

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jul 22 2026

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001435
Circuit Court Case No. 2026-CP-08-00376

GS North Main Owner, LLC d/b/a
Marlowe Summerville,

Respondent,

v.

Joseph E. Donohue, IV, and Caroline
Marvin,

Appellants.

**MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, MOTION TO SET
BOND TO STAY HEARING PURSUANT TO S.C. CODE §27-40-800(f)(1)**

PLEASE TAKE NOTICE, Respondent GS North Main Owner, LLC d/b/a Marlowe Summerville (hereinafter “Respondent”), by and through undersigned counsel, will move before this Court, to grant the Respondent’s Motion to Dismiss the Appeal filed by Appellants Joseph E. Donohue, IV and Caroline Marvin (hereinafter “Appellants”), or in the alternative, direct the Berkeley County Circuit Court to hold a bond to stay hearing as soon as feasible, pursuant to S.C. Code § 27-40-800(f)(1). In support of these Motions, Respondent presents to the Court as follows:

PROCEDURAL HISTORY

1. On December 30, 2025, Respondent filed an Application of Ejectment in Goose Creek Magistrate Court, Berkeley County, against Appellants for failure to pay rent (Case No. 2025CV0810606061).

2. On January 26, 2026, a Rule to Show Case hearing was held, and the Magistrate Court ruled in favor of Respondents, issuing a Warrant of Ejectment.

3. On February 3, 2026, a Writ of Ejectment was issued.

4. On February 4, 2026, Appellants filed a Notice of Appeal in the Berkeley County Circuit Court (Case No. 2026CP0800376).

5. On or about February 11, 2026, a bond-to-stay hearing was conducted in Goose Creek Magistrate Court, resulting in an order requiring Appellants to post bond in the amount of \$6,203.85 by 5:00 PM EST on February 17, 2026 and to make subsequent monthly payments (beginning in March 2026) in the amount of \$2,270.00, due on the first of each month and late after the fifth of the month; in the event of Appellants failing to sufficiently and/or timely make the aforementioned payment amounts, the Warrant of Ejectment shall issue and Appellants' appeal shall be dismissed.

6. Appellants complied with the Bond to Stay Execution on Appeal (hereinafter "Bond to Stay") payment amount; Appellants paid Respondent in the amount of \$6,203.85 by February 17, 2026.

7. By March 10, 2026, Appellants failed to timely/sufficiently make (or even *attempt* to make in good faith) the subsequent monthly payment (for March 2026) in the amount of \$2,270.00 to Respondent, resulting in Respondent contacting the Goose Creek Magistrate Court

to obtain an Order of Non-Compliance with the aforementioned order, which would dismiss Appellants' appeal and (re)issue the Warrant of Ejectment.

8. Appellants contested their failure to pay the subsequent payment for March 2026, resulting in the Goose Creek Magistrate Court scheduling a non-compliance hearing.

9. On March 16, 2026, a non-compliance hearing was held, and the Magistrate Court ruled that Appellants were not in compliance with the Bond to Stay and filed an Order of Non-Compliance. At this hearing, Appellants brought with them a payment stub for their prior \$6,203.85 payment that was timely/sufficiently made and attempted to articulate an excuse for non-compliance; however, Appellants did *not* also bring an inherently probative piece of evidence: *a payment stub for a timely/sufficient March 2026 payment in the amount of \$2,270.00*. The bond-to-stay process for evictions organically produces a probative piece of evidence that allows for verification that the appellant / tenant at least obtained a certified payment before the date on which the payment was due, which indicates, if nothing else, the appellant / tenant was at least capable and/or prepared to make the timely/sufficient payment; however, here, Appellants were unable (presumably because it does not exist) to produce a payment stub for a timely/sufficient March 2026 payment in the amount of \$2,270.00.

10. On March 20, 2026, Berkeley County Circuit Court Judge Dale E. Van Slambrook dismissed the Appeal.

11. On March 20, 2026, Appellants filed a Motion for Relief from Judgment or to Alter or to Amend Order dismissing the Appeal.

