

9/26/01

IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
COURT OF COMMON PLEAS

RECEIVED

APR 16 2020

Edgar W. Dickson, Circuit Judge

SC Court of Appeals

Case No. 2020-000451

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

Janes Smith, Jr.

Respondent

EMERGENCY MOTION FOR STAY OR AN INJUNCTION PENDING APPEAL

Appellants, Rufus Rivers and Merle Rivers, pro se, moves this court for Emergency Motion For Stay Or Injunction Pending Appeal pursuant Rule 62, modifying or replacing Appellant's appeal bond ordered on November 2, 2018. The Magistrate failed to provide Appellants with an appeal bond form to be signed as required by SC Code Of Laws 27-37-800 which was inappropriate at the time of being ordered and Appellants never saw or signed. Appellants should have been afforded the privilege of providing a bond undertaking as provided by South Carolina Code Of Laws 22-3-1110 instead. The

Magistrate's return stated that Appellants were provided a rental analysis by mail prior to the hearing, which was incorrect. Appellants did not know of any rental analysis relating to a rental appeal bond until the day of the hearing while awaiting the hearing in the lobby. Appellants always believed there was no landlord-tenant relationship and there was never a rental agreement. Opposing counsel stated that a landlord-tenant relationship existed because it was a tenant-at-will relationship. See US Legal Inc., **("A tenant-at-will is a tenant who has the landlord's permission to stay on the property past the expiration of the rental agreement. Also, a tenant who occupies rental property with the landlord's consent and makes rent payments without a written lease is a tenant-at-will)**. In this case, neither apply nor was it ever a rental property. The Magistrate granted an invalid eviction which in turn has created a financial hardship on the Appellants by forcing rental payments, cost of unnecessarily filing of court motions, and the unnecessary cost of filing of appeals.

Due process was denied Appellants when the magistrate violated South Carolina Code Of Laws 22-3-20, 22-3-1110 through 22-3-1180. See sccourts.org's Magistrate Law In Civil Actions, section 22-3-20 "further limits a Magistrate's jurisdiction by prohibiting his hearing civil cases... and for disputes as to real property matters except as provided in South Carolina Code Of Laws 22-3-1110 through 22-3-1180. Jurisdiction may not be waived or conferred upon the Magistrate by consent of the parties or by order of a higher court". The Magistrate knew or should have known that a summons and complaint had been filed and served on Respondent James Smith, Jr. prior to Mr. Smith's filing and her proceeding to adjudicate the eviction matter. Instead, she relied on opposing counsels assertion that there was no Summons and Complaint was on file. By allowing this type of behavior to prevail only violates the very laws that it was designed to protect. The magistrate's court can't settle disputes involving real property matters.

Appellants has asked the Magistrate's court for reconsideration and have filed different motions

with the Circuit court, which were either ignored or denied. Appellants feel that filing additional motions with the lower courts would be impracticable. A stay or preliminary injunction would allow Appellants to maintain the status quo and allow Appellants to pursue appellate relief.

ARGUMENTS

The court looks for four factors when assessing the appropriateness of a stay or an injunction pending appeal: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

(1) The likelihood that the party seeking the stay will prevail on the merits of the appeal, or by at least presenting adequate legal arguments.

Appellants meets the first factor for the purposes of injunction pending appeal, specifically in these circumstances. To demonstrate the likelihood of success Appellants, need only show that they are pursuing legal questions that present a need for a more deliberative investigation. As this court will see, there are serious questions raised that need to be resolved. Together with the irraparable harm to the Appellants and the practical result that their appeal will become uncertain unless an injunction is issued, the circumstances presented here favor the issuance of a stay or injunctive relief pending appeal. See

B. Absent Injunction Relief, Appellants Will Be Irreparably Harmed.

There is no doubt that it is evident that Appellants will suffer irreparable harm absent an injunctive pending appeal. If this Court rejects the requested relief and Appellants continue to pay rents into the court, thus, causing more financial hardship allowing the magistrate to violate Appellants' due process by violating the very laws created to afford all parties a level playing field. That is because

the irreparable harm lies in the fact that if the magistrate court's order stands, subject matter jurisdiction is lost and Appellants as senior citizens will be displaced.

