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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2025-002298

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Chief Administrative Judge – Civil
2025-CP-23-6831

APPEAL FROM WEST GREENVILLE SUMMARY COURT
Jonathan A. Horne, Magistrate Judge
2025CV2310101556

Torgues Mingo

Appellant

v.

Flats At Haywood

Respondent

APPELLANT'S RESPONSE IN OPPOSITION TO
RESPONDENT'S PETITION FOR A WRIT OF MANDAMUS

Torgues Mingo
75 Mall Connector Rd. Unit 203
Greenville, SC 29607
Pro Se Appellant

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INTRODUCTION

Respondent Flats at Haywood seeks an extraordinary writ of mandamus commanding Judge Jonathan A. Horne to immediately execute a Writ of Ejectment against Appellant Torgues Mingo. This Court should deny that petition for several fundamental reasons.

First, mandamus is the most extraordinary of remedies, reserved for cases where a lower court has refused to perform a clear ministerial duty and no other adequate remedy exists at law. Respondent has an adequate alternative remedy: because ejectment falls within the exception category of Rule 241(b)(10) SCACR, Respondent could have petitioned this Court under Rule 241(c) for an order confirming its authority to enforce the Writ, or for such other relief as would resolve the enforcement question through proper appellate channels. Respondent chose not to pursue that avenue. The availability of that remedy forecloses mandamus.

Second, the Magistrate Court did not refuse to act. It made a considered legal judgment — consistent with how many courts read the interplay between an ongoing appeal and enforcement — that it could not execute the Writ while the matter remained pending before this Court. That judgment may or may not be correct as a matter of law, but it is not a refusal to perform a ministerial duty. Mandamus does not lie to correct a court's legal reasoning; that is the function of ordinary appeal.

Third, and most critically, there are genuine, unresolved questions of law in this proceeding — including whether the bond hearing complied with S.C. Code Ann. § 27-37-130's five-day requirement, whether S.C. Code Ann. § 27-40-800(b)'s undertaking alternative was ever properly presented to Appellant, and whether the underlying accounting disputes were ever actually

adjudicated — that this Court should address through the normal appellate process rather than by mandamus. Granting a writ of mandamus at this stage would force execution of an ejection before those questions are resolved, potentially causing irreversible harm to Appellant that could not be undone even if this Court later rules in his favor.

Appellant respectfully submits this Response in Opposition and urges this Court to deny Respondent's Petition.

ARGUMENT

I. MANDAMUS IS AN EXTRAORDINARY REMEDY THAT IS UNAVAILABLE WHERE AN ADEQUATE LEGAL REMEDY EXISTS, AND RESPONDENT HAS SUCH A REMEDY.

A writ of mandamus is one of the most extraordinary remedies available in the courts of this State, and the standards for its issuance are correspondingly demanding. To obtain mandamus, a petitioner must demonstrate: (1) a clear legal right to the performance of a specific duty; (2) that the respondent has a corresponding duty to perform that act; (3) that the respondent has failed or refused to perform that duty; and (4) that there is no other adequate remedy available at law. *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 101, 705 S.E.2d 28, 34 (2011); *Woodward v. Woodward*, 294 S.C. 210, 212, 363 S.E.2d 413, 414 (Ct. App. 1987).

Respondent cannot satisfy the fourth element. An adequate alternative legal remedy plainly exists. Rule 241(c)(1), SCACR, expressly provides that after service of a notice of appeal, any party may move for appropriate relief from the appellate court where the appeal is pending. For matters in the exception category — such as ejectment under Rule 241(b)(10) — a tenant who seeks to stay enforcement would move for a supersedeas under Rule 241(c)(1). Conversely, a landlord who believes enforcement is being improperly impeded may petition this Court for a clarifying order confirming its right to proceed. Respondent could have filed such a petition with this Court at any time following Appellant's November 13, 2025 Notice of Appeal to the Court of Appeals. Respondent chose instead to petition the magistrate court and, upon encountering that court's reluctance, to seek mandamus. Neither step was necessary.

The availability of the Rule 241(c) motion procedure is alone sufficient to defeat this Petition. The South Carolina courts have consistently held that where a party possesses an adequate remedy through the ordinary appellate process, mandamus will not lie. *Woodward*, 294 S.C. at 212, 363 S.E.2d at 414. Respondent had precisely that remedy available and declined to pursue it. This Court should deny the Petition on this ground alone.

II. THE MAGISTRATE COURT DID NOT REFUSE TO ACT; IT MADE A REASONABLE LEGAL JUDGMENT THAT AN ONGOING APPEAL PRECLUDED ENFORCEMENT.

