

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR 12 2019

APPEAL FROM Horry COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

Opinion No. 5537
Heard March 5, 2018-Filed July 11, 2018
Petition for Rehearing Denied September 20, 2018
Appellate Case No. 2018-001910

SKYDIVE MYRTLE BEACH, INC.Petitioner

v.

Horry COUNTY.Respondent

BRIEF OF RESPONDENT

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QUESTION PRESENTED

Did the Court of Appeals err in dismissing the appeal on the basis of mootness?

STATEMENT OF THE CASE

The appeal is before the Court on the Court's grant of Skydive of Myrtle Beach, Inc.'s Petition for Certiorari to review the Court of Appeals decision in *Skydive Myrtle Beach, Inc. v. Horry County*, 424 S.C. 298, 818 SE 2d 224 (Ct. App. 2018). The sole question presented in Skydive's Petition is: "Did the Court of Appeals err in dismissing the appeal for mootness?"

PROCEDURAL HISTORY

On June 5, 2014, Horry County Horry County filed an application to evict Skydive Myrtle Beach, Inc. from Hangar 7 located at Grand Strand Airport in North Myrtle Beach, South Carolina. The Magistrate granted Horry County's application to evict Skydive because the terms of Skydive's tenancy had ended and Skydive had no right to continue to possess Horry County's property. [R. 3] The only issue decided by the Magistrate was that Skydive did not have a right to possess Hangar 7 and should be ejected.

Skydive appealed the Magistrate's order and posted a bond for monthly payments to Horry County as determined by the Magistrate. [R. 3] Skydive's appeal to Circuit Court was dismissed on July 21, 2015. Skydive filed a notice of appeal to the SC. Court of Appeals on August 19, 2015.

On October 13, 2015, the Circuit Court issued an order revoking the Magistrate's Bond. On or about October 16, 2015, Skydive vacated Hangar 7 and stopped paying the amount set by the Magistrate's Bond. [R. 327] After Skydive's motion for reconsideration was denied, Skydive

filed a second appeal to the S.C. Court of Appeals the circuit court's order revoking the Magistrate's Bond. Both appeals were consolidated.

The appeal was heard in the South Carolina Court of Appeals. On July 11, 2018, the appeal was dismissed as moot when the appellate court determined that before the appeal was decided, Skydive had vacated the premises. The Supreme Court granted Skydive's Petition for a Writ of Certiorari on January 10, 2019.

STANDARD OF REVIEW

A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). If there is no actual controversy in the underlying dispute, this Court will not decide moot or academic questions. *Id.* (citing *Jones v. Dillon-Marion Human Res. Dev. Comm'n.*, 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982); *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006))

STATEMENT OF FACTUAL BACKGROUND

Horry County Horry County owns Hangar 7 at Grand Strand Airport in North Myrtle Beach. In 2012, Horry County leased Grand Strand Airport to Grand Strand Aviation, LLC d/b/a Ramp 66. The relationship between Horry County and Ramp 66 was that of landlord and tenant. [R. 359] In May of that year, Ramp 66 entered a service agreement with Skydive Myrtle Beach, Inc. for Ramp 66 to provide services for tandem parachute jumps for Skydive's customers from the Grand Strand Airport and to provide other business services. [R. 359] The

service agreement permitted Skydive to use a minimum of 2500 square feet in the "bird hangar" (now known as Hangar 7) only during daylight hours without rent payment 365 days a year. [R.359] Payments for Ramp 66's business services to Skydive were based upon a percentage (19%) of Skydive's gross income. [R. 359] This service agreement stated it would remain in effect through the existence of an underlying lease agreement between Ramp 66 and Horry County's Department of Airports that was scheduled to end in 2020. [R. 360] However, the lease agreement between Ramp 66 and Horry County's Department of Airports ended by mutual agreement of the parties in 2013.

The service agreement between Skydive and Ramp 66 ended when Ramp 66's agreement with Horry County Department of Airports ended in 2013. [R. 360] Skydive and Horry County entered a new agreement on August 13, 2013. Thirty days later that agreement was replaced by a Space Use Permit dated September 13, 2013. The term of the space use permit was from September 13, 2013 to January 31, 2014. The agreement contained an "all in" clause which stated: "The permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by written instrument executed by the Horry County and the Company (Skydive)."