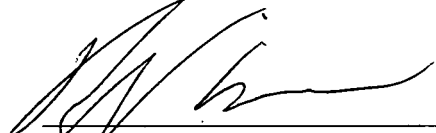
C. Granting The Requested Injunctive Relief Will Neither Substantially Injure Any Other Party Nor Harm The Public Interest.

A stay or injunction pending appeal also will not substantially harm the Respondent or the public for several reasons. First, the Respondent does not have access to the funds in escrow. This is the equivalency of a **Surety Bond**. Only Appellants are suffering by not being able to access their much needed funds as they are on a fixed income and continuing to place monies in to escrow deprives them of the income they need to cover much needed medical expenses, etc. There is no public interest to be served by not granting the relief being sought. Finally, even if these two factors alone did not favor Appellants' request for injunctive relief pending appeal, Appellants still show a substantial case on the and irreparable harm if relief is denied.

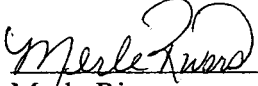
CONCLUSION

For the foregoing reasons, Appellants respectfully request their motion be granted and that this court stay the magistrate's court Order of November 2, 2018, or enter an injunction pending appeal precluding the Magistrate court's writ of ejectment until the Court Of Appeals has resolved Appellants' appeal from the Circuit Court order dated February 21, 2020.

April 8, 2020



Rufus Rivers, pro se



Metle Rivers, pro se

COUNTY OF Orangeburg

Rufus L. Meade Rivers

Plaintiff(s)

vs.

James Smith, Jr.

Defendant(s)

Submitted By: Rufus Rivers
Address: 1429 Leonard Smock Street
Cordova, SC 29034

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) _____ | <input type="checkbox"/> Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
<u>20 -NI-</u>
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) _____ | <input type="checkbox"/> Torts - Personal Injury
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) _____ | <input type="checkbox"/> Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input checked="" type="checkbox"/> Other (499) <u>Breach of fiduciary duty</u> |
| <input type="checkbox"/> Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) _____ | <input type="checkbox"/> Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) _____ | <input type="checkbox"/> Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Incapacitated Adult Settlement (790)
<input type="checkbox"/> Other (799) _____ | <input type="checkbox"/> Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) _____ |
| <input type="checkbox"/> Special/Complex /Other
<input type="checkbox"/> Environmental (600) <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Medical (620) <input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Pre-Suit Discovery (670)
<input type="checkbox"/> Permanent Restraining Order (680)
<input type="checkbox"/> Interpleader (690) | | | |

ATTEST: TRUE COPY

Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Date: 8-6-2018

Submitting Party Signature: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

1

FILED FOR RECORD CIVIL ACTION COVERSHEET
WINNIFA B. CLARK

2019 MAY -8 PM 9:19 2019 -CP- 39 - 01016

CLERK OF COURT ORANGEBURG, SC
2018-CP-38-01339

FILED FOR RECORD
WINNIFA B. CLARK
2018 AUG -6 AM 10:41
CLERK OF COURT
ORANGEBURG, SC

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

FILED FOR RECORD
WINNIE B. CLARK

2019 MAY - 8 PM 3:19

IN THE COURT OF COMMON PLEAS

THE FIRST JUDICIAL CIRCUIT

RUFUS RIVERS)
MERLE RIVERS)
Plaintiffs)
Vs.)
JAMES SMITH, JR)
Defendant)

CASE NO. 2018 - CP - 38 - 01010

CERTIFICATE OF SERVICE

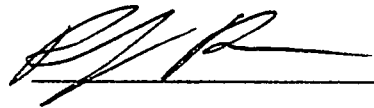
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APR 16 2020
SC Court of Appeals

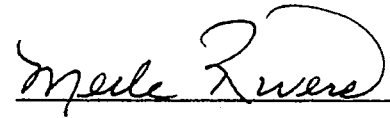
WINNIE B. CLARK

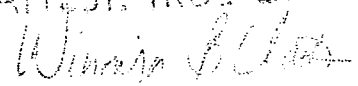
We certify that on this date, we served a copy of Summons and Complaint, with Motion for Injunctive Relief in this action, dated 8-6-2018, on 8-6-2018 by mailing it to him at his last known address, by Depositing it in the U.S. Mail, in an envelope with sufficient postage affixed addressed as follows:

James Smith, JR.
66 Thomas Street
Brentwood, New York 11717

8-6-2018
Date


Rufus Rivers


Merle Rivers

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

RUFUS AND MERLE RIVERS
Plaintiffs

vs.

