIONS**

FILED  
HORRY COUNTY  
2013 DEC -2 PM 4:38  
MELANIE HUGGINS-WARD  
CLERK OF COURT

This matter came before me on November 12, 2013 upon numerous motions by the parties, including the following motions listed in the order of filing:

- A) Motion to Alter or Amend by Plaintiff Garth Holmes d/b/a Creekside MHP Management (“Holmes”);
- B) Motion to Compel by Plaintiff Holmes;
- C) Motion to Reconsider and Appeal of Order and Writ of Ejectment by Defendant AJP Group, LLC;
- D) Motion to Dismiss Appeal, for Bond and/or for Modification of Bond Amount by Plaintiff Holmes;
- E) Motion to Set Appeal Bond to Stay Execution on appeal to Circuit Court by Defendant AJP Group, LLC;
- F) Order and Rule to Show Cause by Defendant AJP Group, LLC.; and
- G) Consent Motion to Stay.

Present at the hearing were Doug Mackelcan, Esquire and Amanda Bailey, Esquire on behalf of Plaintiff Holmes, and Preston Brittain, Esquire on Behalf of Defendant AJP Group, LLC.

For the reasons set forth herein and in consideration of the arguments of counsel, and all pleadings, memoranda, and affidavits on file, I resolve all of the above listed motions and find as follows:

**A) Motion to Alter or Amend by Plaintiff Holmes**

Plaintiff Holmes moved to amend the Complaint pursuant to Rules 15 and 20, SCRCPP to add additional causes of action and to add parties. Under Rule 15, SCRCPP, leave of court to amend a pleading is freely given when justice so requires and amendment does not prejudice any party. Under Rule 20, SCRCPP, several persons may be joined as defendants in a single action if there is asserted against them any right to relief in respect of or arising out of the same transaction, occurrence, or series, and if any question of law or fact common to all defendants will arise. "Courts have wide latitude in amending pleadings and, while this power should not be exercised indiscriminately or to surprise or prejudice an opposing party, the matter of allowing amendments is left to the sound discretion of the trial judge." Hale v. Finn, 388 S.C. 79, 87-88, 694 S.E.2d 51, 56 (Ct. App. 2010).

Defendant AJP Group objected to Plaintiff amending the Complaint on the grounds that Holmes failed to add AJP Group as a party to the initial pleading and that the additional claims for damages prejudice Defendant AJP Group. However, the fact that an amended pleading may prolong litigation or expose the Defendants to damages not originally sought does not constitute legal prejudice within the meaning of the rules.

I find that Plaintiff's proposed amendment to the pleading to add additional causes of action and remedies and to add additional parties does not prejudice the Defendant. Further, I find that the claims asserted against the additional parties arise out of the same transactions, occurrences, or series of occurrences and involves common questions of law and fact. As a

result, I find the Motion to Amend the Complaint to add causes of action and to add Defendants Anthony Pompliano and Vivian Onello is proper pursuant to Rules 15 and 20 of the South Carolina Rules of Civil Procedure.

NOW THEREFORE, Plaintiff's Motion to Amend pursuant to Rules 15 and 20 is GRANTED. Plaintiff shall serve the Amended Pleading upon counsel of record for Defendant AJP Group, LLC within 15 days of this Order. Plaintiff may serve the Amended Pleading upon Defendants Anthony Pompliano and Vivian Onello as provided for by the Rules of Civil Procedure.

IT IS SO ORDERED.

**B) Motion to Compel by Plaintiff Holmes**

Plaintiff Holmes moved to compel AJP Group's responses to interrogatories and request for production, specifically seeking bank records from Bank of America, financial records, and communications by or to AJP Group, LLC with third-parties, including any tenants, Bank of America, DHEC, SCLLR, City of North Myrtle Beach, Leon Butler, Edgar Woodward, or Betty Woodward, or any other third-party concerning Creekside Mobile Home Park.

Defendant AJP Group, LLC objected to the production of bank records arguing that divulging some of the financial information, even under a confidentiality order, would disclose trade secrets of their commercial enterprise.

I find the information sought is discoverable but that the document production regarding third-party communications should be limited to communications with any third-party from November 1, 2011 to the present concerning any complaints or inquiries regarding Creekside Mobile Home Park, Garth Holmes, Patsy Holmes, Creekside MHP Management and/or communications regarding the manner in which the Creekside Mobile Home Park is operated.

Further, all financial records shall be produced by AJP Group, LLC, but may be produced subject to the terms of a Confidentiality Order.

NOW THEREFORE, Plaintiff's Motion to Compel is GRANTED in part.

IT IS SO ORDERED.

**C) Motion to Reconsider and Appeal of Order and Writ of Ejectment by Defendant AJP Group, LLC**

Defendant AJP Group, LLC moved this Court to reconsider the August 27, 2013 Order and Writ of Ejectment on the grounds that it was denied a right to a jury trial. Defendant AJP Group, LLC conceded that it did not raise a right to a jury trial at the June 24, 2013 hearing on the Order and Rule to Show Cause; however, it asserted that it did not have to separately raise the right at the hearing when the demand for a jury trial was made in its' pleadings.