The Space Use Permit also permitted Skydive to use the approximately 6800 square feet of space in Hangar 7 as opposed to 2500 square feet. Possession of Hangar 7 was granted 24 twenty-four hours a day, seven days a week. Skydive's rent payment for the use of Hangar 7 was changed from 19% percent of Skydive's gross income to monthly payments of One Thousand Two Hundred & 00/ 100 (\$1200.00) dollars. [R. 335]

After the term of the Space Use Permit ended on January 31, 2014, Horry County offered to enter another agreement with Skydive with different conditions. Skydive refused to accept the agreement offered by Horry County because it believed the conditions of the offer were unreasonable. On February 24, 2014, Skydive filed a complaint with the Federal Aviation Administration against Horry County for alleged discrimination against Skydive's aeronautical activity at Grand Strand Airport. [R. 349] That complaint was finally dismissed on June 5, 2018. *Skydive Myrtle Beach Inc. v. Horry Cty. Dep't of Airports*, 735 F. App'x 810 (4th Cir. 2018).

On February 28, 2014, Skydive filed a civil lawsuit against Horry County and named additional individuals alleging fraud, conspiracy, breach of contract, defamation, trespass and unfair trade practices, etc. The lawsuit is captioned *Skydive Myrtle Beach, Inc. (a/k/a Skydive Myrtle Beach, LLC) v. Horry County & Horry County Department of Airports, H. Randolph Haldi, Pat Apone, Tim Jackson and Jack Teal*, CI A No. 2014-CP-26-01193. Horry County duly answered with a qualified general denial and several affirmative defenses. That suit is still pending.

By letter dated April 28, 2014, Skydive was notified that it was occupying Hangar 7 unlawfully and that unless Skydive entered a new Space Use Permit Horry County would bring an action to eject the Skydive from Hangar 7. [R. 333] Skydive refused to enter a new Space Use Permit and it refused to vacate Hangar 7.

Horry County filed an Application for Ejectment of Skydive from Hangar 7 in Magistrate's Court on June 5, 2014. [R. 76] Skydive responded with a motion to dismiss. The motion to dismiss was denied and the date for the trial of the ejectment action was set. Skydive's attorney requested reconsideration of the Magistrate's order denying a dismissal of the ejectment action

or in the alternative, a jury trial and a thirty day continuance allow Skydive to amend its responsive pleading to add a counterclaim. [R. 88] Skydive's request for reconsideration was denied. Skydive's request for an additional thirty days to file a counterclaim and for a jury trial were denied by the Magistrate as being untimely on July 23, 2014. [R. 3] See Rule 11 (b) SCMCR(*If either party wants a jury trial it **must** be requested in writing at least five working days prior to the date set for trial*)(*emphasis added*). Also see *Bowers v. Thomas*, 373 S.C. 240, 247, 644 S.E.2d 751, 754 (Ct. App. 2007).

The ejectment action was tried on July 23, 2014, and Horry County's application for ejectment was granted. [R. 3] Skydive appealed the order of the Magistrate. [R. 82] Skydive obtained a Magistrate's Bond to stay the execution of the Magistrate's order of ejectment until the appeal was heard by the circuit court. [R.2] The appeal was heard by the circuit court and was dismissed in the summer of 2015. [R. 10] [R. 20] Skydive filed its first appeal in connection with the dismissal of its appeal.

On September 16, 2015, Horry County's attorney informed the Skydive that Horry County believed the Magistrate's Bond ended by its on terms and the execution of the Magistrate's order of ejectment was no longer stayed. [R. 358] On September 17, Skydive's attorney responded that he disagreed with the Horry County and if required to litigate the 72 hour notice, Skydive would do so in the circuit court and/or the court of appeals. [R. 324] On September 18, 2015, Skydive filed an emergency motion for an injunction and to stay the ejectment. Skydive's emergency motion for a stay was denied by the Circuit Court on October 13, 2015. [R. 28] In addition to denying the stay, the Circuit Court formally revoked the Magistrate's Bond. [R. 28]

By October 15, 2015, all parachute jumping operations had ceased at Grand Strand Airport

for safety reasons. [R. 327][R. 29-31] R.315-318] See *Order of Horry County Department of Airports*, October 9, 2015. (Copy Attached as Exhibit A and incorporated herein by reference).

