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Dd

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

SKYDIVE MYRTLE BEACH, INC,)
)
Appellant,)
)
v.)
)
HORRY COUNTY,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2014-CP-26-4965

ORDER DENYING APPELLANT'S
MOTION FOR INJUNCTION AND
STAY OF EJECTMENT

FILED
HORRY COUNTY
2015 OCT 15 PM 12:57
MELANIE HUGGINS
CLERK OF COURT

NOV 23 2015
SC Court of Appeals

THIS MATTER came to be heard before me on September 22, 2015, upon Appellant's Motion for Emergency Injunction and Stay of Ejectment dated September 17, 2015. Appearing on behalf of Appellant was Robert B. Varnado of Brown & Varnado, LLC; appearing on behalf of the Respondent was Arrigo P. Carotti, Horry County Attorney. In addition to the requests made in its Motion, Appellant alternatively requested at the hearing a stay of proceedings under Rule 62, SCRPC and/or a writ of supersedeas under Rule 241, SCACR. After reviewing this matter and the record as a whole, the submittals of counsel, and upon hearing arguments of counsel and being fully informed, for the reasons set forth below, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

Based on the evidence submitted before this court and the arguments of counsel, I find and conclude that:

1. Skydive Myrtle Beach, Inc. (SDMB) currently operates its business from a commercial aircraft hangar owned by Horry County.
2. Horry County brought an ejectment proceeding in Magistrate's Court and the

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Magistrate ordered the ejectment of SDMB after a bench trial on July 23, 2014.

3. SDMB appealed the Magistrate's decision to the Circuit Court, and on August 1, 2014, the Magistrate entered a Bond to Stay Execution on Appeal, which provided "execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court."

4. On May 27, 2015, the Circuit Court issued an Order Dismissing Magistrate's Appeal, affirming the decision of the Magistrate.

5. In response to a subsequent Motion filed by Appellant, on July 16, 2015, the Circuit Court issued an Order Denying Appellant's Motion to Reconsider Dismissal of Appeal.

6. By Notice dated August 19, 2015, SDMB filed a Notice of Appeal of the Circuit Court's July 16, 2015 Order to the South Carolina Court of Appeals.

7. Horry County notified SDMB on September 16, 2015 that Horry County would proceed with the ejectment after the expiration of seventy-two (72) hours.

8. SDMB submitted its Motion for Emergency Injunction and Stay of Ejectment to this Court on September 17, 2015.

9. SDMB did not offer any affidavits or testimony to establish that it would suffer irreparable harm, that it has a likelihood of success on the merits, and that it does not have an adequate remedy at law if it is required to relocate its business.

10. Horry County, on the other hand, has presented evidence that it faces substantial risk while SDMB is allowed to continue to operate from property belonging to Horry County, including significant exposure to potential liability due to SDMB's continued misconduct as demonstrated by numerous and ongoing safety incidents threatening persons and property, and possible non-compliance with FAA requirements related to SDMB's continued hazardous activities on and about the property.

CONCLUSIONS OF LAW:

Based on the record herein, I conclude as follows:

1. Under South Carolina law, an injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by a party. Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). In order to be entitled to injunctive relief, an applicant must establish three elements: (1) irreparable harm; (2) a likelihood of success on the merits; and (3) absence of an adequate remedy at law. Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). In that the Appellant did not establish that it would suffer irreparable harm, that it has a likelihood of success on the merits, and that it does not have an adequate remedy at law, Appellant is not entitled to an injunction preventing its ejection from the property.

2. The Bond Staying Execution on Appeal issued by the Magistrate pursuant to S.C. Code Ann. § 27-37-130 does not remain in effect through all appeals, but rather expired by its own terms, and as a matter of law, upon the final determination of the Circuit Court, and is no longer in effect.

3. Rule 241(b)(10), SCACR provides that appeals of ejection proceedings are an exception to the automatic stay granted upon the filing of an appeal from the Circuit Court to the Court of Appeals, and therefore the ejection is not automatically stayed by virtue of SDMB's appeal to the Court of Appeals.

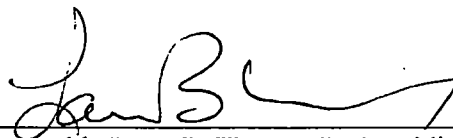
4. SDMB alternatively requested at the hearing of this matter that the Court issue a writ of supersedeas under Rule 241, SCACR or a stay of proceedings under Rule 62, SCRCP to prevent Horry County from proceeding with ejection; however, SDMB has not supported such requests with any showing that it would be entitled to such relief. In light of the fact that SDMB has had the benefit of a hearing on the merits and appellate review by the Circuit Court, and that

Horry County has demonstrated that it suffers substantial risk by virtue of SDMB's continuing operations from Horry County property, the Court has determined that it would be inappropriate to grant a stay or writ of supersedeas where the burden to Horry County significantly outweighs any potential damage to SDMB.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

Appellant's Motion for Emergency Injunction and Stay of Ejectment, including the requests for writ of supersedeas and stay of proceedings made at oral argument, is **DENIED**.

IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr., Presiding Judge
Fifteenth Judicial Circuit

Canary, SC

10-13-, 2015