Mandamus does not lie to compel a court to reach a particular legal conclusion; it lies only to compel a court to act at all — to perform a ministerial, non-discretionary duty — when it has refused or failed to do so. *Woodward*, 294 S.C. at 212, 363 S.E.2d at 414. A court that has acted but reached a legal conclusion the petitioner disagrees with has not refused to perform a duty; it has exercised judgment. The remedy for an erroneous legal conclusion is appeal, not mandamus.

Here, the record reflects that the West Greenville Summary Court did not ignore Respondent's request. It considered the request and communicated — informally, then in response to Respondent's February 24, 2026 motion — that it could not proceed while the matter remained under appeal. That is a legal judgment about the scope of the court's jurisdiction in light of the pending appellate proceedings. It may be a debatable conclusion, but it is not a refusal to act.

The distinction matters. When a court mistakenly believes it lacks jurisdiction, the proper remedy is for the aggrieved party to seek clarification from the appellate court — precisely what Rule

241(c) is designed to accomplish. Mandamus is not an instrument for compelling a lower court to adopt the petitioner's preferred legal interpretation of jurisdictional boundaries. To hold otherwise would allow mandamus to substitute for ordinary interlocutory appellate practice in every case where a lower court made a questionable ruling about the scope of a pending appeal. That is not the law.

III. THE BOND PROCEEDING BELOW DID NOT COMPLY WITH S.C. CODE ANN. § 27-37-130, CREATING AN UNRESOLVED STATUTORY QUESTION THIS COURT SHOULD NOT RESOLVE BY MANDAMUS.

Even setting aside the availability of alternative remedies, mandamus is inappropriate here because the very premise of Respondent's petition — that Appellant clearly forfeited his appeal by failing to post bond — rests on a statutory procedure that was not followed correctly.

S.C. Code Ann. § 27-37-130 provides that if a tenant fails to file the required appeal bond within five days after service of the notice of appeal, the appeal shall be dismissed by the trial magistrate. Appellant filed his Notice of Appeal on October 17, 2025. Under the plain text of the statute, the five-day period expired on October 22, 2025. The bond hearing was not held until October 27, 2025 — five calendar days past the statutory deadline.

Rather than dismissing the appeal within five days as § 27-37-130 directs, the magistrate scheduled a hearing, set a bond amount (\$4,243.50 in arrears plus \$1,125.00 in advance November rent, totaling \$5,368.50), and gave Appellant an extended deadline of November 3, 2025. This hybrid procedure — conducting a hearing outside the statutory timeframe, then applying the dismissal

sanction for failure to pay the amount set — departs from the statutory text of § 27-37-130 and has no express authorization in that provision or any other.

Respondent's Petition asks this Court to treat the Writ of Ejectment as unquestionably valid and immediately enforceable. But the validity and enforceability of that writ depends on whether the dismissal of Appellant's circuit court appeal was legally proper — which in turn depends on whether the bond proceeding itself complied with the governing statute. Judge Gravely's Form 4 order dismissing the circuit court appeal was entered November 9, 2025. Appellant received notice of that order on November 12, 2025, and filed his Notice of Appeal to this Court on November 13, 2025. Those questions are squarely before this Court on the main appeal. It would be improper for this Court to resolve them by mandamus, in a summary proceeding without full briefing, in a manner that may be irreversible by the time the main appeal is decided.

IV. S.C. CODE ANN. § 27-40-800(b) PROVIDES AN INDEPENDENT STAY MECHANISM THAT WAS NEVER OFFERED TO APPELLANT, RAISING AN UNRESOLVED QUESTION OF LAW.

Separately from the § 27-37-130 bond procedure, S.C. Code Ann. § 27-40-800(b) provides a distinct and independent mechanism for staying execution of an ejectment judgment. That provision states:

It is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate in accordance with Section 27-40-780, as it becomes due periodically after the judgment was entered. Any magistrate, clerk, or circuit court judge shall

order a stay of execution upon the undertaking. S.C. Code Ann. § 27-40-800(b)
(2024).

The language of this provision is mandatory: upon a signed undertaking to pay ongoing rent as it becomes due, a stay of execution shall issue. The statute does not require payment of accrued arrearages, posting of a cash bond, or procurement of a surety. It requires only a commitment to pay future rent obligations going forward.

Rule 241(b)(10), SCACR — the very rule upon which Respondent relies — explicitly carves out the ejectment exception "as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800." The Rule incorporates both statutes. To read § 27-40-800 out of the analysis entirely, as Respondent urges, renders the Rule's reference to that statute meaningless surplusage. Under basic principles of statutory construction, that reading must be rejected.