On or about October 16, 2015, Skydive surrendered possession of Hangar 7 and stopped making payment under the Magistrate's Bond. [R. 327]

On October 23, 2015, Skydive moved for reconsideration of the order revoking the Magistrate's Bond and denial of a stay of execution. When Skydive's motion was denied, Skydive filed a second appeal to the S.C. Court of Appeals.. By the time Skydive filed its second appeal, Skydive had already vacated Hangar 7. Skydive did not seek a stay of the order of execution from the appellate courts pursuant to Rule 241, SCACR.

After Skydive surrendered possession, Hangar 7 was dedicated to community uses. All skydiving operations have ceased at Grand Strand Airport pursuant to a determination from the Horry County Department of Airports that such operations are not safe at Grand Strand Airport. [See Exhibit A] Skydive has not occupied Hangar 7 or made payments to Horry County since October of 2015.

ARGUMENTS

I. Horry County's Application for Ejectment is Moot.

The questions raised by *Berry v Zahler*, *supra*, and the Court of Appeal's decision in the present appeal are what relief can the Court grant within the framework of a commercial tenancy eviction action. An eviction action in magistrate's court is designed to be a statutory process for quick resolutions of landlord-tenancy disputes provided both parties have a full opportunity to be heard. *Wimberly v. Shorter*, 204 S.C. 558, 30 S.E.2d 593, 595 (1944).

Horry County's commercial eviction action was authorized S.C. Code Ann. § 27-37-10, et.

seq. because the term of tenancy for Skydive had expired. Horry County contends the sole purpose of its summary ejectment action ended when Skydive surrendered possession of the property. Horry County respectfully contends the pleadings and issues preserved in the record do not present a proper framework within which the Court could restore Skydive's possession of the premises.

An action for damages is the only statutory remedy available to a tenant if it is evicted wrongfully from a landlord's property. S.C. Code Ann. § 27-37-140. Horry County respectfully requests that the Court compare the statutory remedies for wrongful dispossession in commercial landlord tenancy ejectment actions with the statutory remedies for wrongful dispossession in residential landlord tenancy ejectment actions. Compare S.C. Code Ann. § 27-40-660 (*If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement...*) with S.C. Code Ann. § 27-37-140. (*In case any tenant is wrongfully dispossessed he may have an action for damages against the landlord*). The statutory remedy for wrongful commercial ejections does not include the remedy of recovering possession of the leased premises. S.C. Code Ann. § 27-37-140. The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative. *Riverwoods, L.L.C. v. Cnty. of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) Recovering possession of Hangar 7 is not one of the statutory remedies available to Skydive after it has vacated Hangar 7. S.C. Code Ann. § 27-37-140.

There are substantial differences between a court order allowing a commercial tenant to remain in possession of a property and a court order restoring a commercial tenant to possession

after the tenant has vacated and stopped making payments for 3 ½ years. For example, Horry County would respectfully contend the Court does not have jurisdiction to address the parties' rights or third party rights that arose during the 3 ½ years after Skydive vacated the premises. Further, the Court is not authorized to write a new lease agreement between Skydive and Horry County. Even if the Court could restore Skydive's possession and write a new lease agreement, it does not have jurisdiction reestablish Skydive's aeronautical business at Grand Strand Airport. Such jurisdiction is vested in the Federal Aviation Administration. See 47 USCA § 47107, *et. seq.* The only controversy on appeal between Skydive and Horry County is the ejectment action. *Berry v Zahler* 220 S.C. 86, 66 SE 2d 459 (1951). *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 818 S.E.2d 224 (Ct. App. 2018), reh'g denied (Sept. 20, 2018), cert. granted (Jan. 10, 2019).

