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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

FEB 16 2017

Hon. Robin B. Stilwell, Circuit Court Judge

SC Court of Appeals

Case No. 2016-CP-10-2230

The Housing Authority of the  
City of Charleston,

Respondent,

v.

Katrina Brown,

Appellant.

MOTION TO REMAND

Appellant hereby respectfully requests that this Honorable Court hold the instant appeal in abeyance and remand this action for further proceedings before Magistrate Judge Jennifer B. McCoy. This motion is made upon the following grounds:

This appeal arises out of an action filed by Respondent on March 1, 2016 seeking to eject Appellant from her apartment in a federally-subsidized public housing complex. This matter was first heard by Magistrate Judge Jennifer B. McCoy on March 16, 2016. Judge McCoy found in favor of Appellant and denied Respondent's application for ejectment. See Exhibit A attached hereto. Respondent appealed to the Court of Common Pleas for Charleston County where

the matter was heard by Circuit Judge Robin B. Stilwell. Judge Stilwell, by Order dated January 11, 2017, remanded this action to Judge McCoy with directions to enter a ruling consistent with *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002), with the option for Judge McCoy to conduct an additional evidentiary hearing or rely on the previous record. See Exhibit B attached hereto. Judge Stilwell noted in his Order that Judge McCoy referenced “distinguishable facts” between the instant case and *Rucker* in her return, but failed to articulate what those facts were.

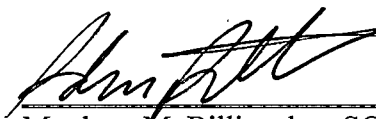
By Order dated January 30, 2017, Judge McCoy entered an Order reversing her previous decision in favor of Appellant and granting Respondent’s application for ejectment. See Exhibit C attached hereto. By letter dated February 8, 2017, Appellant requested that Judge McCoy vacate her January 30<sup>th</sup> Order and allow the parties to submit briefs and/or additional evidence. See Exhibit D attached hereto. By Order dated February 10, 2017, Judge McCoy vacated her January 30<sup>th</sup> Order and granted Appellant’s request that the parties be allowed to submit briefs. See Exhibit E attached hereto.

While Appellant believes that Judge Stilwell’s January 11<sup>th</sup> Order remanding this action to Judge McCoy was interlocutory in nature, certain language in the Order could be argued to make findings which Appellant believes constitute errors of law. Thus, out of an abundance of caution, Appellant has perfected her appeal to this Court in an effort to preserve those issues. However, Appellant

believes that remanding this action for further proceedings before Judge McCoy consistent with her February 10<sup>th</sup> Order is proper for two reasons. First, doing so would enable Judge McCoy to make findings as to whether the instant case and *Rucker* are distinguishable so that the record is made clear for any subsequent appeal. Second, Judge McCoy's ruling may resolve this matter entirely. South Carolina appellate courts have granted motions to remand for a variety of reasons similar to those raised here. E.g. *Wicker v. Anderson County Council*, 289 S.C. 479 (1986) (remanding to lower court for consideration of post-trial motions); *Diamond Jewelers of Spartanburg, Inc. c. Naegele Outdoor Advertising Co.*, 290 S.C. 260 (1985) (remanding for consideration of post-trial motions); *Clements v. Young*, 310 S.C. 73 (S.C. Ct. App., 1992) (noting that the South Carolina Supreme Court had previously remanded for reconstruction of as much of the record as necessary for appeal).

THEREFORE, Appellant respectfully requests that this appeal be held in abeyance and the matter remanded to Judge McCoy for further proceedings consistent with her February 10, 2017 Order.

WE SO MOVE:

 Feb 16, 2017

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Adam Protheroe, SCB No. 78442  
South Carolina Legal Services  
P.O. Box 1646  
Orangeburg, SC 29116  
(803) 533-0116  
Attorneys for Appellant

Other Counsel of Record:  
Theodore Parker, III, Esq.  
Parker Nelson & Associates, CHTD.  
211 King Street, Suite 107  
Charleston, SC 29401



16-CP-10-2230  
2016CV1010700386  
MAGISTRATE CASE NUMBER

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )

RETURN OF THE MAGISTRATE

CITY OF CHARLESTON HOUSING  
AUTHORITY

VS

KATRINA BROWN  
DEFENDANT

FILED  
2016 MAY 20 AM 11:26  
JULIE J. ARMSTRONG  
CLERK OF COURT

Comes now, Jennifer B. McCoy, magistrate in and for Charleston County, South Carolina, and hereby provides the following Return for the appeal of the above-referenced case in Circuit Court:

