

**- AFFIDAVIT ATTACHED -
MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND MOTION
TO QUASH WRIT OF EJECTMENT
ON ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case #2016-002177

RECEIVED

FEB 16 2017

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge
Case No. 2016-CP-32-1968

SC Court of Appeals

Bob Rice Realty, Inc., Respondent,
v.
Gerald J. Nagy, Appellant.

**MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER
AND MOTION TO QUASH WRIT OF EJECTMENT
ON ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854**

Come now the Defendant, Gerald J. Nagy, pro se, in accordance with Rule 65, SCRCPC and hereby presents the following:

I. FACTS

1. On April 04, 2016, Respondent served Appellant with a 30 day notice to vacate, and on May 18, 2016, filed for a Writ of Ejectment.
2. On May 31, 2016, Appellant filed his Answer and Counterclaim, asserting that there was an automatic renewal clause within the subject lease, and neither party had terminated the lease according the lease terms and conditions.
3. On June 02, 2016, a hearing was held in the Cayce - West Columbia Magistrates Court wherein the Honorable Judge Albert J. Dooley found in favor of Respondent, ruling there was no operable lease in effect, and denying all counterclaims.
4. Also on June 02, 2016, Appellant filed a Notice Of Appeal with Lexington County Court Of Common Pleas.

5. On September 20, 2016, the appeal was heard and the Honorable Judge Donald B. Hocker found for the Appellant, ruling in part: "It is ordered that the Magistrates Ruling is *reversed* to the extent of allowing the Appellant to remain on the property until December 31, 2016 *in accordance with the subject lease* (emphasis added)." Judge Hocker also awarded Appellant \$150.00 in costs. (Copy of ruling attached as Exhibit A)
6. On October 24, 2016, Appellant filed a Notice of Appeal with the South Carolina Court Of Appeals seeking an adjustment of the damage award.
7. Although almost finished with transitioning to a new residence, Appellant is still currently residing at the subject property and realizes he is in a "hold over" position. Appellant still has some personal property in addition to business equipment and records that still need to be moved. As such, Appellant has remitted to Respondent payment for both January and February rents.
8. On February 03, 2017, Respondents Attorney wrote a letter to Judge Hocker requesting the Judge clarify as to whether or not the Magistrate could now issue an order to vacate (Writ Of Ejectment) or if a new case must be filed. (Copy attached as Exhibit B)
9. On February 07, 2017, Regan A. Snow, Administrative Assistant for Judge Hocker responded, with Judge Hocker essentially making no ruling on the matter. (Copy attached as Exhibit C)
10. On February 15, 2017, with no advance notice to the Appellant, Lexington County Sherriffs Deputy McManus served Appellant with a Writ Of Ejectment referencing the Magistrate case originally heard on June 02, 2016, signed by Judge Dooley, Cayce-West Columbia Magistrate. (Copy attached as Exhibit D)

II. ARGUMENT

- 1) In finding for the Appellant in the above captioned case, Judge Hocker reversed the ruling of the Magistrates Court. Clearly, Judge Hocker agreed with the Appellants position that an operable lease was in effect, and that the term of said lease would expire on December 31, 2016. By implication, there was an operable lease in effect until that date. In doing so, the original Magistrates case was closed and is now a previous matter insofar as the Writ Of Ejectment is concerned. If Bob Rice Realty, Inc. wishes to obtain a Writ Of Ejectment it should be handled as a new matter. In initially

deferring to Judge Hocker for an opinion, it is also clear that the Magistrate is not certain of his standing, and at a minimum should have heard arguments from both parties.

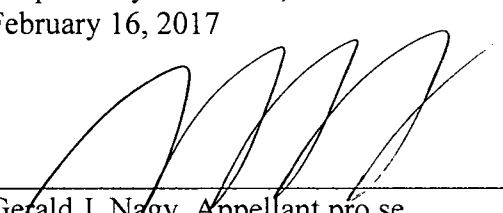
- 2) As the case is still under appeal, based on South Carolina Statutes §27-40-800(f)(1) the Magistrate is enjoined from taking any actions in the original case until such time as the Court Of Appeals issues it's ruling. As Judge Hocker neither ordered payment of rent "under bond" or issued a stay of execution of the Writ Of Ejectment, it is clear that this was not necessary based on his findings. Again, an operable lease was in effect, and again, if Bob Rice Realty, Inc. wishes to obtain a Writ Of Ejectment it should be handled as a new matter.

