

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

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

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**RECEIVED**  
FEB 21 2017  
SC Court of Appeals

Bob Rice Realty, Inc., Respondent,

v.

Gerald J. Nagy, Appellant.

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**MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION TO QUASH WRIT  
OF EJECTMENT ON ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854**

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Cynthia K. Mason  
Holler, Garner, Corbett, Gilchrist,  
Hayes & Mason  
1777 Bull St.  
Columbia, SC 29201  
Phone (803) 765-2968  
Fax (803) 520-0233  
Attorney for the Respondent

February 21, 2017  
Columbia, SC

## FACTS

1. Appellant apparently filed his motion on February 16, 2017, although neither Respondent nor Respondent's counsel has been properly served with the Motion, or with the Court's corresponding Order requiring Respondent's response by Tuesday, February 21, 2017 at noon as required South Carolina Appellate Court Rules, Rule 241 (b)(5).

2. On June 2, 2016, the Honorable Albert J. Dooley (Magistrate) issued an order evicting the Appellant from Respondent's property. On that same date, Appellant filed a notice of intent to appeal the eviction to the Court of Common Pleas.

3. The appeal was heard on September 20, 2016, by the Honorable Judge Donald B. Hocker. Judge Hocker's ruling specifically states, "The Magistrate's ruling is reversed, *to the extent of allowing the Appellant to remain on the property until December 31, 2016.*" Judge Hocker also awarded Appellant \$150.00 in costs. (Order attached as Exhibit A.)

4. On October 24, 2016, Appellant filed a Notice of Appeal of the monetary damage award with the South Carolina Court of Appeals. (Notice of Appeal attached as Exhibit B.)

## LEGAL ANALYSIS

Judge Hocker's Order specifically states, "[t]he Magistrate's ruling is reversed, *to the extent of allowing the Appellant to remain on the property until December 31, 2016.*" Judge Hocker's Order only reverses the immediate eviction of the Appellant until December 31, 2016. The Appellant was notified of this ruling and had notice that he was only permitted to remain on the property until December 31, 2016. Most significantly, the Appellant did not appeal this ruling.

Under South Carolina Appellate Court Rules, Rule 241(a), ".....The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal ...." The

Appellant only appealed the award of monetary damages. The eviction does not affect the appeal of the monetary damage award, and therefore, the Magistrate Judge retained jurisdiction over the eviction issues as they were not stayed as part of this appeal. As such, if Appellant is aggrieved by the Magistrate's Writ of Ejectment, Appellant's proper course would be to appeal the Writ.

Moreover, even if the eviction itself was appealed, it is not subject to an automatic stay provisions pursuant to SCACR 241(b)(10).

Appellant's petition also indicates that he simply needs additional time to vacate the property. Respondent is not opposed to allowing Appellant to remain in the property until February 28, 2017. However, a stay of the eviction would cause irreparable harm to the Respondent in that Respondent has a buyer for the property, but the buyer will not enter into a contract or purchase the property until the tenant is out.

Respectfully Submitted,

  
Cynthia K. Mason

# **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-cl-32-1968

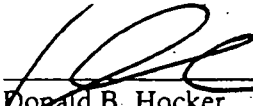
Response )

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**

**NOTICE OF APPEAL FROM COMMON PLEAS  
REGARDING A MONETARY DAMAGE AWARD IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

Bob Rice Realty, Inc., Respondent,


v.

Gerald J. Nagy, Appellant.

NOTICE OF APPEAL

Gerald J. Nagy hereby appeals the monetary damage award of the Honorable Donald B. Hocker dated September 20, 2016, wherein the Circuit Court reversed Lexington County Magistrates Court case #2016-CV-1060854. Appellant received written notice of the order on November 24, 2016.

October 24, 2016



Gerald J. Nagy, Appellant Pro Se  
Mail Stop 149  
911 Old Barnwell Road  
West Columbia, South Carolina 29170  
(803) 791-3438

Respondent:  
Bob Rice Realty, Inc.  
2201 Marshall Street  
Columbia, South Carolina 29203  
(803) 779-2600

**RECEIVED**  
OCT 25 2016  
SC Court of Appeals

## CERTIFICATE OF SERVICE

I, Gerald J. Nagy, hereby attest and affirm that on this date, October 24, 1016, the within and foregoing NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A MONETARY DAMAGE AWARD IN A CIVIL CASE, was served by having deposited the aforementioned document with the method and on the parties as indicated below:

Via postage prepaid United States Postal Service First Class Certified Mail, with Domestic Return Receipt Requested, article addressed to:

Bob Rice Realty, Inc.  
2201 Marshall Street  
Columbia, South Carolina 29203

Via postage prepaid United States Postal Service First Class Mail, article addressed to:

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

Via hand delivery to:

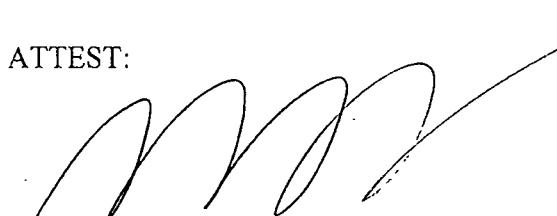
Beth Carrigg  
Lexington County Clerk of Court  
205 East Main Street  
Lexington, South Carolina 29072

**RECEIVED**

OCT 25 2016

SC Court of Appeals

ATTEST:

  
\_\_\_\_\_  
Gerald J. Nagy

**Gerald J. Nagy**

Mail Stop 149 • 911 Old Barnwell Road • West Columbia, South Carolina 29170 • (803) 791-3438

October 24, 2016

Jenny Abbott Kitchings  
Clerk Of Court  
South Carolina Court Of Appeals  
P.O. Box 11629  
Columbia, SC 29211.

**RECEIVED**

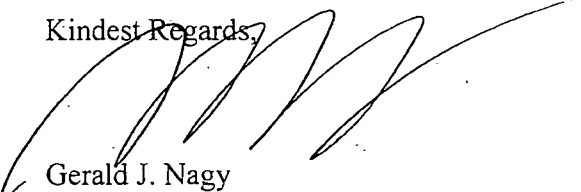
OCT 25 2016

SC Court of Appeals

Dear Ms. Kitchings,

Enclosed you will find both an original and a copy of my NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A MONETARY DAMAGE AWARD IN A CIVIL CASE, along with the filing fee of \$150.00. Please check this in and return the copy to me in the envelope provided.

Kindest Regards,

  
Gerald J. Nagy