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STATE OF SOUTH CAROLINA
Richland County

COURT OF APPEALS
5th Circuit

Court of Common Pleas
Case Number: 2011-CP-26-4065

GWBD, LLC

Wells Fargo Bank, N.A.,

Respondent

Vs.

MOTION FOR BOND TO STAY
EXECUTION ON APPEAL

Coleen Campi, Michael Campi,
Beechcombers Internation Inc.
Abrasive-Tool; American Gift
Corporation; South Carolina
Department of Revenue,

{Shannon Barone, Joseph Barone

Appellant

SOUTH CAROLINA, COURT OF APPEALS

Now come the tenants (also heretofore referred to as appellants, we, our or us) we are presenting our case Pro se, in the above entitled action and respectfully show this Honorable Court that a judgment of ejectment was issued against the us and for the landlord on the 26th day of April, 2012, and to be executed on or by May 22, 2012 by order of the Master of Equity, Judge Stroman. We have filed notice to appeal this judgment with the Clerk of the Appellate Court, we have served the respondent and we have paid the filing fees. We have done all of these things in a timely manner and

within 30 days from date of service of notice, which was on April 27, 2012, and within the limitations of the law.

- 1) At the time of signing the lease and several months prior to the findings of the Master of Equity, we have pre-paid rent in the amount of \$10,200.00, for the full term of the lease signed; November 1, 2011 through October 31, 2012 for 1205 Anderson Street, Conway, South Carolina 29526. In addition we have also paid \$850.00 for the deposit on the rental property, all in total prior to the foreclosure which took place in January 2012.
- 2) We appeared in the Master of Equity's court on April 23, 2012 and did present to the court, proof of tenancy in the forms of proof of ONE month's deposit, the signed lease which had the terms of payment written directly into it, and an electronically time stamped and signed statement from the previous owner, which was requested by council for the subsequent owner. In court on April 23, 2012, council for the respondent stated that no other case for the "Protecting Tenants in Foreclosure Act" had been heard before the courts in the state of South Carolina prior to our case as a matter of reference to the fact that there were no cases on file with which to contrast.
- 3) Under the Federal, Protecting Tenants in Foreclosure Act (PTFA), the Dodd-Frank Wall Street Reform Act (Dodd-Frank) and the South Carolina State, Residential Landlord and Tenant Act (State laws) there is absolutely no standard set high as the evidence provided by us to the lower court. By all of the standards set forth in PTFA, Dodd-Frank, and the State laws, if the previous landlord/owner(s), who received and accepted payment from us, acknowledges the legitimacy of the lease that is, in all cases, the only standard required.

4) The lower court ascertained that because the previous owner has sixty (60) judgments against them, that their "statements" regarding contractual agreements with us are invalid or "questionable". The previous owners were not victims of sub-prime mortgages, but rather, had owned and operated a successful retail shop at Broadway at the Beach, for nearly ten (10) years. This business was approximately 75% of their annual income. Unwittingly, the previous owners signed agreements with vendors which placed them personally responsible for any defaults on loans and debts. When the economy began to fail, so did their business, and within a matter of months, their business was gone, 75% of their income was gone, but the debts remained. Now, they do have several judgments against them, however, in FACT, the Federal and State laws have NO provisions which state that if a landlord has judgments against them that their contracts with tenants are invalid. There is NOTHING in any of the State or Federal Landlord/Tenant laws which exclude people with judgments from failed, lawful businesses from being landlords.

5) According to the judgment from the lower court, because both owners of the home and both tenants, husband and wife, did not sign the lease. SECTION 27-40-320. Effect of unsigned or undelivered rental agreement. (a) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. (b) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. HISTORY: 1986 Act No. 336, Section 1. Since the landlords acknowledge receipt of payment, this statement by the lower court is clearly NOT substantiated.