III. PRAYER

The Appellant respectfully requests this honorable Court grant the following relief:

- 1) Issue a Temporary Restraining Order as allowed under Rule 65(b) SCRPC, staying the enforcement of the Writ Of Ejectment until such time as a hearing on the merits of the above arguments may be heard.
- 2) Allow that the February rent submitted by Appellant to Respondent be of sufficient Security as required by Rule 65(c) SCRPC. In the event a hearing on this matter cannot be held before March 01, 2017, the Appellant post additional Security with this Court in the amount of \$900, representing the current monthly rental amount.

Respectfully submitted,
February 16, 2017



Gerald J. Nagy, Appellant pro se

RECEIVED

FEB 16 2017

SC Court of Appeals

EXHIBIT A

State of South Carolina)

FILED

Court of General Sessions

County of Lexington)

2016 SEP 21

~~A 8 01~~

Court of Common Pleas

Gerald J. Nagy

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

vs. Appellant)

Bench Order

Bob Rice Realty)

Case#: 2016-CP-32-
1968

Respondent)

THIS IS A MAGISTRATE'S APPEAL.
THE APPELLANT APPEARED PRO SE.
THE RESPONDENT DID NOT APPEAR
THROUGH REPRESENTATIVE OR COUNSEL.

IT IS ORDERED THAT THE
MAGISTRATE'S RULING IS REVERSED
TO THE EXTENT OF ALLOWING THE
APPELLANT TO REMAIN ON THE
PROPERTY UNTIL DECEMBER 31, 2016
IN ACCORDANCE WITH THE SUBJECT
LEASE. JUDGMENT FOR COURT
COSTS OF \$150 IS ALLOWED IN FAVOR
OF THE APPELLANT AGAINST THE
RESPONDENT.

So Ordered

Lexington SC
9-20-16

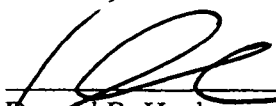

Donald B. Hocker
Circuit Court Judge

EXHIBIT B

HOLLER, GARNER, CORBETT, GILCHRIST, HAYES & MASON

J. Ed Holler | Everett Hope Garner | James J. Corbett* | James W. Gilchrist Jr. | Dean Hayes | Cynthia K. Mason**

Of Counsel:
Stanley G. Freeman
Steven D. Dennis*

1777 Bull Street at Laurel
Columbia, South Carolina 29201
Phone (803) 765-2968 / Fax (803) 252-8290
www.hollergarner.com

Reply To:
Post Office Box 11006
Columbia, S.C. 29211

* Certified Circuit Court Mediator
** Also licensed in North Carolina

Anthony R. Plante (1966-2016)

February 3, 2017

The Honorable Donald B. Hocker
P.O. Box 972
Laurens, SC 29360

Re: Bob Rice Realty v. Gerald J. Nagy

Dear Judge Hocker:

I have been retained to represent Bob Rice Realty. I did not represent them in the underlying case or the appeal. I am writing to request clarification about the attached order issued as a result of the tenant's appeal of an order of eviction. I have been instructed by Judge Dooley to seek guidance from you as to whether he can now issue an order to vacate based on your order, or if a new case must be filed.

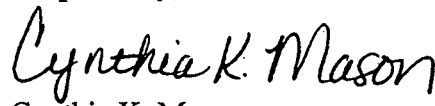
The facts and procedural posture of the case are as follows:

Mr. Nagy signed a lease ending in Dec. 2015. He was offered a renewal for 2016, but the offer was rescinded. My client never signed the new lease, and Mr. Nagy never returned the signed lease. Additionally, Mr. Nagy wouldn't let the landlord into the apartment, wouldn't let contractors in to make repairs, changed the locks, etc. The Honorable Albert J. Dooley, III, Lexington County Magistrate, evicted. Mr. Nagy appealed claiming the renewal offer was signed and accepted by him, even though it never signed by the landlord. Your order reversed the eviction order "to the extent of allowing the appellant to remain in the property until December 31, 2016."

To date, Mr. Nagy has not vacated the premises. My client needs to get him out quickly because they have a purchaser who won't close while the tenant remains in the property.

Please let me know if you need any other information or documents to make your decision. Thanks so much for your consideration.