12. On April 15, 2026, Respondents filed a Memorandum in Opposition of Appellants' Motion for Relief from Judgment or to Alter or to Amend Order dismissing the Appeal.

13. On May 27, 2026, Judge Dale E. Van Slambrook filed a Form 4 Order denying Appellants' Motion for Relief from Judgment or to Alter or to Amend Order dismissing the Appeal as it was procedurally defective.

14. On June 26, 2026, Appellants filed a Notice of Appeal for the Form 4 Order dismissing Appellants' Appeal in Berkeley County Circuit Court and Form 4 Order denying Appellants' Motion for Relief from Judgment or to Alter or to Amend Order dismissing the Appeal.

15. On June 29, 2026, the Court of Appeals sent a deficiency notice regarding Appellants' Notice of Appeal as the proof of service was not in compliance with the South Carolina Appellate Court Rules, which gave Appellants ten (10) days to correct the deficiency.

16. On July 14, 2026, the Court of Appeals sent a letter to Respondent that the deficiency has been cured, although Respondent was not served with such correction.

17. Appellant Joseph E. Donohue, IV is a SC-licensed attorney.

MOTION TO DISMISS

Upon review of relevant provisions of the South Carolina Appellate Court Rules, it is apparent that Appellants' Appeal before the Court of Appeals necessitates immediate dismissal.

Rule 260(a) of the South Carolina Appellate Court Rules, in relevant part states "whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 262(b), S.C.A.C.R. states "any document filed with the appellate court shall be accompanied by proof of service showing the document has been served on all parties." Rule 262(c), S.C.A.C.R., states:

Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the appellate court. Service upon the attorney or upon a party shall be made by:

- (1) delivering a copy to the person, in which case service is complete upon delivery. Delivery of a copy under this provision means: handing it to the attorney or to the party; or leaving it at the office of that person with a clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;
- (2) depositing a copy with the U.S. mail, properly addressed to the person at that person's last known address with sufficient first class postage attached, or, if no address is known, by leaving it with the clerk of the appellate court. Service by mail is complete upon mailing; or
- (3) serving a copy on the person by electronic means in a manner providing by order of the Supreme Court of South Carolina.

Pursuant to Rule 260(a), the Court of Appeals is required to dismiss Appellants' Appeal because Appellants failed to serve the corrected proof of service on Respondent, or their counsel. Respondent, nor its counsel, received any filing, whether by hand-delivery, mailing, or by electronic means. As a result, Appellants has not complied with Rule 262(b), S.C.A.C.R.

Therefore, Appellants' Appeal should be dismissed pursuant to Rule 260, S.C.A.C.R., and a remittitur should be issued pursuant to Rule 221, S.C.A.C.R.

MOTION TO SET BOND TO STAY HEARING

Pursuant to S.C. Code 27-40-800(f)(1), bond must be set before this case may proceed further. The statute is intended to prevent precisely the type of ongoing prejudice / abuse of process that Respondent is currently being made to endure. Each day this Appeal remains pending before the Court of Appeals, continuing financial damage / harm is caused to Respondent. During the pendency of this Appeal, Appellants continue to enjoy the benefit of residential occupancy while Respondent bears the full financial burden associated with Appellants' continued possession (i.e., Appellants maintain possession but are not paying for same).

The continued pendency of this Appeal effectively operates as a *de facto* stay of the Writ of Ejectment, originally issued against Appellants by the Goose Creek Magistrate Court on

February 3, 2026. The stay benefits Appellants despite their failure to prosecute their Appeal and comply with the South Carolina Appellate Court Rules and South Carolina Residential Landlord Tenant Act. Under South Carolina law, the only recognized basis for staying the execution of a writ of ejectment in an eviction proceeding after a writ has been appealed by a leaseholder (e.g., Appellants), is the entry of a bond order pursuant to S.C. Code § 27-40-800. The legislature's enactment § 27-40-800 is presumably to ensure that landlords can at least receive rental income as long as an eviction appeal remains pending, sometimes for months or years, because (and especially in evictions on nonpayment of rent grounds, such as this eviction) if a tenant wishes to take the position that he/she paid rent, then they should at least be made to pay / capable of paying this to *literally* buy themselves more time – to provide otherwise would mean that tenants can live rent-free so long as they appeal, which is an outcome clearly not provided for by pertinent rule(s) and law(s); these rule(s) and law(s) anticipate and aim to combat such a shameless abuse of process, not enable it. The ongoing delay in this matter undermines that statutory purpose and exacerbates Respondent's financial losses.