1. On March 1, 2016, Plaintiff, City of Charleston Housing Authority ("Housing") filed an Application for Ejectment against Defendant Katrina Brown alleging violation of the terms or conditions of the lease.
2. Defendant was personally served with a copy of the Ejectment on March 4, 2016.
3. Defendant requested a hearing to show cause why she should not be ejected from the premises at 2214-A Sunnyside Drive, Charleston, SC 29403.
4. A hearing took place on March 16, 2016, at 10:30 a.m. The following parties appeared:
  - a. Stephen D. Wright, Director of Security for the Charleston Housing Authority
  - b. Marlin C. Burwell, with the Charleston Housing Authority
  - c. Detective Jason Jarrell, Officer with the Charleston City Police Department
  - d. Katrina Brown, Defendant
  - e. Matthew Billingsley, Attorney for Defendant
5. The City of Charleston Housing Authority most recently entered into a lease agreement ("Agreement") with Defendant Katrina Brown on December 16, 2015. This Agreement provided for Defendant to occupy 2214-A Sunnyside Drive, Charleston, SC 29403 along with three other

occupants: Reshauna Brown, Anthony Cobbs (correctly "Cobb"), and Janique Richardson. (See Agreement, Plaintiff's Exhibit 1.)

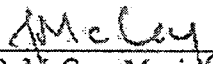
6. Plaintiffs sought ejectment of the Defendant based on Sections 5C, 5(d), 5E, 5(f), 16(n), and 16(u), which prohibit "unlawful" or "criminal" conduct by residents or household members.
7. During the hearing, the Housing Authority called Detective Jason Jarrell of the City of Charleston Police Department ("CPD") as a witness. Detective Jarrell testified that the Defendant's son, Anthony Cobb was arrested on January 13, 2016, for unlawful carrying of a pistol. Because he fit a physical description of a perpetrator of an attempted armed robbery which had taken place in the area on January 11<sup>th</sup>, two days earlier, he was questioned as to that incident as well. Neither criminal event took place on the grounds of the housing authority. According to Detective Jarrell, Mr. Cobb gave a post-Miranda confession to the attempted armed robbery after being placed under arrest for the unlawful carrying charge. However, during the first interview of Mr. Cobb, he would not "give up" the name of the second perpetrator involved in the attempted armed robbery. According to Detective Jarrell, CPD then contacted his mother, Defendant Brown, who assured the Detective she would make her son tell them the name of the second perpetrator. However, during a second interview of Mr. Cobb, he still would not give CPD a name. Detective Jarrell stated that at that point, Defendant Brown advised her son not to speak to the police anymore.
8. The Defendant, Katrina Brown, then testified that all the allegations had occurred off the premises of the Housing Authority and that her son, Mr. Cobb, was still held in the Charleston County Jail on bond for the charged offenses (at the time of the hearing). She also testified that she had no knowledge of the alleged incidents until her son was arrested. She further testified that, if he is able to post his bond, their plan is for him to stay at her mother's (his grandmother's) house and to no longer reside with her and her other young child at the Housing Authority dwelling.
9. No other witnesses testified for the Plaintiff or Defendant.
10. Upon review of the testimony presented at court, along with applicable South Carolina and United States law, the magistrate issued an Order finding that Defendant Katrina Brown was not in

substantial breach of her lease with the Housing Authority. Therefore, the magistrate did not find for an eviction against Ms. Brown. The magistrate's order did state, however, that any actions within the policies of the Housing Authority to require removal of her son, Mr. Cobb, from the lease as a household member, would be appropriate. (See magistrate's Order, dated March 31<sup>st</sup>, 2016.)

As always, this magistrate is happy to assist the circuit court with any further information as may be needed.

This the 19<sup>th</sup> day of May, 2016.

Respectfully submitted,

  
\_\_\_\_\_  
Jennifer B. McCoy, Magistrate Judge  
County of Charleston

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
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The Housing Authority of the City of )  
Charleston, )  
 )  
Plaintiff-Appellant, )  
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vs. )  
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Katrina Brown, )  
 )  
Defendant-Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT



**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND**

Civil Action No.: 2016-CP-10-2230

This matter comes before the Court pursuant to The Housing Authority of the City of Charleston's appeal of the Magistrate Court's decision. Both parties to this matter were present in court with their respective counsel. This Court has had the opportunity to review the submissions of the parties, the return of the Magistrate, and to consider the arguments of counsel.

**SCOPE OF REVIEW**

The standard which the Circuit Court applies to an appeal from a Summary Court follows:

Upon hearing the appeal, the Appellate Court shall give judgement according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all of the parties and for errors of law or fact.

Bowers v. Thomas, 373 S.C. 240, 244, 644 S.E. 2d 751, 753 (S.C. Ct. App. 2007).

