

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.
Circuit Court Judge

APPELLATE CASE NO. 2015-001868

SKYDIVE MYRTLE BEACH, INC.Appellant

v.

HORRY COUNTY.....Respondent

RESPONSE OPPOSING MOTION
FOR RECONSIDERATION

RECEIVED
SEP 07 2018
SC Court of Appeals

September 5, 2018

Michael W. Battle, (SC Bar # 584)
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(843-248-4321)

Attorneys for Respondent Horry County

Respondent Horry County respectfully opposes Appellant Skydive Myrtle Beach, Inc.'s (SDMB) petition for rehearing. This Court correctly found that the sole issue on appeal was the right of possession of Bird Hangar pending the SDMB's appeals. This Court further found that SDMB had not possessed the Bird Hangar for a period of three years. SDMB does not dispute those findings in its Petition for Rehearing. This Court properly found that the no controversy capable of specific relief existed and a judgment would not have any practical effect upon the sole issue on appeal. Therefore the appeal was moot. *Sloan v. Greenville Cty.*, 380 S.C. 528, 670 S.E.2d 663 (Ct. App. 2009)

SDMB claims it did not voluntarily give up possession of Bird Hangar, and the mootness doctrine as applied in *Berry v Zahler* 220 S.C. 86, 66 SE 2d 459 (1951) should not apply to SDMB. Horry County disagrees with SDMB's claim that it did not voluntarily give up possession of Bird Hangar. As noted by this Court, SDMB never filed a petition for a supersedeas or stay with this Court after the circuit court ruled the magistrate court's stay was dissolved and affirmed the magistrate's order of ejectment. After the circuit court entered its final order, SDMB's rights were governed by SCACR 241(b) (10) (Ejectment orders are an exception to a general stay). In a case subject to an exception to the general stay, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. SCACR 241(a). Horry County contends that SDMB's decision to vacate the property instead of filing a petition in this Court for supersedeas or stay was voluntary and Horry County's actions were proper under the magistrate's order of ejectment. At all times during this appeal SDMB has been represented by competent attorneys.

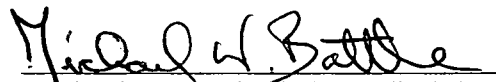
SDMB claims that the mootness doctrine should not be applied in the present case

because landlords in commercial ejectment cases could defeat the rights of commercial tenants on appeal under a magistrate's appeal bond by repeatedly enforcing the circuit court's denial of the appeal of the magistrate court's order of ejectment. Horry County contends SCACR 241 contains a clear procedure for staying lower court ejectment orders pending appeal in the appellate courts. SDMB did not avail itself of that procedure but instead vacated the property upon demand by Horry County.

SDMB makes a general claim that the mootness doctrine should not be applied because the Court's decision will have some improper collateral consequences on other pending litigation previously filed between the parties [2014-CP-26-1193]. SDMB claims the present decision will allow Horry County to argue that such litigation is now moot or that there is some preclusive effect on SDMB's damages claims. The relation of the issues in the present case and 2014-CP-26-1193 was raised before the magistrate in SDMB's motion to dismiss on the grounds that the present case should be dismissed because 2014-CP-26-1193 was pending in circuit court at the time the present ejectment action was filed. The magistrate denied SDMB's motion to dismiss and found the ejectment action was independent of 2014-CP-26-1193. The magistrate's order is the law of the present case.

CONCLUSION

For the forgoing reasons, Respondent Horry County respectfully requests that SDMB's Petition for Rehearing be denied.


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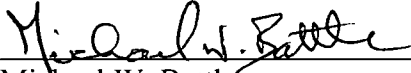
Skydive Myrtle Beach, Inc.....Appellant.

PROOF OF SERVICE

Michael W. Battle certifies that he is an attorney with the Battle Law Firm, LLC, attorneys for Respondent Horry County and that he has mailed Respondent's Opposing Motion for Reconsideration to the addresses shown this 5th day of September 2018, with proper postage attached thereto.

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September 5, 2018

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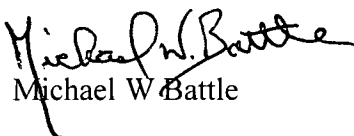
RE: Skydive Myrtle Beach, Inc. v. Horry County
Appellate Case No. 2015-001868

Dear Ms. Kitchings:

Enclosed herewith for filing please find an original and one copy of Respondent's Response opposing Motion for Reconsideration and a Proof of Service. By copy of this correspondence I am providing Counsel of Record with a copy of the same via U.S. mail and email.

If you have any concerns, please do not hesitate to contact my office.

Sincerely,

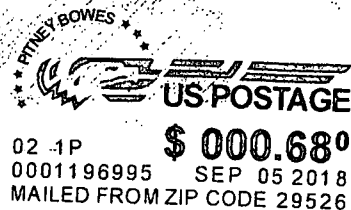
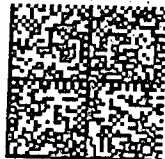

Michael W Battle

C: Robert B. Varnado
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Enclosure: stated

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