Accordingly, Respondent respectfully requests that if the Court of Appeals denies Respondent's Motion to Dismiss, it should if nothing else promptly direct the Berkeley County Circuit Court to schedule a bond-to-stay hearing at the earliest practicable date as authorized by S.C. Code § 27-40-800(f)(1) before any further proceedings occur.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court of Appeals grant Respondent's Motion to Dismiss Appellants' Appeal in its entirety, as Appellants, one of which is a SC-licensed attorney, failed to comply with the South Carolina Appellate Court Rules. In the alternative, should the Court deny Respondent's Motion to Dismiss, Respondent respectfully

requests that the Court of Appeals remand this case to the Berkeley County Circuit Court to conduct a bond-to-stay at the earliest practicable date.

BROWNLEE WHITLOW & PRAET, PLLC



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ATTORNEY(S) FOR RESPONDENT

July 22, 2026
North Charleston, SC

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GS North Main Owner, LLC d/b/a
Marlowe Summerville,

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v.

Joseph E. Donohue, IV, and Caroline
Marvin,

Appellants.

PROOF OF SERVICE

I certify that on this date I have served the Motion to Dismiss Appeal, or in the Alternative, Motion to Set Bond to Stay Hearing Pursuant to S.C. Code § 27-40-800(f)(1) on Appellants, Joseph E. Donohue, IV, and Caroline Marvin, by depositing a copy hereof in a postpaid envelope in a post office or official depository under the exclusive care and custody of the United States Post Office Department properly addressed to Appellants, as well as serving a copy electronically on Appellant/Appellants' attorney, Joseph E. Donohue, IV, as follows:

Joseph E. Donohue, IV
J. Donohue Law, LLC
431 Saint James Ave., Ste. L PMB 194
Goose Creek, SC 29445
joey@jdonohuelaw.com

Joseph E. Donohue, IV
12000 Marlowe Vista Place, #12107
Summerville, SC 29486

Caroline Marvin
12000 Marlowe Vista Place, #12107
Summerville, SC 29486

This the 22 day of July, 2026.

BROWNLEE WHITLOW & PRAET, PLLC



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ATTORNEY(S) FOR RESPONDENT



Brownlee Whitlow & Praet

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SC Court of Appeals

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July 22, 2026

South Carolina Court of Appeals

Attn: Clerk of Court

P.O. Box 11629

Columbia, SC 29211

ctappfilings@sccourts.org

Re: *Joseph E. Donohue, IV, et al. v. GS North Main Owner, LLC d/b/a Marlowe Summerville*

Appellate Case No.: 2026-001435

Our File No.: 31603-00002

Dear Clerk:

Enclosed is the original of Respondent's Motion to Dismiss, or in the Alternative, Motion to Set Bond to Stay Hearing Pursuant to S.C. Code § 27-40-800(f)(1) and Proof of Service in reference to the above captioned matter. Please file the same and return the clocked-in copy to me to my email address provided above.

By copy of this letter, I hereby serve the same upon Appellants

If you have any questions or concerns, feel free to contact my office.

Sincerely,

BROWNLEE WHITLOW & PRAET, PLLC

Emily N. Hansbarger

Enclosures

cc: Joseph E. Donohue, IV and Caroline Marvin (via first-class mail/e-mail)
Marlowe Summerville (via e-mail)

Mailing Address:

P.O. Box 62975

N. Charleston, SC 29419

Contact: 843.628.7120

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