SUMMONS

Case # 2018-CP-38-01010

JAMES SMITH, JR.
Defendant

TO THE REFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you,

and serve a copy of your answer to this Petition upon the subscriber, at the address shown below, within 30 days after

service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgement by default will be rendered against you for the relief demanded in the petition.

Orangeburg, South Carolina

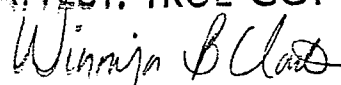
1429 Legrand Smoak Street

Cordova, SC 29039

Dated:


Rufus Rivers, PRO SE


Merle Rivers, PRO SE

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
]	
RUFUS RIVERS	]	CASE # 2018-LR 38-01014
MERLE RIVERS	]	BREACH OF FIDUCIARY DUTY
Plaintiffs]	
VS.	]	EXPEDITED INJUNCTIVE RELIEF
]	
JAMES SMITH, JR	]	COMPLAINT
Defendant]	

CAUSE OF ACTION

(breach of fiduciary duty)

(Jurisdiction)

1. Plaintiffs, are and at all times herein mentioned, domiciled in and a citizen of the State of South Carolina. Defendant, James Smith, Jr., is and was at all times herein mentioned, domiciled and a citizen of the State of New York.
2. Plaintiffs allege that on/or about July 1, 2013, in the State of New York defendant executed an invalid Power-of-Authority(POA). Defendant used that very POA to execute an invalid quitclaim deed to himself one year later on September 19,2014 transferring property that was gifted to plaintiffs but not recorded with the County of Orangeburg.
3. Defendant through a real estate attorney in Charleston, South Carolina, then recorded the documents with the Orangeburg County Register of Deeds on October 10, 2014.
4. The property at 1429 Legrand Smoak Street in Cordova, South Carolina was gifted to plaintiffs by Jessie Mae Smith, the principal. The defendant was well aware of the transaction.

ATTEST: TRUE COPY
Winnaja B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

FILED FOR RECORDED
 WINNAGA B. CLARK

Plaintif and defendant had discussed the matter during the latter part of 2012.

5. Plaintiffs had no reason to believe or reasonably believe that defendant would take the Bizarre steps taken to intervene and steal the gift from plaintiffs.

6. The principal, Jessie Mae Smith, now deceased, resided with plaintiffs for a period of time before being taken to New York with defendant in March, 2013, at which time Jessie Mae did not appear to be lucid enough to make that kind of decision, as the defendant himself indicated during our discussion.

7. During the principal's stay with plaintiffs, plaintiffs learned much about her financial and medical affairs from accompanying her to the financial institution and medical facilities.

8. The acts and omissions of the defendant, James Smith, Jr. , as alleged above, constitutes intentional breaches of his fiduciary duties to Jessie Mae Smith, the principal and eminent loss to plaintiffs.

9. Defendants leaves to question why principal could not have transferred the property to him directly if that was her intention, rather than employ an attorney in another county and handle the transactions by mail or courier in another state. An agent's duties should be in the best interest of the principal and her wishes and not the agent's.

10. Defendant's breach of his fiduciary duties were willful, malicious, oppressive, and in conscious disregard of the principal's plaintiffs' rights, accordingly, plaintiffs' request the quitclaim deed be revoked and rendered void.

FIRST CAUSE OF ACTION

(Constructive Fraud)

11. Defendant intentionally kept principal, Jessie Mae Smith out of contact with plaintiffs while carrying out the above-referenced actions. Defendant avoided the appropriate method of transferring the property by leaving the jurisdiction of the property and using an extraordinary means which is suspicious. If the principal had intended for defendant to own

the property , plaintiffs believes she would have signed it over to the defendant rather than having documents prepared in another state and having them mailed to her in New York to be executed when she was already in the appropriate jurisdiction. This type of transaction creates suspicion and allows for mischief. This is the perfect scenario for unauthorized self-dealing. Defendant was well aware of the gift, and never once chose to bring it up in the presence of Jessie Mae Smith, whom could have cleared up the issue. In hind-sight, plaintiffs desire not to create confusion was their mistake. Plaintiffs' understanding was any part of an agreement performed makes it a contract. Plaintiffs also, alleges that the signatures on the POA does not match Jessie Mae Smith's signatures.