- 6) According to State law, SUBARTICLE IV. GENERAL PROVISIONS SECTION 27-40-310. Terms and conditions of rental agreement. (a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties. The fact that the landlords and we agreed that the rent would be paid one (1) year in advance is NOT a violation of these rules, it was written directly into the lease to which the lower court has made reference.
- 7) To the lower court's statement that because the party who was not the signatory issued the "email receipt," (statement) confirming the terms of the lease, and payment in full, that the statement was "questionable". The statement from the previous owner is electronically time stamped by a reputable, international organization making it an authentic and relevant document under the Uniform Electronic Transactions Act (UETA) which states UETA equates electronic signatures to manual signatures. It requires that the signer execute or adopt a sound, symbol, or process with the intent to sign the record. Additionally, UETA requires that the electronic signature be linked or logically associated with the electronic record being signed. Since Coleen Campi is the registered owner email account from which the statement was sent, received the rent as an agent for her signatory spouse, and subsequently provided a "statement" affirming the terms of the lease, this document is clearly acceptable by legal standards. Additionally, UETA makes clear that anything electronic would suffice, including voice recordings, Web browser clicks, and other symbols or keystrokes to indicate intent. Under UETA, any type of digital information could be considered to be either a signature or a record, with the totality of all the circumstantial evidence – both digital and real world – both relevant and necessary. Therefore, the "email" is relevant.

8) "SECTION 27-40-420. Disclosure. (c) A person authorized to enter in a rental agreement on behalf of a landlord who fails to comply with subsection (a) with regard to a rental agreement entered into on behalf of the landlord becomes an agent of the landlord for purposes of that rental agreement for: (1) service of process and receiving and receipting for notices and demands; (2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or **making available for the performance of the obligations all rent collected from the premises and retained by the person on behalf of the landlord. (Emphasis added)** Therefore, Mrs. Campi, although not the signatory of the lease, but as a co-owner with equal interests AND authorized by Mr. Campi, did collect the rent for one year in full, and subsequently, at the behest of parties outside the original agreement, issued a statement which confirmed the terms of the lease and the receipt of the payment.

9) The court's decision reflects an argument put forth by the Plaintiff regarding a hand written stipulation in the lease agreement. Under that stipulation, either the tenant or the landlord would be able to give thirty (30) days' notice as long as the landlord returned whatever pre-paid rent monies remained. The Plaintiff requested and was granted enforcement of this stipulation without imparting the repayment of the unused pre-paid rent. Under SECTION 27-40-230.

Unconscionability. ... (section (1) Omitted for lack of relevance) (2) any provision of a rental agreement was unconscionable when made, the court may enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result; or... (Section (3) omitted for lack of relevance) (b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination. HISTORY: 1986 Act No. 336, Section 1. How then, can the

stipulation be split to an unconscionable end for the tenant? The lower court in the interest of justice and applying State laws, should have eliminated the stipulation altogether. The subsequent owner was aware of the risks of purchasing a home at foreclosure auction, where the tenants entered into a "good faith" transaction. The stipulation was added to the lease to PROTECT our investment of \$10,200.00. It was NOT intended to be split, causing an unconscionable end for ANYONE, especially us. This pre-paid rent was the sum total of our savings, using the stipulation to evict without compensation is in fact unconscionable and in violation of the State law because 1.) the subsequent owner assumes all of the liabilities, and 2.) it causes us to be homeless without means of acquiring safe, clean reasonable alternate housing.

10) The terms of the payment were written directly into the lease which was provided to respondent's counsel, the previous owner even obliged respondent counsel's unusual request and supplied a statement plainly itemizing the transaction and its outcome as a manner of "receipt" as proof of the transaction. A transaction which neither contractual party involved has ever disputed or denied. By standard of the law, as long as the original landlord, who in agreement with us on the terms of the lease, acknowledges the legitimacy of the lease and in doing so, imparts the understanding that we did in fact pay as agreed in the terms of the lease, nothing more should be required of us but to complete the term of the lease.

11) Additionally, there was NO action taken by the previous landlords to indicate that we had not paid the rent. The lease was signed November 1, 2011 and the deed on the sale of the home wasn't recorded until January 31, 2012. We weren't served with notice until March 27, 2012. Yet, in all of that time, the previous landlords never once filed a complaint that they had not received payment nor do they make that claim now.

12) With every reasonable expectation based on the plain standards set forth in the Federal and State laws, we brought forth substantive, valid and FACTUAL evidence. These documents were presented with the expectation, given the plain standard of the Federal and State laws, that the Honorable Master of Equity, Judge Stroman, be compelled to see justice for us under these legal standards. There is no other standard under the law which requires MORE evidence than what is reasonable, logical and immediately available.

13) What other reasonable item could be produced based on the original transaction that is still within the norm of a standard rental agreement for one year? Should all potential tenants be made to record one (1) year leases with the town or county? Should we have insisted on seeking a notary for sworn statements/ affidavits from the landlords or witnesses at the time of signing the lease? Should we be required to do background checks and credit checks? Is this the age we have come to? Under NO rental or landlord-tenant law is there required anything more than what we provided.