II. The Court of Appeals correctly applied Berry v Zahler, supra,

Skydive argues that the Court of Appeals incorrectly applied *Berry v Zahler, supra*, and the doctrine of mootness to the present appeal. In its brief, Skydive claims *Berry v Zahler, supra*, is an old an outdated precedent for mootness that has been surpassed by modern caselaw and the adoption of the South Carolina Appellate Court Rules. Horry County disagrees. *Berry v Zahler, supra*, has been cited as good authority on the issue of mootness at least fifteen times in South Carolina appellate decisions. In addition to the present appeal the most recent cases that cited *Berry v Zahler, supra*, were *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014); *City of Charleston v. Masi*, 362 S.C. 505, 509, 609 S.E.2d 301, 304 (2005).

Skydive's attorney claims *Berry v Zahler, supra*, is inapposite because Skydive did not voluntarily vacate the property. [Skydive Brief p.8] Horry County disputes Skydive's unproven factual claim. Even if the court were to accept Skydive's unproven factual claims, the court in

Berry v Zahler, supra, did not find the appeal was moot on the grounds that tenants had voluntarily abandoned the property. *Id.* The court found that the appeal was moot as a matter of law because the issue of possession had been resolved and the court does not concern itself with moot or speculative questions. *Berry v. Zahler*, 220 S.C. 86, 87, 66 S.E.2d 459, 460 (1951).

Skydive's arguments are not correct in connection with the application of mootness, because the doctrine of mootness involves a legal question of whether the case justiciable. *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Mootness does require an analysis of the intervening act that caused the case to become moot. *Id.* "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief. *Curtis v. State*, 345 S.C. 557, 567–68, 549 S.E.2d 591, 596 (2001).

The modern exceptions to doctrine of mootness do not suggest a factual analysis of the intervening cause of the subsequent acts is necessary to determine whether an appeal is moot. *Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander*, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015) "In the civil context, there are three general exceptions to the mootness doctrine." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). "First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." *Id.* "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* at 568, 549 S.E.2d at 596. "Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* at 568, 549 S.E.2d at 596.

Skydive's failure to obtain a stay under Rule 241, SCACR did not make the appeal moot.

The subsequent acts that caused mootness were Skydive's surrender of the premises and stopping payments. If Skydive was still in possession of Hangar 7, the case would not be moot. Even if Skydive could show it was wrongfully forced out of Hangar 7, which is denied, the case is still moot because when the appeal was decided by the SC Court of Appeals there was no one left to evict. *Berry v Zahler* 220 S.C. 86, 66 SE 2d 459 (1951). There are not any damages claimed in the present appeal by either party.

Skydive claims that because of the Magistrate's original stay of execution, Skydive's rights to remain in Hangar 7 were protected even though Skydive had surrendered the premises and stopped payments. In other words, Skydive claims it was allowed to vacate Hangar 7 and to stop making payments but Horry County's right to execute the order of ejectment remained stayed on appeal. Further, Skydive claims Horry County's rights to future uses its property should be tied up until the appeal ended. Horry County contends that Skydive's claim violates the intent of state statutes authorizing summary commercial ejectment proceedings. See S.C. Code Ann. § 27-37-130 (*An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases*)

The applicability of *Berry v Zahler*, supra, can be discerned further from the fact that if the Court were to restore possession of Hangar 7 to Skydive, the Court does not have authority to establish the terms for what would amount to a new lease. Skydive originally sought to enforce its service agreement with Ramp 66 that called for occupancy of 2500 square feet during daylight hours for a percentage of Skydive's gross profits. [R. 359] However, the Skydive now suggests the court should rewrite the Ramp 66 agreement to be consistent with the Magistrate's bond to create an indefinite term for 100% of Hangar 7 with a monthly payment of rent of \$1200 or if that act was not feasible, the Court could cause Horry County to build a new hangar for Skydive to

lease on the same terms. [Skydive Brief p 9] Horry County contends courts “are without authority to alter a contract by construction or to make new contracts for the parties.” *Abel v. S.C. Dep't of Health & Envtl. Control*, 419 S.C. 434, 441, 798 S.E.2d 445, 448 (Ct. App. 2017), reh'g denied (May 2, 2017); *C.A.N. Enters. v. S.C. Health & Human Servs. Finance Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988).