Plaintiff Holmes objected to AJP Group, LLC's motion to reconsider on the grounds that AJP Group, LLC does not have any right to a jury trial of issues when ejectment is ordered pursuant to Section 27-40-790 and Section 27-37-155 of the South Carolina Code for the non-payment of the amounts of rent when due during the pendency of proceedings, as required by the August 31, 2012 and October 12, 2012 Orders in this case.

I find the AJP Group, LLC does not have a right to a jury trial of the issues raised in the August 27, 2013 Order and Writ of Ejectment pursuant to Section 27-40-790 and Section 27-37-155 of the South Carolina Code. Further, I find that even if AJP Group, LLC did have a right to a jury trial, AJP Group, LLC has waived and/or not timely raise this right. See Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (issue raised for first time in Rule 59, SCRCPC, motion is not preserved for review); RRR, Inc. v. Toggas, 378 S.C. 174, 185, 662 S.E.2d 438, 443 (Ct. App. 2008) (a party cannot use a motion to reconsider, alter or amend a judgment to

present an issue that could have been raised prior to the judgment but was not). Therefore, I deny AJP Group, LLC's Motion to Reconsider and Appeal of Order and Writ of Ejectment by Defendant AJP Group, LLC.

NOW THEREFORE, AJP Group, LLC's Motion to Reconsider and Appeal of Order and Writ of Ejectment by Defendant AJP Group, LLC is DENIED, and therefore the Consent Motion to Stay Execution is DENIED as moot. The Defendant AJP Group, LLC and all occupants of the lots/premises shall have until December 12, 2013 (30 days from the date of the hearing on these motions) to voluntarily vacate the premises. All remaining terms of the August 27, 2013 Order and Writ of Ejectment are unchanged.

IT IS SO ORDERED.

**D) Motions on Stay and Appeal Bond**

Plaintiff moved for a bond and undertaking to be set for purposes of any appeal by AJP Group, LLC by Motion to Dismiss Appeal, for Bond, and/or for Modification of Bond Amount. Similarly, AJP Group, LLC moved for bond to be set to stay execution on appeal by motion to Set Appeal Bond to Stay Execution on Appeal to Circuit Court. I resolve these motions by setting a bond and requiring an undertaking as set forth herein in order to stay the August 27, 2013 Order and Writ of Ejectment on appeal.

Plaintiff asserted that following the expiration of the Disputed Leases on March 30, 2013 and following the issuance of the Order and Writ of Ejectment on August 27, 2013, Defendant AJP Group, LLC has refused to vacate the eight (8) lots, continues to occupy those lots as a landlord and in the operation of their commercial business. Plaintiff Holmes argued that AJP Group, LLC owes \$22,728.49 in back rent, utilities, and fees to Plaintiff Holmes, as set forth in

the July 30, 2013 Verified Statement of Account, together with actual and statutory damages set forth in the amended pleadings, and attorney's fees and cost.

Further, Plaintiff Holmes argued that AJP Group, LLC has no right to continue to occupy the eight (8) lots and that any appeal does not automatically stay the execution of the August 27, 2013 Order and Writ of Ejectment absent a bond in an amount sufficient to satisfy any potential actual damages, together with an undertaking by AJP Group to pay rent and utilities when due and to abide by the Creekside Mobile Home Park Rules and Regulations, attached to Plaintiff's September 5, 2013 Motion to Dismiss Appeal, for Bond, and/or for Modification of Bond Amount as "Exhibit A".

Plaintiff Holmes asked this court to set bond in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) and to require the bond be posted and an undertaking of Defendant AJP Group, LLC to pay rent and utilities when due and to abide by the Creekside Mobile Home Park Rules and Regulations in order to stay the August 27, 2013 Order and Writ of Ejectment on appeal.

Defendant AJP Group, LLC asserted that a bond on appeal should not be required as a result of alleged damages AJP Group, LLC has suffered due to the service of the August 27, 2013 Order and Writ of Ejectment by the Sheriff on its tenants. Further, AJP Group, LLC argued that bond based on speculative damages and attorney's fees is not proper.

Section 27-37-130 of the South Carolina Code states "An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal

shall be dismissed....” On the other hand, Section 27-40-800 of the South Carolina Residential Landlord Tenant Act permits an appeal to stay execution of a writ of ejectment in the event the tenant files an undertaking to pay rent when due.

While I am not convinced that the South Carolina Residential Landlord Tenant Act applies to the relationship between Plaintiff and Defendant as Defendant AJP Group, Inc. operates a commercial enterprise as a landlord within Creekside Mobile Home Park, AJP Group, LLC cannot unilaterally decide that it will remain a tenant on these eight (8) lots so long as it pays some rent. I find that if AJP Group, LLC intends to occupy or operate on these (8) lots pending any appeal, a bond and undertaking are proper and required in order to stay execution of the August 27, 2013 Order and Writ of Ejectment. The amount of rent shall be set pursuant to the Rules and Regulations for the eight (8) lots at a total of \$2,720 per month, plus water utilities as billed.