The record in this proceeding does not reflect that Appellant was ever informed of, or offered, the § 27-40-800(b) undertaking option. The bond hearing on October 27, 2025 focused exclusively on the cash bond amount, and no mention of a mere undertaking to pay future rent appears in any order or exhibit. If Appellant had been offered — and had signed — such an undertaking, a stay would have issued as a matter of law, and Appellant's appeal rights would have been preserved regardless of his inability to pay the accrued arrearages in cash.

This unresolved question — whether the failure to offer or implement the § 27-40-800(b) undertaking procedure was itself reversible error — is a central issue in the pending appeal. This Court should not grant mandamus enforcement of the Writ before it has resolved that question.

V. DUE PROCESS CONCERNS COUNSEL AGAINST MANDAMUS ENFORCEMENT WHERE BOND WAS FINANCIALLY UNATTAINABLE AND APPELLANT'S LEDGER DISPUTES REMAIN UNADJUDICATED.

Beyond the statutory issues, there is a constitutional dimension to this proceeding that this Court should not overlook in deciding whether to issue a summary writ of mandamus.

The Supreme Court of the United States has recognized that conditioning access to judicial process on the prepayment of fees or costs can violate due process when the effect is to completely bar a litigant from any meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S. 371, 374–77 (1971). This principle was extended to appellate access in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), where the Court held that where the State controls access to a forum in which a vital interest is at stake, it cannot condition that access on financial resources the litigant demonstrably does not possess.

The bond set at the October 27, 2025 hearing — \$4,243.50 in arrears plus \$1,125.00 in advance rent, totaling \$5,368.50 in cash — was beyond Appellant's financial means. That inability was not a strategic decision to avoid the bond requirement; it was a financial reality that was never inquired into at the hearing. No means inquiry was conducted. No alternative was offered. No consideration was given to whether § 27-40-800(b)'s undertaking mechanism might provide a constitutionally adequate substitute.

Housing is a vital interest. An eviction judgment carries severe and lasting consequences well beyond the loss of a particular apartment. As documented in Appellant's Initial Brief, the eviction

record in this case has already resulted in denial of multiple housing applications. These consequences extend for years and impair a tenant's fundamental ability to secure shelter. The due process concerns that arise from foreclosing judicial access when a vital interest is at stake are not hypothetical; they are present facts in this record.

Equally important, the underlying accounting dispute in this case — the question of whether Respondent properly applied Appellant's payments and whether the alleged arrearages are accurately stated — was never adjudicated. Appellant appeared at the October 10, 2025 hearing before the Honorable Darrell S. Fisher and presented evidence of payment disputes and challenged Respondent's ledger. The court entered its order without making specific factual findings on those disputes. Respondent's own eviction complaint stated the initial arrearage as \$2,857.25, yet by the time of the bond hearing it had grown to \$4,243.50 — a difference of \$1,386.25 that was never specifically accounted for in any order in the record.

Granting mandamus at this stage — forcing immediate execution of the Writ — would render Appellant's pending appeal moot or effectively academic before the unresolved legal and factual questions in it are adjudicated. The harm to Appellant would be immediate and irreversible: loss of housing, further damage to rental history, and displacement. If this Court later rules in Appellant's favor on the statutory bond issues or the § 27-40-800(b) question, there will be no effective remedy for the harm caused by premature enforcement.

By contrast, the harm to Respondent from denying the Petition is not irremedial. Respondent continues to possess the right to seek a lift of any stay through Rule 241(c) and to obtain a ruling

on that motion from this Court in the ordinary course. The equities strongly favor allowing the pending appeal to proceed to decision rather than short-circuiting it through mandamus.

CONCLUSION

For the foregoing reasons, Appellant Torgues Mingo respectfully requests that this Court:

1. DENY Respondent's Petition for a Writ of Mandamus in its entirety;
2. Allow the pending appeal (Appellate Case No. 2025-002298) to proceed to decision on the merits, including determination of the statutory and due process questions presented in Appellant's Initial Brief and Reply Brief;
3. In the alternative, if this Court deems it appropriate to address enforcement, first require full briefing on whether the § 27-37-130 bond hearing was timely and whether § 27-40-800(b)'s undertaking mechanism was properly made available to Appellant; and
4. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/ Torgues Mingo
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April 15, 2026

CERTIFICATE OF SERVICE

SC Court of Appeals

I hereby certify that on the 15th day of April, 2026, I served a copy of the foregoing Appellant's Response in Opposition to Respondent's Petition for a Writ of Mandamus upon Respondent's counsel by United States Mail, First Class, postage prepaid, in an envelope addressed as follows:

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And by filing the original with:

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