SECOND CAUSE OF ACTION

(Negligence)

12. Defendant breached duty of care, and breach was the actual and proximate cause of plaintiffs' eminent injury and not advising plaintiffs of his actions when transferring property to himself while knowing that Jessie Mae Smith gifted property to plaintiffs.

THIRD CAUSE OF ACTION

(Conversion)

13. Defendant did not act in the best interest of principal or carry out principal's wishes allowing plaintiffs to take rightful ownership of the gifted property, when he used his authority through Power-of-Attorney to acquire property that was intended for plaintiffs.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

14. Defendant used Power-of-Attorney to benefit himself through self-dealing.

FIFTH CAUSE OF ACTION

(Invalid Owner)

15. Defendant is an invalid owner and plaintiffs incorporate all allegations and causes of action.

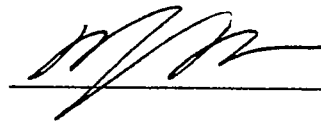
Wherefore, plaintiffs pray for judgment against defendant as follows:

On the causes of actions:

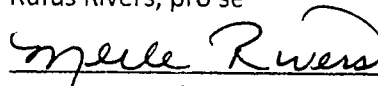
1. For judgment by voiding quitclaim deed.
2. For cost of this action.
3. For such other relief as the court deems just.
4. For the court to undo transactions conducted by the Power-of-Attorney.

We declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed this 6th day of August 2018, at Orangeburg, South Carolina.



Rufus Rivers, pro se



Merle Rivers, pro se

THE STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RUFUS RIVERS
MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

IN THE COURT COMMONPLEAS

THE FIRST JUDICIAL CIRCUIT

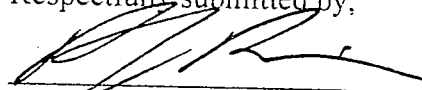
Case # 2018-CP-38-01016

MOTION FOR INJUNCTIVE RELIEF
EXPEDITED REVIEW REQUESTED

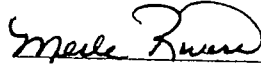
Plaintiffs, Rufus and Merle Rivers, moves this court for Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure staying in further action by defendant in the above-referenced matter. The reasons supporting this motion are set forth in the attached memorandum.

Dated: 8-6-2018

Respectfully submitted by,



Rufus Rivers, pro se



Merle Rivers, pro se

ATTEST: TRUE COPY



CLERK OF COURT

ORANGEBURG COUNTY, SC

MEMORANDUM

This court should immediatrly issue an injunction order staying any further action pertaining to the aforementioned case until the court rules upon petitioners' civil complaint. Petitioners' rights to possession/ownership to property at 1429 Legrand Smoak Street, Cordova, SC 29039. Petitioners were gifted property and moved into the property September, 2009 by Jessie Mac Smith(aunt). Petitioners relocated to the referenced address with all of their belongings understanding that the property was theirs. Recently, petitioners were notified by defendant that he was going to sell the property and was given a 30 day notice. Defendant had executed a Power-of-Arorney and Quitclaimed the property to himself. Plaintiffs gave up everything to take possession of the property and harm is unjustifiably imminent. 1. Defendant has violated his fiduciary obligation by self-dealing. 2. Defendant's violation voids the property transfer. This court should grant these plaintiffs' emergency motion because plaintiffs will be displaced and deprived of the gift that was granted them through the mischief of the defendant. No third party will be unjustifiably harmed if the injunction is granted, and the public interest will be served, therefore, affordingly, allowing plaintiffs opportunity to meaningfully challenge the Power-Of-Arorney and ultimately the Quitclaim Deed through their

civil complaint.

In conclusion , an injunction should be issued because:

- 1.Petitioners are likely to succeed on the merit of the petition.
- 2.An injunction is necessary to provide petitioners an opportunity to meaningfully challenge respondent's breach of fiduciary duties.
- 3.Petitioners will suffer irreparable harm if respondent is permitted to proceed.