In addition to the above stated reasons, Horry County disputes Skydive’s claim that Horry County forced Skydive to vacate by the improper use of police power. Horry County would show that the September 16, 2015, notice expressly stated the absence of a stay was the reason for the notice. Skydive immediately disagreed with Horry County and remained in possession of Hangar 7 until skydiving operations at Grand Strand Airport had ceased and the Circuit Court denied Skydive’s request for an emergency stay. [R. 30, ¶2] After the Circuit Court revoked the Magistrate’s Bond, Horry County notified the Skydive that it would have to vacate Hangar 7 on October 16, 2015. [R. 327] Skydive requested an extension which the Horry County denied. [R. 327] Apparently, Skydive surrendered possession sometime after October 16, 2015. [Appellant Brief p. 8]

On October 23, 2015, Skydive filed a motion to have the circuit court reconsider its order denying emergency relief. [R. 179]. Skydive’s motion to reconsider was denied by orders dated November 9, 2015 and November 24, 2015. [R.32 & 32b] Skydive filed a second notice of appeal from the Circuit Court’s order revoking the magistrate’s bond on November 20, 2015.

At the time Skydive vacated the premises all skydiving operations had ceased at Grand Strand Airport. [See Exhibit A] Skydive’s attorney noted the cessation of skydiving activities in correspondence that acknowledged “there are no jumping operations ongoing” at Grand Strand Airport. [R. 327]

The FAA aeronautical letter of agreement between Skydive, Horry County, and the Air Traffic controllers was suspended. [Exhibit A]. Horry County contends Skydive decided to vacate because after skydiving operations at Grand Strand Airport had been suspended, Skydive had little incentive to remain and pay rent for Hangar 7. [R. 327] Skydive was represented by an attorney throughout all proceedings and Horry County contends Skydive was fully aware of its rights to petition for a stay in the appellate courts under Rule 241, SCACR and to remain in possession of Hangar 7.

III. Skydive's other reasons not to apply Berry v. Zahler, supra, are not properly before the court.

Skydive's other reasons for distinguishing *Berry v Zahler, supra*, appear for the first time on appeal. Those reasons are not contained in the record on appeal. Those reasons do not address the original question of what the Court can do within the framework of a landlord-tenant ejectment action after the tenant has vacated the premises. Skydive suggest that a big part of its appeal is to establish Skydive's right to maintain a business at Grand Strand Airport. The skydiving business Skydive had at Grand Strand Airport was suspended on October 9, 2015. [Exhibit A] The propriety of the suspension of Skydive's aeronautical business by Horry County Department of Airports is not part of the present appeal.

IV. Rule 241 SCACR is the applicable rule for obtaining a stay.

Skydive admits that Rule 241 SCACR is a clear and comprehensive procedure for stay and supersedeas and that compliance with Rule 241 does not require further guidance from the court. Rule 241 SCACR provides that an execution of an order of eviction is not stayed by the general rule granting stays on appeals. Rule 241 refers to S.C. Code § 27-37-130 which provides that execution on evictions are not stayed unless the tenant posts a bond. Skydive claims that once the

original magistrate's bond is posted it continues on through the various levels of appeal even though Skydive has vacated the premises and stopped making payments under the bond. Skydive's claim of an indefinite continuing stay is contrary to the statute's requirement that in the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate. S.C. Code Ann. § 27-37-130. Horry County contends that when the monthly payments due under the bond stopped and the bond ceased to be funded as required by § 27-37-130 and the Magistrate's Order of Execution, the bond ceased to exist. *Id.* Skydive's claim is an anomaly from the summary proceedings established in S.C. Ann. § 27-37-10, et. seq.

V. The modern exceptions to mootness do not apply to the present appeal.

Skydive argues the present appeal is not moot because the issue of staying an ejectment proceeding is capable of repetition but evading review. Skydive also argues that the appeal is not moot because the eviction order may have collateral consequences on the parties' litigation captioned *Skydive Myrtle Beach, Inc. v Horry County et. al.* 2014-CP-26-1193. Horry County disputes both of Skydive's claims.

a. The issues raised in the present appeal do not evade review.

