

MOTION FOR RECONSIDERATION

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FROM CHARLESTON COUNTY
Court of Magistrate

Joanna Sumney, Magistrate

Case No. 2019CV1011401500

BACCO, LLC

Respondent,

v.

Gary Weesner c/o Freedom
Transmissions Plus, LLC

Appellant.

RECEIVED
OCT 15 2019
SC Court of Appeals

MOTION FOR RECONSIDERATION

I am filing for a motion of reconsideration for Court of Appeals to reconsider the petition of stay and supersedeas, the writ of ejectment, and dismissal of appeal by Magistrate Sumney for the Circuit Court on Oct 1.

I filed for stay and supersedeas yesterday, Oct 14, with Court of Appeals and was advised I needed to file with Circuit Court since it appeared my bond modification case was still pending. I filed the stay and supersedeas with Charleston Circuit Court this morning and with Magistrates office. Magistrates office told me there was nothing that they could do that constable was already at the property.

I went to the Circuit Court and they told me they have already ruled on my appeal and request for bond modification. I asked for proof and I was given paperwork from magistrates office. I was scheduled for a court date Oct 7 with Circuit Court at 1100. I went to court and my case was not heard.

Landlord-BACCO, LLC

Tenant-Freedom Transmissions Plus, LLC

1. Original Eviction and Writ of Ejectment should have been dismissed pursuant 27-37-155(4). If the amount of rent due is determined at Final adjudication to be less than alleged by landlord, decision must be entered for the tenant if the court determines that the tenant has complied fully with the provisions of Section 27-37-150; this section, and the lease agreement. Landlord gave a credit, which was an incorrect lesser amount of what tenant is still due to this day. Rent was paid in full at time of partial incorrect credit.

Brief synopsis

1. Landlord gave tenant extra time to pay rent and late fees. Landlord agreed to accept final payment on May 17. Landlord then refused tenants offer to drive to North Carolina to hand deliver final payment to landlord or tenants offer to Western Union the funds. Landlord did not act in good faith by denying the tenant the ability to pay the final rent payment per agreement. This refusal has set into motion an eviction that should have been dismissed in May because tenant was owed a credit towards rent which if applied correctly by the Magistrate, tenant would have had a zero rent balance.

2. Even though rent should have been considered paid in full by tenant, an eviction waa filed by landlord and a warrant of ejectment was filed May 28. Tenant filed for bond to stay on execution on May 31. Tenant tries to speak with Magistrate Sumney regarding rent being paid and Sumney Magistrate printed copy of landlord tenant laws and told tenant to read them.

3. Bond to Stay hearing was heard on June 10. Tenant paid the rent via PayPal on July 10, by the due date stated on the bond form. The morning of July 10, Magistrate Sumney ordered dismissal of bomd to stay, stating that tenant refused to pay rent. This was unture, tenant paid rent July 10 per bond order.

4. Tenant appealed to Circuit Court and case was heard August 27 by Honorable Roger King. Judge King sent the bomd to say back to Judge Sumney to correct the conflicting ssentences regarding due dates for bomd to stay.

5. Sept 16. Hearing with Magistrate Sumney to correct conflicting statements in the Bond to Stay order written by Magistrate Summey, per request of Judge King. Tenant argued that tenant should not have to pay late fees, due to conflicting language written in the Bond to Stay order by Judge Sumney. Tenant

was charged late fees by Magistrate Sumney due to Magistrate conflicting statements on Bond to Stay.

6. Tenant appealed the Bond to Stay to the Circuit Court. Court date was scheduled for Oct 7 at 1100. Tenant went to court and was told at the end of sitting through other hearings that tenant was not on the docket.

7. Tenant has appealed with Court of Appeals the writ of ejectment and Magistrate Sumneys dismissal of tenant appeal to Circuit Court for Bond Modification.

1. Credits Tenant is owed by landlord that were not applied fully by Magistrate.
 - a. Refund on overpayment of CAM. Full amount was not applied. Tenant is owed approximately \$1,000.
 - b. Credit for parking lot. Landlord agreed to pay \$2,000 towards parking lot improvements. Tenant received quotes for various types of driveways and parking lots. Landlord agreed to allow tenant to have ROC delivered for driveway. Once tenant moved into building landlord asked tenant to hold off on having material delivered. When tenant asked numerous times about drive/parking lot funds, tenant was put in perpetual delay. Tenant paid \$1,600 to have parking lot grazed because tenant could not wait any longer. Tenant was denied access through main building parking lot for both employees/customers and tenants drive/parking lot turned into a giant mud hold from rain and insufficient materials in the area.
 - c. Tenant was charged for solid waste disposal when tenant had their own solid waste container and account. Tenant was owed a refund for this.
 - d. Tenant charged for water. Tenant owed refund for water. Only running water provided was a water hose spicket for almost one year.

Landlord not acting in good faith during eviction process and lease.

1. Numerous incorrect balance sheets were presented to tenant. Tenant had to correct landlords math and the tenant actually advised the landlord that the landlord was not charging enough on the final balance sheet. Landlord either deliberately or by accident caused mass confusion by

constantly delivering incorrect balance sheets. Incorrect balance sheets provided by landlord caused tenant to believe that tenant only owed.

2. Landlord failed to deliver timely roughed in plumbing and separate office building shell as noted in the lease. Instead of delivering what was required of landlord per lease, landlord delivered a mobile office that looked like a semi truck trailer and a porta potty. This affected not only the appearance of Freedom Transmissions business but also the hygiene and safety of customers and employees. Employee's and customers had to wash hands with a garden hose. Landlord was to deliver roughed in plumbing and separate office building within 30 days of signing of lease. After between nine to ten months of requesting these items, tenant finally settled on another portable building type and roughed in plumbing of the portable building.

3. Landlord employed individuals who were rude to my customers and called a customer a racist slur. Landlord's employee ran off customers and cable installer. Employee locked a customer between two gates at one point. This also affected not only my business but the right to peaceful enjoyment of the property.

4. Retaliatory eviction. Landlord failed to deliver timely roughed in plumbing and separate office building shell as noted in the lease. Tenant asked for the separate office building via personal phone calls, emails, and text numerous times. Shortly after tenant sent a certified letter stating landlord was in violation of lease by providing the separate office and roughed in plumbing, landlord filed for eviction. Tenant had no office or bathroom for almost a year. Tenant has also been informed that landlord is wanting to move a different tenant in for a higher rent amount.

I want to pay the correct bond to stay amount and proceed for the remainder of the lease. I should not have to pay late fees due to the Magistrate improper wording on the Bond to Stay and the fact that the landlord returned the rent. I the eviction placed on hold until the proper bond amount is determined by the court. This is an emergent situation. Customer cars, my own vehicle have been towed out of the garage off the property. I have no idea what else is gone at this point because I have been going back and forth with Circuit Court and am awaiting for the on duty judge.

I have served all parties via US Postal Service today.

October 14, 2019

s/ _____
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