FILED 8/11/18
W. B. Clark
Clerk of Court
Orangeburg County SC

4. By granting petitioners expedited injunctive relief, no third party will be harmed.

8-6-2018
Date



RUFUS RIVERS, pro se

8-6-2018
Date



MERLE RIVERS, pro se

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Case #

RUFUS RIVERS
MERLE RIVERS
Plaintiffs

ORDER
GRANTING INJUNCTIVE RELIEF


vs.

JAMES SMITH, JR.
Defendant


In view of these findings, Plaintiffs is entitled to a preliminary injunctive relief until the court issues a determination of the merits of Plaintiffs' petition or until further order of the court.

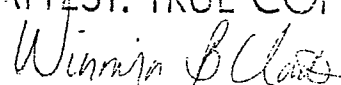
Accordingly, for good cause shown, Plaintiffs' motion is granted, further, the court finds that no bond is necessary because no third party will suffer no monetary damages should it be decided that the injunctive relief should not have been granted.

Date:


Rufus Rivers, pro se

JUDGE


Merle Rivers, pro se

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, S.C.

**AFFIDAVIT
OF
RUFUS RIVERS
MERLE RIVERS**

**IN THE STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

The undersigned, Rufus and Merle Rivers, being duly sworn hereby deposes and says:

1. We are over the age of 18 and are residents and senior citizens of South Carolina. We have personal knowledge of the facts herein, and, if called as a witness, could testify completely herein.
2. We suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. When we were made aware of James Smith, Jr.'s fraudulent transfer of ownership to the property at 1429 Legrand Smith Street, Cordova, South Carolina, where Defendants have resided since 2009 after being granted possession of the property by the owner, Jessie Mae Smith, Defendants filed a Summons and Complaint with a Motion for Injunctive Relief inside on August 6, 2018 alleging invalid ownership. Mr. Smith received and signed for the documents on August 14, 2018. He then filed eviction papers, through his counsel, Kathleen McDaniel on August 20, 2018. We were never advised of a hearing on the motion. (see attached #1 & #2)
4. On September 18, 2018 a hearing was held and the defendants answered in writing showing that title to real property would come in to question pursuant South Carolina Code of Laws 22-3-20. (see attached #3)
5. Magistrate Stephanie Grant stated the the document only indicates that there is a case pending on Circuit Court, and did not matter because she had a copy of the Power-of-Attorney and Quitclaim Deed which shows Mr. Smith as owner of the property without retaining a copy.
6. It was Defendants' understanding at the time pursuant South Carolina Code Of Laws 22-3-1110 that was the only requirement, "defendant may, either with or without other matter of defense set forth in his answer.....".
7. Defendants presented an undertaking that only needed the bond amount set by the magistrate and her approval pursuant South Carolina Code of Laws 22-3-1120. (see attached #4)
8. The court erroneously adjudicated a real property where she was prohibited. Instead we were told "it wasn't the right time."
9. Defendants requested a copy of the order and was refused a copy while being told that "the court did not have to give one." We inquired at the disciplinary commission that oversees magistrates and was told that the magistrate had to provide us copy, but we still have not seen or received hard copies of anything including the appeal bond which required our signatures.

10. A motion for reconsideration and motion to vacate the writ of ejectment were held simultaneously and the magistrate's decision was upheld. (see attached #9 & #10)

11. Shortly thereafter. We received a letter directed to Attorney McDaniel requesting her recommendation for an appeal bond amount. (see attached #5)

12. On the day of the bond hearing while waiting in the lobby, we were approached by Attorney McDaniel and provided a rental analysis. (see attached #6)

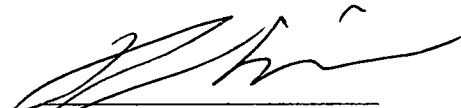
13. At the hearing, we attempted to provide the magistrate with a surety bond that would have been completed by my surety once an amount was approved by the magistrate. Another judge present at the hearing stated that kind of bond was used only in criminal cases. The magistrate used opposing counsel's rental analysis as a guide for determining the rental amount of \$700.00 per month for a mobile home in a rural area to begin immediately.