Appeals from ejectment action are excepted from the general stay found in Rule 241, SCACR. However, the procedures for preserving an appeal in ejectment actions are well established in the statute and the rules of procedure. See S.C. Code § 27-37-130; Rule 241, SCACR. An appeal from the statutory process enacted for handling ejectment proceedings in landlord tenant disputes can be stayed provided the tenants meets certain bond conditions. S.C. Code Ann. § 27-37-130. In the present appeal the terms of the Magistrate's Bond stated it would end when the appeal to circuit court was heard and decided. Based upon that language in the

Magistrate's Order, the Circuit Court formally revoked the Magistrate's Bond. The Circuit Court also refused to issue a new bond and the Circuit Court refused to grant a stay of execution of the ejectment order. [R. 28] Horry County then notified Skydive a third time to vacate the premises. Skydive surrendered possession of Hangar 7 and stopped payments but Skydive then appealed the order of the Circuit Court.

The general doctrine of mootness is well established in South Carolina. *Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander*, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015). The application of the legal doctrine of mootness in connection with landlord-tenancy proceedings has been established at least since 1951. *Berry v Zahler* 220 S.C. 86, 66 SE 2d 459 (1951). Mootness applies to a court's legal authority. It does not require a factual analysis of the parties' alleged behavior after the appeal has been filed. *Id.* Such acts may create a different remedy for a different claim but such remedies are not part of the issues constituting the present appeal.

Horry County contends the intervening act that made Skydive's appeal moot is the undisputed fact that Skydive had surrendered possession of Hangar 7. The stay of execution was not the act that made Skydive's appeal moot. Skydive could have prevented the case from becoming moot by refusing to leave Hangar 7, paying rent and obtaining a stay of Magistrate's Order of Ejection from the appellate courts. Rule 241, SCACR. In view of Skydive's refusal to leave Hangar 7 after two prior notices to vacate, Skydive's suggestion that it was intimidated into leaving by Horry County, rings hollow. Skydive's claim that it did not have to seek a stay of the Magistrate Court's order, is contradicted by the fact that Skydive filed an emergency petition for a stay of the execution of the ejectment order in circuit court after it vacated Hangar 7 and stopped making payments. Skydive vacated Hangar 7 even before the Circuit Court issued a denial to Skydive's motion to reconsider the order formerly revoking the Magistrate's Bond.

b. *There is no manifest urgency to establish rule for future conduct.*

Under the second exception to mootness, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interests. Skydive does not present any argument in connection with the second exception of manifest urgency, Further, Skydive admits that Rule 241 SCACR is a clear and comprehensive procedure and the court does not to provide further guidance for obtaining a stay. [Skydive Brief p. 12] Therefore, the manifest urgency exception to mootness does not apply in the present appeal.

c. *The dismissal of the appeal will not affect Skydive Myrtle Beach, Inc. v Horry County 2014-CP-26-1193.*

If a decision by a court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked. *Id.* To invoke successfully the collateral consequences doctrine, Skydive must show that there is a reasonable possibility that prejudicial collateral consequences will occur. Accordingly, the Skydive must establish these consequences by more than mere conjecture but need not demonstrate that these consequences are more probable than not. This standard provides the necessary limitations on justiciability underlying the mootness doctrine itself. See *Renaissance Mgmt. Co., Inc. v. Barnes*, 175 Conn. App. 681, 689, 168 A.3d 530, 536 (2017).

Skydive makes two claims of possible collateral consequences that may be affected by the Court's dismissal of the present appeal for mootness. First, Skydive claims that dismissal of the appeal may allow Horry County to argue *Skydive Myrtle Beach, Inc. v Horry County 2014-CP-26-*

1193 is moot. Second Skydive claims that dismissing the appeal for mootness may have some preclusive effect on Skydive's damages claims in the pending lower court action. Horry County disputes both claims. An examination of the claims pending *Skydive Myrtle Beach, Inc. v Horry County* 2014-CP-26-1193 reveals those claims are not related to the present appeal. [R. 33]

All of the facts alleged in Skydive's complaint in *Skydive Myrtle Beach, Inc. v Horry County* 2014-CP-26-1193 occurred before February 23, 2014. The magistrate's Writ of Ejectment was not issued until July 23, 2014. Skydive surrendered possession of Hangar 7 on October 16, 2015. The appeal for mootness was dismissed on March 5, 2018. Skydive admits that it did not have possession of Hangar 7 when the appeal was dismissed for mootness. [Appellate Brief p 8] Horry County contends that the alleged acts that occurred 1 ½ years before Skydive surrendered the premises will not be mooted by the dismissal of the present appeal for its mootness.