Respectfully,


Cynthia K. Mason

cc: Gerald J. Nagy
300 Timber Ridge Rd.
West Columbia, SC 29169

Albert J. Dooley, III
Lexington Magistrate
650 Knox Abbott Drive
Cayce, SC 29033

EXHIBIT C



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Donald B. Hocker
Judge

Laurens County Courthouse
100 Hillcrest Square, Suite Q
Post Office Box 972
Laurens, SC 29360
Phone: (864) 984-2076
Fax: (864) 984-2333
dhockerj@sccourts.org

February 7, 2017

Ms. Cynthia K. Mason
Attorney at Law
Post Office Box 11006
Columbia, South Carolina 29211

Re: Bob Rice Realty vs. Gerald Nagy

Dear Ms. Mason:

Judge Hocker has requested that I respond to your letter of February 3, 2017 regarding the above case. Judge Hocker does not believe he has any jurisdiction to make any additional rulings in this case. However, he does expect that all persons adhere to the provisions of his prior Order. He trusts that you, on behalf of your client, and Judge Dooley will take the appropriate action in this matter. Judge Hocker is sorry that he cannot be more accommodating pursuant to your request.

Cordially,

A handwritten signature in cursive script that reads "Regan A. Snow".

Regan A. Snow,
Administrative Assistant for
Donald B. Hocker, Circuit Court Judge

DBH/ras

cc: Gerald J. Nagy
300 Timber Ridge Road
West Columbia, SC 29169

Albert J. Dooley, III
Lexington Magistrate
650 Knox Abbott Drive
Cayce, SC 29033

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
)
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2016CV321060854
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Bob Rice Realty Inc
2201 Marshall St

Columbia, SC 29203
(803) 779-2600

PLAINTIFF(S)

Vs
Gerald Nagy
300 Timber Ridge Dr

West Columbia, SC 29169

DEFENDANT(S)

BE OUT By: 2-16-2017 @ 2:50pm

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the 14th day of February, 2017, you are hereby Ordered to proceed to the premises located at **300 Timber Ridge Dr West Columbia, SC 29169.**

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

February 14, 2017

Cayce-West Columbia Magistrate Court

McMANUS

, being duly sworn state that:

- I personally served a copy of this Writ on _____, an occupant of the rental unit
- On _____ 20____, at _____ the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.
- On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- Informed by Plaintiff that case is settled.

Date: 2-15, 2017 @ 1450

JP McManus
Sheriff/Deputy Sheriff/Constable

- AFFIDAVIT OF APPELLANT -

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case #2016-002177

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge
Case No. 2016-CP-32-1968

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Gerald J. Nagy, Appellant.

- AFFIDAVIT OF APPELLANT -

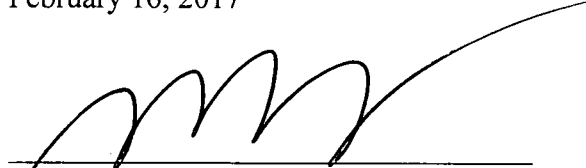
Personally appeared before me, who being duly sworn, deposes and states:

1. I am over the age of eighteen and legally qualified to testify under oath.
2. At 2:50 PM on February 15, 2017, I was served a Writ Of Ejectment signed by Judge Albert J. Dooley, which clearly states I am ordered to vacate, within 24 hours, the premises located at 300 Timber Ridge Drive / West Columbia, South Carolina 29169, located in Lexington County. The Writ additionally states that beginning at 2:50 PM on February 16, 2017, my personal property may be deposited beside the public street or roadway.
3. It is my belief this Writ Of Ejectment has been improperly issued.
4. To file and serve an appeal of the Writ Of Ejectment would take a few days at a minimum, by which time my property may already have been placed at curbside causing me irreparable harm and financial loss. In addition, I have a heart condition (coronary blockage) that makes it physically impossible for me to move my property within the allotted 24 hours without the risk of a severe heart attack or even death.
5. Because of the reasons stated above, I request that a Temporary Restraining Order be

issued without Notice as allowed under Rule 65(b) SCRCP.

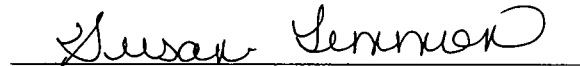
FURTHER AFFIANT SAYETH NOT!

February 16, 2017



Gerald J. Nagy, Appellant pro se

Personally appeared before me, sworn to, and subscribed, on February 16, 2017.



Susan Semmes
Notary Public For South Carolina

My Commission Expires: 1 / 29 / 2023