14) Furthermore, No non-contractual party should have influence to invalidate that which the previous owners and we agreed to in an arm's-length transaction which is NOT in violation of ANY State or Federal laws.

15) What it comes down to is that the subsequent owner doesn't want to assume the legal liabilities and responsibilities that come with purchasing a home at a foreclosure auction, which is not a license to abate the law. The subsequent buyer KNOWS they are legally liable, AND even in a "good faith" sale, under SECTION 27-40-450. Limitation of liability. (a) **Unless otherwise agreed, a landlord who conveys the premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of**

liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for security recoverable by the tenant under Section 27-40-410, unless the security deposit is transferred from the seller to the purchaser and the tenant is notified in writing a reasonable time after the transaction in which case the purchaser is liable under Section 27-40-410. (Emphasis added)

The lower court continues to address the fact that we, the tenants, have not attempted to recover any of the pre-paid rent from the previous owners; first, we are in the home so taking money would be unethical, but also, and we understand and respect the laws of liability in actions such as these. Under both the State and Federal laws, it is the responsibility of the subsequent owner to recover any deposits or pre-paid rent from the previous owners. We have met all of our contractual obligations. The transfer of ownership was unknown to us and not of our control.

16) SECTION 27-40-620. Failure to deliver possession. (a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-430, rent abates until possession is delivered and the tenant may: (1) terminate the rental agreement upon at least five days' written notice to the landlord *and upon termination the landlord shall return all prepaid rent and security; (Emphasis added)* or (2) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the actual damages sustained by him *(Emphasis added)*.... (section (a) omitted for lack of relevance) (b) *If a person's failure to deliver possession is wilful and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or twice the actual damages sustained, whichever is greater, and reasonable attorney's fees. (Emphasis added)* HISTORY: 1986 Act No. 336, Section 1. Since the lower court has ordered us to vacate the property in 30 days, and we have a legal and binding lease for one (1) year, which conveyed to the new owners at

the time of purchase, and since, should the lower courts order stand, we will then lose FIVE (5) month's pre-paid rent equaling \$4,250 and \$850 in security deposit, we intend to impose Section 27-40-620 for the greater amount of twice the actual damages plus, fees for all of the time and effort imparted in preparing the legal documents and legal arguments for court AND filing fees for motions and appeal, at no less the \$50.00/hour and no less than 288 hours totaling \$14,400 and \$175 in filing fees plus damages for the cost of storage space for our belongings totaling \$240.00/mo. Totaling \$39,830.00 at the imposed rate of 2x's the damages.

17) Alternatively, and preferably, we beg of this Honorable Court that one of two more reasonable remedies be granted:

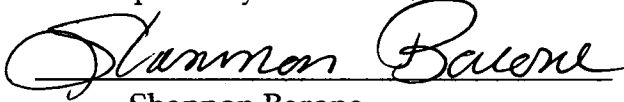
- 1) This stay of execution pending appeal be granted based on the merits of our arguments, evidence, the laws which support them and the irreparable hardship of being homeless without means to procure safe, clean, reasonable housing.
- 2) At minimum, under the "Protecting Tenants in Foreclosure Act" Pub. L. No. 111-22 subsections 701 - 704 (2009), Sec. 702. Subsection B which clearly states that if a tenant does not have a lease, they are still entitled to NINETY DAYS (90) notice prior to the action of eviction. We request that 90 days should the court not grant the stay

18) We beg to compel this Honorable Court to recognize the urgent need to have this motion granted as any other response would render results which negate the immediate need of an appeal. If we are evicted without an opportunity to appeal while in the home, it is unlikely that we would return to the home in the event that the appeal is granted. At minimum, by protections of the Federal law, we

should be permitted to remain in the home until 90 days from the court's order to evict. Otherwise, we will be homeless without means to acquire new housing.

This the 14th day of May, 2012

Respectfully submitted,



Shannon Barone
1610 D Church Street #321
Conway, South Carolina 29526
Pro se - Appellant



Joseph Barone
1610 D Church Street #321
Conway, SC 29526
Pro se - Appellant

cc: Robin Ciaccio
306 Main Street
Conway, SC 29526
Attorney for Respondent