

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL RICHLAND COUNTY  
Court Of Common Pleas

Jean H. Toal, Senior Circuit Court Judge

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**RECEIVED**

JUL 17 2017

**SC Court of Appeals**

Case No. 2016-CP-40-06177

Alexander N. Gee, Jr. a/k/a Sandy Gee, and Karen B. Gee a/k/a Karen Gee,  
Respondents,

v.

Ernest E. Yarborough, a/k/a Ernest Yarborough,  
Appellant.

Appellate Case No. 2017-001394

NOTICE OF MOTION AND MOTION TO RECONSIDER AND  
ALTER OR AMEND ORDER

YOU WILL PLEASE TAKE NOTICE that the Respondents, Alexander N. Gee, Jr. a/k/a Sandy Gee, and Karen B. Gee a/k/a Karen Gee, by and through their undersigned attorney, will move before the Hon. James E. Lockemy, Judge, at such time as is convenient to the Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider the Order issued and filed on July 7, 2017, and to alter or amend said Order to address the following points:

1. The Order, which accepted Appellant's undertaking ("Bond to Stay Execution on Appeal"), whereby the Appellant promised to pay rent in the amount of \$1,250.00 per month starting July 1, 2017, failed to address the terms and conditions of the Residential Rental Agreement ("Lease") between the parties, which required the Tenant to pay rent of \$1,250.00 per month, PLUS Homeowner's Association Dues if applicable, PLUS real property taxes.

2. The Order failed to require Appellant to fulfill, during the appeal, his financial

obligations under the Lease, which required the Tenant to pay HOA Assessments (estimated at \$30.00 per month) and annual real property taxes (estimated for 2017 at \$5,562.04, which was the amount of the 2016 taxes) in addition to the monthly rent.

3. The Order failed to consider that the purpose of the undertaking is to maintain the status quo during the appeal (See Graham v. Graham, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct.App. 1990)) and that, should the Tenant be allowed to continue to have possession of Respondent's property without paying all accruing obligations required by the Lease to be paid by the Tenant, the status quo is not maintained.

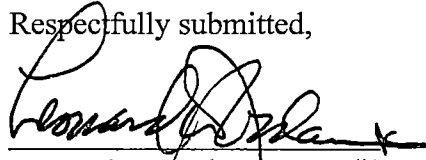
4. The Order failed to follow the terms of the applicable statute (section 29-40-800, cited in the Order), which clearly requires an undertaking to pay rent "as it becomes due periodically after judgment was entered" in an amount "determined by order of the judge of the circuit court." Hon. Jean H. Toal, Judge, has not determined the amount of rent (going forward) to be paid by Appellant.

5. The Order apparently accepted, at face value, the erroneous (misleading) statement by Appellant that, "Pursuant to the findings of the Honorable Judge Toal, the tenant is obligated to pay rent in the amount of \$1,250.00 per month, due on the first day of each month." Judge Toal's Order did not undertake to address the Tenant's rent obligation going forward or even to fully evaluate the already accrued, unpaid rent. Instead, it acknowledged that "the Defendant was required to pay, in addition to regular monthly rent and homeowners association assessments, the 2009 and future year's real property taxes until he closed on the property" and it "ORDERED that the foregoing requirements of the payment of rent shall not be construed to limit the Defendant's obligations under the Lease."

NOTICE: Respondents served on July 5, 2017, and filed on July 11, 2017, a Motion for

Modification of Tenant's Undertaking, which requested that Judge Toal modify Appellant's Bond to Stay Execution on Appeal. A filed-copy of said Motion is attached. Respondents respectfully request that this Motion to Reconsider be held in abeyance until said Motion for Modification is resolved.

