

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2018-001924

Morgan Conley.....Plaintiff/Appellant,

v.

April Morganson.....Defendant/Respondent.

APPELLANT'S MEMORANDA OF LAW

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INTRODUCTION

Appellant's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated November 6, 2018, requesting that the parties in this Appeal serve and file a Memoranda addressing the issue of appealability. Appellant's Memoranda of Law follows.

FACTS

Appellant's counsel represented Morgan Conley, the Plaintiff below and Attorney S. Jahue Moore, Jr., represented the Defendant below. Plaintiff sought a recovery under several provisions of the South Carolina Residential Landlord and Tenant Act, (hereinafter, as the, "Act"). Appellant/Plaintiff's case alleged that the Defendant/Landlord violated provisions of the Act. Both parties and their counsel appeared in a Bench Trial before the Honorable Clifton Newman, held in Richland County Circuit Court, on September 28, 2018. After the Appellant/Plaintiff presented her case, the Lower Court issued a Directed Verdict in favor of the Defendant/Landlord. No Form "4" Order or formal Order was issued by the Lower Court, before Plaintiff/Appellant served her Notice of Appeal. No Rule 59(e), of the South Carolina Rules of Civil Procedure, ("SCRCP"), was filed by Appellant/Plaintiff's counsel, because the Lower Court ruled on Plaintiff/Appellant's appealable issues. With no Form "4" Order, nor a formal Order being issued by the Lower Court and with no Motion pending, Plaintiff/Appellant was required to serve her Notice of Appeal within thirty days of the Lower Court's decision on September 28, 2018, which decision was rendered in open Court, before a Court Reporter with both parties and their legal counsel present.

FACTS, (Cont.)

Plaintiff/Appellant was required to serve her Notice of Appeal within thirty days of the Lower Court's decision and Plaintiff/Appellant's Notice of Appeal was served on Defendant's counsel and hand-delivered to this Court on October 25, 2018.

The Lower Court's decision granting the Defendant a Directed Verdict, was on the merits and ended the whole of Plaintiff/Appellant's Causes of Action, under the South Carolina Residential Landlord and Tenant Act. The Lower Court's grant of a Directed Verdict ended the case and the litigation and no other issues were left to be decided and no further

Hearings are pending before the Lower Court. On November 6, 2018 the Defendant/Landlord submitted a proposed Order to the Lower Court with November 6, 2018, being some twelve calendar days after the Plaintiff/Appellant had served her Notice of Appeal on October 25, 2018. The Plaintiff/Appellant's service of a Notice of Appeal on October 25, 2018, removed jurisdiction from the Lower Court, pursuant to Rule 205 of the South Carolina Appellate Court Rules, (hereinafter as, "SCACR") and Plaintiff/Appellant's service of a Notice of Appeal stayed matters before the Lower Court, pursuant to Rule 241(a), SCACR.

LEGAL ARGUMENT

Because the Lower Court's decision was on the merits and ended the whole of Plaintiff/Appellant's Causes of Action under the South Carolina Residential Landlord and Tenant Act, the Lower Court's decision is appealable. This Court has provided clear guidance to determine if an Order determines the merits of a case, "An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case." McCrea v. City of Georgetown 384 S.C. 328, 681 S.E.2d 918, 920 (Ct. of App. 2009); Neeltec Enterprises, Inc. v. Long, 705 S.E.2d 57 (Ct. of App. 2011).

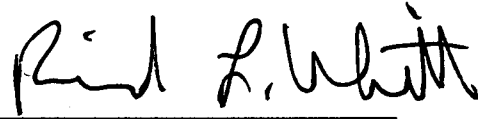
Because Plaintiff/Appellant received notice of Lower Court's decision on September 28, 2018, with all parties and counsel present, Plaintiff/Appellant was required to serve her Notice of Appeal within thirty days of the Lower Court's decision. Rule 77(d), SCRPC, **Orders and Judgements** "...such mailing or electronic transmission shall not be necessary to parties who have already received notice...." and Wells Fargo Bank, NA vs. Fallon Properties, South Carolina, LLC, et. al, 776 SE 2d 575, (Ct. of App. 2015).

CONCLUSION

Because the Lower Court's decision involved the merits of Plaintiff/Appellant's case, and because the Lower Court's decision ended her case, the Lower Court's decision finally determined the merits of Plaintiff/Appellant's case, and the Lower Court's decision is appealable.

[Signature Page Follows]

AUSTIN & ROGERS, P.A.

A handwritten signature in black ink, appearing to read "Richard L. Whitt". The signature is written in a cursive style and is positioned above a horizontal line.

Richard L. Whitt, S.C. Bar #: 62895
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November 15, 2018
Columbia, South Carolina

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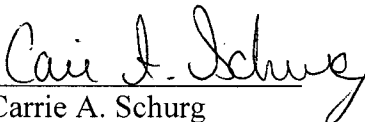
v.

April Morganson.....Defendant/Respondent.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused Appellant's Memoranda of Law and this Proof of Service, to be served on November 15, 2018, via hand-delivery, as addressed below.

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Carrie A. Schurg

November 14, 2018
Columbia, South Carolina