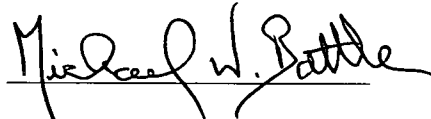
The same argument applies to Skydive's claims for damages. Horry County contends that Skydive's alleged damages were incurred before February 23, 2014. Those alleged damages would have been well fixed before Skydive surrendered possession on October 16, 2015. Those damages will not be affected by the dismissal of the present appeal on the grounds of mootness.

CONCLUSION

For the forgoing reasons the decision of the S.C. Court of Appeals should be affirmed and the appeal should be dismissed.

Respectfully submitted.

Battle Law Firm, LLC.

A handwritten signature in black ink that reads "Michael W. Battle". The signature is written in a cursive style and is positioned above a horizontal line.

Michael W. Battle
Attorney for Horry County
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Conway, South Carolina 29528
(843)-248-4321
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April 9, 2019

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APR 12 2019

S.C. SUPREME COURT



October 9, 2015

By HAND DELIVERY

Skydive Myrtle Beach, Inc.
Grand Strand Airport, Hangar 7
Myrtle Beach, SC

Robinson Aviation
Grand Strand Airport Control Tower
Myrtle Beach, SC

Re: NOTICE OF CLOSURE OF DROP ZONE – CEASE AND DESIST ORDER

To whom it may concern:

Pursuant to the Director's Determination dated October 7, 2015 in the matter of *Skydive Myrtle Beach, Inc. v. Horry County Department of Airports*, FAA Docket No. 16-14-05 (a copy of which is enclosed), notice is hereby given that the drop zone located at Grand Strand Airport (CRE) is closed until further notice and Horry County Department of Airports ("HCDA") hereby suspends the Letter of Agreement relating to skydiving operations at CRE among HCDA, Skydive Myrtle Beach ("SDMB"), Robinson Aviation, as air traffic control tower operator at CRE ("Robinson"), and Myrtle Beach air traffic control (MYR).


Pursuant to Sections 6(H) and 10 of the Minimum Standards relating to operations at Grand Strand Airport adopted by the Horry County Commissioners (the "Minimum Standards"), the Airport Director has determined that Skydiving operations cannot be safely accommodated at CRE and SDMB is hereby ordered to CEASE and DESIST from all



Skydiving operations at CRE until further notice. Any violation of the Minimum Standards, including this Cease and Desist Notice, will lead to removal from the airport and civil penalties.

Robinson is hereby directed not to clear any airspace for skydiving operations over and into CRE. Any skydiving operations landing within CRE will be considered to be a violation of the Minimum Standards and a trespass under applicable law.

HORRY COUNTY DEPARTMENT OF AIRPORTS

By: 

H. Jason Terreri

Assistant Director of Airports

Cc: Myrtle Beach Air Traffic Control
Jacksonville Air Traffic Control
Randall S. Fiertz, FAA Director of Airport Compliance and Management Analysis
Michael J. O'Donnell, FAA Director of Airport Safety and Standards
Patricia Apone, Airport Director
Arrigo Carotti, Esq.
H. Randolph Haldi, Esq.
Sgt. Frank Venegas, Horry County Police Dep't, Airport Div.
David Y. Bannard, Esq.
Jeffery Blease, Esq.
Michael Battle, Esq.
(all w/ encl.)

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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

Opinion No. 5537
Heard March 5, 2018-Filed July 11, 2018
Petition for Rehearing Denied September 20, 2018
Appellate Case No. 2018-001910

SKYDIVE MYRTLE BEACH, INC.Petitioner

v.

HORRY COUNTY.....Respondent

PROOF OF SERVICE

The undersigned hereby certifies that on April 11, 2019, the **Respondent's Brief** was served on Petitioner's and Respondent's counsel of record via U.S. Mail, to the below address:

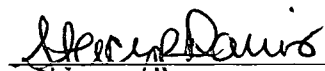
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S.C. SUPREME COURT


Stacy R. Davis served for:
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Battle Law Firm, LLC