Respectfully submitted,



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Attorney for the Respondents

Columbia, South Carolina  
July 17, 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2016-CP-40-6177

Alexander N. Gee, Jr., a/k/a Sandy Gee, )  
and Karen B. Gee, a/k/a Karen Gee, )

Plaintiffs, )

-vs- )

Ernest E. Yarborough, a/k/a Ernest )  
Yarborough, )

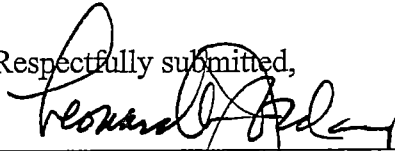
Defendant. )

**MOTION FOR MODIFICATION OF  
TENANT'S UNDERTAKING**

RICHLAND COUNTY  
FILED  
2017 JUN 11 AM 9:17  
JEAN H. TOAL, P.R. & G.S.

The Plaintiffs, Alexander N. Gee, Jr., a/k/a Sandy Gee, and Karen B. Gee, a/k/a Karen Gee, by and through their undersigned attorney, will move before the Honorable Jean H. Toal, Presiding Judge of the Court of Common Pleas for Richland County, at such time as is convenient to the Court, for an Order of the Court modifying the terms of the undertaking stated in the "Bond To Stay Execution on Appeal (S.C. Code 27-40-800)" filed on June 23, 2017, in accordance with the Lease between the litigants, which requires that the Tenant (Defendant, Ernest E. Yarborough) pay \$1,250.00 per month, PLUS Homeowners Association dues (estimated at \$30.00 per month), PLUS real property taxes on an annual basis (estimated at \$5,562.04, which was the amount paid by the Plaintiffs for 2016).

Respectfully submitted,



Leonard R. Jordan, Jr.  
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Attorney for Plaintiffs

Columbia, South Carolina  
July 5, 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2016-CP-40-6177

Alexander N. Gee, Jr., a/k/a Sandy Gee, )  
and Karen B. Gee, a/k/a Karen Gee, )

Plaintiffs, )

-vs- )

Ernest E. Yarborough, a/k/a Ernest )  
Yarborough, )

Defendant. )

CERTIFICATE OF MAILING

RICHLAND COUNTY  
FILED  
2017 JUL 11 AM 9:17  
JENNIFER W. MCBRIDE  
C.C.P. & G.S.

I, Michele Pringle-Falls, an employee of Jordan Law Firm, the Plaintiffs' Attorney, hereby certify that I have, this 5<sup>th</sup> day of July 2017, served a copy of the Motion For Modification Of Tenant's Undertaking to the Defendant, Ernest E. Yarborough, by mailing a copy thereof to him, postage prepaid to the address indicated below:

Mr. Ernest E. Yarborough  
117 Ashley Hall Road  
Columbia, SC 29229

  
Michele Pringle-Falls

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL RICHLAND COUNTY  
Court Of Common Pleas

Jean H. Toal, Senior Circuit Court Judge

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Case No. 2016-CP-40-06177

Alexander N. Gee, Jr. a/k/a Sandy Gee, and Karen B. Gee a/k/a Karen Gee,  
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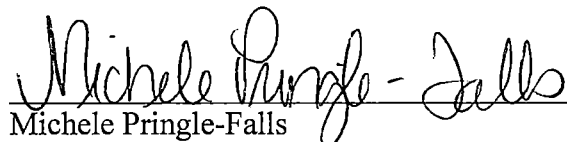
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CERTIFICATE OF MAILING

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I, Michele Pringle-Falls, of Jordan Law Firm, attorney for Respondents, Alexander N. Gee, Jr. a/k/a Sandy Gee, and Karen B. Gee a/k/a Karen Gee, hereby certify that I have this 17<sup>th</sup> day of July, 2017, served a copy of the Notice of Motion and Motion to Reconsider and Alter or Amend Order upon Ernest E. Yarborough, Appellant, by mailing a copy thereof, postage prepaid, to him at the address indicated below:

Mr. Ernest E. Yarborough  
117 Ashley Hall Road  
Columbia, SC 29229

  
Michele Pringle-Falls