Section 18-7-170 of The South Carolina Code of Laws, 1976, as amended, provides that on appeal from Magistrate's Court, the Circuit Court may make its own findings of fact. Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E. 2d 605, 608 (S.C. Ct. App. 2001).

A handwritten signature in black ink, appearing to be "A. J. ?".

## FACTS

The Lease Agreement governing this matter was signed on December 16, 2015, by Katrina Brown for 2214-A Sunnyside Drive. Listed on the lease are Katrina Brown, Janique Richardson, and Anthony Cobbs. A subsequent lease was signed by Mrs. Brown on February 1, 2016, listing the same three individuals.

A Charleston Police Department incident report for trespass was generated on January 14, 2016. Officers responded to 1 Cool Blow Street in reference to an armed robbery. Anthony Cobb, Mrs. Brown's minor son, a resident at the Sunnyside Drive location, was later arrested and charged with Unlawful Carrying of a Pistol and admitted to the Attempted Armed Robbery in conjunction with the incident at 1 Cool Blow. As Mr. Cobb is a resident of the Sunnyside Drive apartment, this is a breach of the Dwelling Lease Agreement and Mrs. Brown was rightfully subject to eviction.

The details of the Magistrate level hearing are outlined in the Return prepared by the Honorable Jennifer McCoy, which is already a part of the Court's file. This includes testimony by Detective Jarrell that Mr. Cobb confessed to the attempted armed robbery and testimony from Mrs. Brown that Mr. Cobb was in fact a resident on the premises, although he was being held at the Charleston County Detention Center at the time of the hearing. In spite of Mrs. Brown's testimony that Mr. Cobb would not be residing with her, she listed him as a resident on the February 1 lease, which was executed two weeks after the armed robbery incident.

## FINDINGS

The controlling case in this matter is *The Department of Housing and Urban Development vs. Rucker*. 535 U.S. 125 (2002). In *Rucker*, the Supreme Court found that a public housing

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agency has the authority to evict a tenant under similar circumstances. The Supreme Court conducted a fairly exhaustive review of the relevant statute and determined, notwithstanding potential harsh results on tenants, the plain language of the statute vested a public housing agency with the authority to evict a tenant under circumstances similar to the case at bar. This Court is certainly cognizant of the arguably inequitable and unfortunate results of a strict interpretation of the statute. The undersigned, on a strictly personal level, finds it unsettling that a hard-working mother, entirely innocent, could be evicted from her residence based upon the immature and asinine transgressions of a household resident. However, public policy, as advanced by the Legislature and the Supreme Court, recognizes that drug activity and violent crime is a plague on public housing communities. Therefore, this legislation was enacted to potentially curb this illegal activity. Whether or not the subject mechanism is effective in that regard is a debate for another date and time. Quite simply, it is a tool of public policy enacted by the Legislature and found acceptable by the Supreme Court.

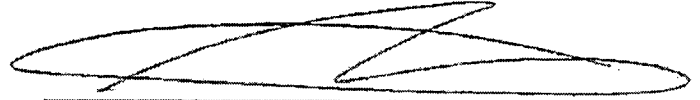
After a review of the record, this Court cannot find how the instant case is substantively dissimilar from the factual pattern in Rucker. The Order of the Magistrate references "distinguishable facts" from Rucker but fails to articulate what those distinguishing characteristics may be.

THEREFORE, the case is remanded to the Summary Court for a ruling consistent with the Supreme Court decision in *Department of Housing and Urban Development vs. Rucker*. Id. The Magistrate may conduct an additional evidentiary hearing or rely upon the previous record.

RCS m

The Housing Authority of the City of Charleston vs. Katrina Brown: 2016-CP-10-2230

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Robin B. Stilwell', written over a horizontal line.

ROBIN B. STILWELL

January 11, 2017  
Greenville, South Carolina

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STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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2016CV1010700386  
MAGISTRATE CASE NUMBER



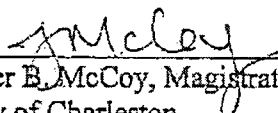
ORDER UPON REMAND

CITY OF CHARLESTON HOUSING )  
AUTHORITY )  
  
VS )  
  
KATRINA BROWN )  
DEFENDANT )

The magistrate court is in receipt of the Circuit Court's Order dated January 11, 2017, by the Honorable Robin B. Stilwell, remanding the above-referenced matter to the lower court for a ruling consistent with the United States Supreme Court's decision in Department of Housing & Urban Development v. Rucker, 535 U.S. 125, 122 S. Ct. 1230, (2002). Based on the higher court's analysis of that decision, this court now finds for an eviction. Plaintiff may proceed with filing Second Papers.

