

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2018-000540
Case No: 2018-CP-26-01584

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MAY 02 2018

Appellant SC Court of Appeals

Natachia Barlow,

v.

Cape Landing Apts,

Respondent.

MEMO IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

Respondent, 3851 Cape Landing, LLC d/b/a Cape Landing Apartments (hereinafter "Respondent"), by and through its counsel, Thomas I. Howard, Jr., in support of its motion to dismiss appeal would show unto this Honorable Court:

1. Cape Landing is the Landlord/Owner of that certain residential real property located at 3769 Cape Landing Drive, Apt. J, Myrtle Beach, South Carolina 29588 (hereinafter "Premises").
2. Appellant along with Karl Gaffney (hereinafter "Lessees") entered into an Apartment Lease Contract with Respondent for the rental of the Premises with a monthly rental amount of \$955.00 per month, due on or before the first of each month with no grace period.

3. Subsequently, on or about February 7, 2018, an application for ejectment was filed by Respondent due to Lessees' breach of the Lease for failing to pay rent when due or demanded.

4. A judgment for the Respondent was entered on or about February 26, 2018 granting Respondent's request for a Writ of Ejectment.

5. On or about March 8, 2018, Appellant filed an appeal in the Court of Common Pleas for Horry County.

6. Pursuant to South Carolina Code Ann. § 27-40-800, a bond to stay hearing was conducted at the Conway Magistrate Court on or about March 12, 2018 whereby Appellant executed an undertaking to pay \$3,559.17 within 5 days which said undertaking made the amount due by Monday, March 19, 2018 by 9:00am.

7. The Bond to Stay Execution on Appeal to Circuit Court also provided that "If Tenant fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant."

8. On or about March 20, 2018, Ryan Huggins, attorney for the eviction action and circuit court appeal executed a Landlord's Affidavit of Non-Compliance which was filed with the magistrate court and notified the court that the bond had not been paid.

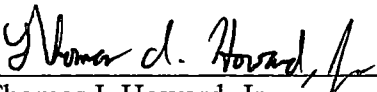
9. On or about March 28, 2018, Appellant filed a notice of appeal with the South Carolina Court of Appeals appealing the Circuit Court's ruling/dismissal of her appeal for failure to comply and asking for the Court of Appeals to stay the eviction action.

10. On or about March 30, 2018, the Court of Appeals issued an order denying Appellant's request for a stay of the writ of ejectment.

11. SCACR Rule 241(b)(10) requires that Appellant meet a condition precedent to continue with her appeal by executing a bond or undertaking under South Carolina Code Ann. § 27-40-800, and the Court of Appeals has already denied her request for granting a stay of the writ of ejectment

Therefore, Respondent respectfully requests this Honorable Court dismiss Appellant's Appeal as Appellant has failed to meet conditions precedent by failing to comply with the terms of the aforementioned bond to stay, Respondent intends to go forward with the execution of the writ of ejectment and set-out, and Respondent believes that the denial of the motion to stay makes the appeal moot and makes a dismissal proper as the Notice of Appeal is an appeal of the appeal of the lower court's dismissal of the case as being moot for failing to comply with the terms of the bond to stay.

Respectfully submitted this 1st day of May, 2018.



Thomas I. Howard, Jr.
SC Bar No. 101252
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3255 Landmark Drive, Ste. 301
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Attorney for Cape Landing Apartments

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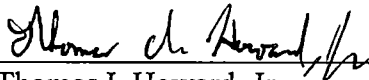
Cape Landing Apts,

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the **Notice of Appearance, Respondent's Motion to Dismiss and Memo in Support of Respondent's Motion to Dismiss** on Natachia Barlow by depositing a copy of it in the United States Mail, Postage Prepaid, on **May 1, 2018**, addressed to her at:

Natachia Barlow
3769 Cape Landing Circle, Apt. J
Myrtle Beach, SC 29588.


Thomas I. Howard, Jr.
SC Bar No. 101252
Brownlee Whitlow & Praet, PLLC
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BROWNLEE WHITLOW & PRAET, PLLC

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May 1, 2018

Ms. Jenny Abbott Kitchings
The SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **Natachia Barlow v. Cape Landing Apts.**
Appellate Case No: 2018-000540
Our File No.: 30143-09

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SC Court of Appeals

Dear Ms. Kitchings:

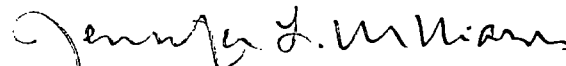
Enclosed are the original and seven (7) copies of Respondent's Notice of Appearance, Respondent's Motion to Dismiss and Memo in Support of Respondent's Motion to Dismiss in the above-referenced matter. I have also enclosed a check in the amount of \$25.00 for the filing fee. Please file the same and return the clocked-in copies to me in the enclosed envelope.

By copy of this letter, I am serving a copy of the same upon the Appellant.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions or need additional information.

Sincerely,

BROWNLEE WHITLOW & PRAET, PLLC



Jennifer L. Williams
Paralegal

JLW

Enclosures

cc: Natachia Barlow (via US Mail)
Cape Landing Apartments (via email)

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SHIP TO:
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