

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Aracelis Santos,	)	Case No. 2018-CP-08-01008
	)	
Appellant/Plaintiff,	)	
	)	
vs.	)	<b>ORDER OF DISMISSAL WITHOUT</b>
	)	<b>PREJUDICE</b>
Harris Investment Holdings, LLC,	)	
	)	
Respondent/Defendant.	)	

This matter comes before me on motion of the Respondent/Defendant, Harris Investment Holdings, LLC, (hereinafter "HIH") for an order dismissing this case without prejudice. For the reasons set forth below, the motion is granted.

HIH filed eviction actions in the magistrate's court seeking to eject Aracelis Santos from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. A consolidated bench trial was held before the magistrate on October 11, 2017.

Following trial, the magistrate's court issued an order dated December 7, 2017, in which it granted HIH's applications for ejectment with respect to both Latino Mix and El Alamo. Santos filed a motion for a new trial, which the court denied via written order dated February 2, 2018. On February 2, 2018, the court issued a writ of ejectment with respect to El Alamo.<sup>1</sup> On February 8, 2018, Santos filed a Notice of Appeal of the magistrate court's orders to this Court in Case No. 2018-CP-08-0026 (the "First Appeal").

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**SC Court of Appeals**

<sup>1</sup> Santos vacated the Latino Mix premises voluntarily prior to the magistrate court's ruling on the motion for a new trial.

In the meantime, following a hearing on February 26, 2018, the magistrate set an appeal bond in the amount of \$59,295.23. Santos filed a motion for reconsideration of the bond amount, which the magistrate denied via written order dated March 7, 2018.

Thereafter, Santos moved this Court in the First Appeal to vacate the bond requirement, upon which the Court determined the inclusion of any amount awarded to HIH for attorneys' fees in the bond was improper. Via order issued on April 9, 2018, this Court remanded "the issue of the bond" to the magistrate's court for re-calculation. Meanwhile, the First Appeal remained pending in this Court.

After the magistrate re-calculated the bond, on June 1, 2018, Santos filed a second civil action in this Court (Case No. 2018-CP-08-1008, the "Second Appeal"), in which she again sought to appeal the magistrate's order of ejectment and related orders and, in addition, to assert various tort claims against HIH. HIH moved to dismiss the Second Appeal on several grounds, including that the combination of a civil appeal with new tort claims was procedurally improper.

Following a hearing on HIH's motion to dismiss, the Court issued an order dated October 2, 2018 (the "Order"), to which Santos consented, requiring her to dismiss the Second Appeal. Despite repeated demands from counsel for HIH, Santos has not complied with the Order as evidenced by the fact that this action remains pending. At the hearing on the instant motion, Santos argued that the Order was intended only to require her to amend her pleading in this action to delete the claim for civil appeal, and she insisted she has complied with the Order. But the plain language of the Order, to which Santos consented, expressly requires *dismissal of the action* without prejudice. Santos plainly has not complied with this requirement.<sup>2</sup>

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<sup>2</sup> Moreover, the Court notes that, contrary to her counsel's statements at the hearing, Santos did not seek to amend her complaint in this action until March 19, 2019, and she did so then for the purpose of attempting to add additional parties to this action.

Because Santos has failed to comply with the Order to which she consented, HIH is entitled to an order dismissing this action without prejudice. It is hereby ORDERED that this action is dismissed without prejudice.

**AND IT IS SO ORDERED.**

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Kristi F. Curtis  
Circuit Court Judge

June \_\_, 2019