This the 30 day of January, 2017.

Respectfully submitted,

  
\_\_\_\_\_  
Jennifer B. McCoy, Magistrate Judge  
County of Charleston



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February 8, 2017

Via First Class Mail and Fax to (843) 720-7133

Hon. Jennifer B. McCoy  
995 Morrison Drive  
Charleston, SC 29403

**RE: Housing Authority of the City of Charleston v. Katrina Brown (2016CV1010700386)  
Our File No. 16-0635990**

Dear Judge McCoy:

I hope this letter finds you well. We are writing to request that your order dated January 30, 2017 finding for Plaintiff be vacated and the parties given an opportunity to file briefs and, if necessary, for a supplemental evidentiary hearing before you reach a final decision in this matter. We feel strongly that your initial decision in this matter was in line with *Rucker* and that the Circuit Court's order does not mandate reversal of your decision. We would appreciate the opportunity to present authority and additional evidence, if needed, to support our position.

We acknowledge that the Circuit Court's order remanding this case clearly permitted you to issue a decision without further hearing. However, the reversal of your decision without further hearing or, at least, an opportunity to brief the issues has placed Ms. Brown in a very difficult position when it comes to her right to further appeal. We believe that you were correct to distinguish the instant case from *Rucker* and we believe that evidence to support that distinction exists in the record. However, as the Circuit Court pointed out, those facts may not have been clearly articulated. If we are forced to pursue an appeal on the record as it exists, something we intend to do if your January 30<sup>th</sup> order stands, that lack of clarity will likely continue to be an issue. Ms. Brown's prospects for keeping her housing may suffer not because the facts or the law are against her, but because the record supporting your initial conclusion is inadequate.

Therefore, we respectfully request that you vacate your January 30, 2017 order in this case and provide the parties with an opportunity to brief their positions and for a further evidentiary hearing if one is needed to address distinctions between this case and *Rucker*. We would need to serve a notice of appeal of the Circuit Court's order by this Friday, February 10<sup>th</sup>, so unfortunately time is of the essence. One or both of us can be available for a hearing or conference call on this request if one is needed.



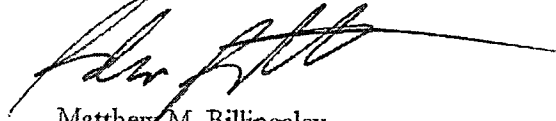
South Carolina  
**BAR FOUNDATION**  
Lawyer Building Justice



This issue is one of great import to Ms. Brown and other public housing tenants throughout the State as we expect it is to the Housing Authority as well. Thank you in advance for your time and consideration.

With kind regards, we are

Sincerely,



Matthew M. Billingsley  
Adam Protheroe  
Attorneys for Katrina Brown

AP/

CC: Theodore Parker, III, Esq.  
Parker Nelson & Associates, CHTD.  
211 King Street, Suite 107  
Charleston, SC 29401  
Via fax to (843) 727-2599

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )

2016CV1010700386  
MAGISTRATE CASE NUMBER



AMENDED ORDER

CITY OF CHARLESTON HOUSING )  
AUTHORITY )

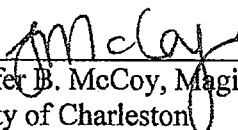
VS )

KATRINA BROWN )  
DEFENDANT )

This court is in receipt of Defendant's letter requesting a Motion to Alter/Amend/Clarify its Judgment entered by Order of this court on January 30, 2017. Pursuant to Rule 19 of the *South Carolina Magistrates Court Rules*, the January 30<sup>th</sup> Order is hereby VACATED allowing both Plaintiff and Defendant to brief this court on the issues relevant to either side, specifically limited to Circuit Court's Order regarding "distinguishable facts" between the *Dept. of Housing and Urban Development vs. Rucker* case. **Briefs must be received in this court no later than February 24<sup>th</sup>, 2017.** A final judgment on remand by this court will be issued thereafter.

This the 10<sup>th</sup> day of February, 2017.

Respectfully submitted,

  
\_\_\_\_\_  
Jennifer B. McCoy, Magistrate Judge  
County of Charleston

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Hon. Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-10-2230

The Housing Authority of the City of Charleston

Respondent

v.

Katrina Brown

Appellant

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Motion to Remand on The Housing Authority of the City of Charleston by depositing a copy of it in the United States Mail, postage prepaid, on February 16, 2017, addressed to its attorney of record, Theodore Parker, III., Esq.

February 16, 2017

SOUTH CAROLINA LEGAL SERVICES



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Attorneys for Appellant

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SC Court of Appeals