The bond amount to be posted by AJP Group, Inc. of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) is appropriate and supported by the affidavits and pleadings on file pursuant to S.C. Code Ann. §27-37-130. Further, in addition to the bond required to be posted, I find that an AJP Group, Inc. shall file an undertaking to abide by the park rules and for the payment of rent and utilities in substantially the following form:

Now comes the tenant, Defendant AJP Group, LLC, in the above entitled action and respectfully shows the court that an Order and Writ of Ejectment was issued against the tenant and for the landlord, Plaintiff Garth Holmes d/b/a Creekside MHP Management filed on August 27, 2013, by the Honorable Larry B. Hyman. Tenant has appealed the judgment.

Pursuant to the findings of the Honorable Larry B. Hyman, the tenant has been obligated to pay rent in the amount of \$2,720 per month, due on the 1st day of each month to the McNair Law Firm, P.A., 2411 Oak Street, Suite 206, Myrtle Beach, SC 29577 (or P.O. Box 336, Myrtle Beach, SC 29578) and late if received by the McNair Law Firm after 5:00 p.m. on the 5<sup>th</sup> of each month. In addition, the tenant has been obligated to pay water utilities to the McNair Law Firm at the address here in the amount billed by Plaintiff Garth Holmes d/b/a Creekside MHP Management for each of the eight (8) lots within fifteen (15) days from receipt of billing. Lastly, tenant has been obligated to comply with the Creekside Mobile Home Park Rules and Regulations, incorporated herewith and attached to Plaintiff's Motion to Dismiss Appeal, for bond and/or for Modification of Bond Amount, recorded September 5, 2013 as "Exhibit A".

Tenant hereby undertakes to pay the periodic rent and utilities hereinafter due and abide by the Rules and Regulations, according to the aforesaid findings of the court.

Provided AJP Group, LLC files a timely Notice of Appeal and within five (5) days after service of the notice of appeal, AJP Group, LLC files a bond in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) and an undertaking as set forth above, the August 27, 2013 Order and Writ of Ejectment shall be stayed until the appeal is decided with finality.

If the AJP Group, LLC timely appeals but fails to post bond, make a payment, or comply with the Rules and Regulations according to the undertaking and this order, a writ of ejectment shall be issued and executed pursuant to Section 27-37-40 of the South Carolina Code.

NOW THEREFORE, the Parties' motions to set appeal bond are GRANTED IN PART, DENIED IN PART, as set forth above.

IT IS SO ORDERED.

**E) Order and Rule to Show Cause by Defendant AJP Group, LLC**

Defendant AJP Group, LLC filed an Order and Rule to Show Cause as to why Plaintiff Holmes should not be held in Contempt for violation of the Order and Writ of Ejectment for serving the Horry County Sheriff's Office with a copy of the Order for service without waiting ten (10) days after the Order and Writ of Ejectment was entered.

Defendant AJP Group, LLC asserted that Section 27-47-530(B) of the South Carolina Code states that a "writ of ejectment may not issue until ten days after a verdict for the plaintiff". By sending the August 27, 2013 Order and Writ of Ejectment to the Horry County Sheriff's Office for service prior to the expiration of ten (10) days after the date of the entry of the order, Defendant AJP Group, LLC asserted Plaintiff Holmes violated the Order and Writ of Ejectment.

I find the Order and Rule to Show Cause has never been issued by any judge, and further, even if it had, I find no willful violation of any terms of the August 27, 2013 Order and Writ of Ejectment by Holmes.

NOW THEREFORE, AJP Group, LLC's Order and Rule to Show Cause is DENIED.

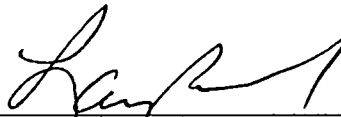
IT IS SO ORDERED.

**F) CONCLUSION**

Pursuant to the terms of the findings and conclusions herein:

- Motion to Alter or Amend by Plaintiff Holmes filed July 19, 2013 is GRANTED pursuant to Section A of this Order;
- Motion to Compel filed by Plaintiff Holmes filed August 20, 2013 is GRANTED IN PART pursuant to Section B of this Order;
- Motion to Reconsider and Appeal of Order and Writ of Ejectment by Defendant AJP Group, LLC filed August 30, 2013 is DENIED pursuant to Section C of this Order;
- Motion to Dismiss Appeal, for Bond and/or for Modification of Bond Amount by Plaintiff Holmes filed September 5, 2013 is GRANTED IN PART pursuant to Section D of this Order;
- Motion to Set Appeal Bond to Stay Execution on appeal to Circuit Court by Defendant AJP Group, LLC filed September 5, 2013 is GRANTED IN PART, DENIED IN PART pursuant to Section D of this Order;
- Order and Rule to Show Cause by Defendant AJP Group, LLC filed September 10, 2013 is DENIED pursuant to Section E of this Order; and
- Consent Motion to Stay by Defendant AJP Group, LLC filed September 19, 2013 is DENIED pursuant to Section C of this Order.

IT IS SO ORDERED.

  
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The Honorable Larry B. Hyman  
Circuit Court Judge

Conway, South Carolina  
11-25, 2013