14. We then filed a motion in Circuit Court for review of rental payments because they were improper, since there never was any type of landlord-tenant relationship. (see attached #7)


15. We filed a motion for reconsideration and have not received any response. (see attached #8)

We declare that, to the best of our knowledge and belief, the information herein is true, correct, and complete.

Executed this 10th day of April 2020



Rufus Rivers, pro se



Merle Rivers, pro se

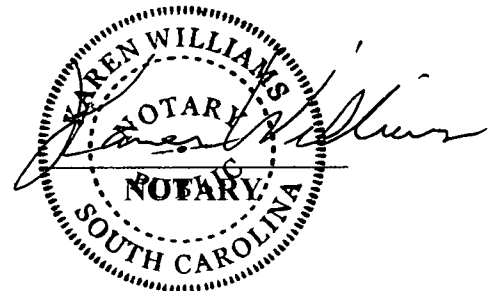
NOTARY ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA, COUNTY OF ORANGEBURG

The foregoing Affidavit was acknowledged before me this 10th day of April, 2020, by Rufus Rivers and Merle Rivers, who, being first duly sworn under oath according to law, deposes and says that they have read the foregoing Affidavit subscribed by them, and that the matters stated herein are true to the best of their information, knowledge, and belief.

mation, knowledge, and belief.

My commission expires the 22nd day of May, 2022.



230

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

2018CV3810702780

CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

3792

James F. Smith Jr)
Attorney Kathleen M McDaniel)
Post Office Box 1929)
Columbia, SC 29202)
(803) 850-0912)

FILED FOR RECORD
WINNIPA B. CLARK
2018 NOV 21 PM 3:13
CLERK OF COURT
ORANGEBURG, SC

2

CCSO

PLAINTIFF(S))

VS.)

Rufus & Merle Rivers)
1429 Legrand Smoak Street)
Cordova, SC 29039)

RULE TO VACATE OR SHOW CAUSE
(Eviction)

DEFENDANT(S))

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at 1429 Legrand Smoak Street, Cordova, SC 29039 because they say that:

- You have failed to pay rent when due or demanded in the amount of \$_____.
- The terms of your tenancy or occupancy have ended.
- You have violated the terms or conditions of your lease by:

You, **Rufus & Merle Rivers**, the defendant and lessee of the premises listed above, **and all others** are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 OR to contact **Central Region Magistrate** located at 1540 Ellis Avenue, Orangeburg, SC 29115, PHONE: (803) 533-5843 within **ten (10) days** of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: August 20, 2018

Regina D. Doremus
MAGISTRATE JUDGE

Personally appeared before me, the undersigned deponent who, being duly sworn, says that s/he is a person over 18 years of age not a party or attorney in this action and that s/he attempted to serve the Rule to Vacate or Show Cause on [Defendant(s)] on the following dates/times:

	DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1.						8:23-18	
2.						5:44	
3.							

SWORN to and Subscribed before me
This 24 Day of August, 2018)
Melissa G. Brubaker)
NOTARY PUBLIC OR JUDGE)

[Signature]
SIGNATURE OF SERVER
Frazier

On _____, I deposited a copy of this document in the United States Mail in an envelope addressed to the Defendant(s) above with first class postage affixed thereto.

Rule to Vacate or Show Cause

Rufus Rivers

EX A-1

STATE OF SOUTH CAROLINA]
COUNTY OF ORANGEBURG]
JAMES SMITH, JR.]
Plaintiff]
VS]
RUFUS RIVERS RUFUS AND MERLE RIVERS]
Defendants]

IN THE MGISTRATES COURT
CASE NO. 2018CV1810702780
REPLY: TO RULE TO SHOW CAUSE
REQUEST TO INCORPORATE CASES IN
COURT OF COMMON PLEAS

3

*Case to magistrates
She gave it back
opposing attorney has copy*

FILED
APR 10 2018
2:45 pm
RECORD
CLERK
ORANGEBURG SC


Now comes the defendants replying and denying any and all allegations:

- 1. Defendants were never a part of any valid lease or rental agreement with plaintiff.
- 2. Defendants never resided at 1428 Legrand Smoak Street, Cordova, South Carolina, 29039

Defendants have a pending Complaint with Motion for Injunction filed with the Court Of Common Pleas, in the First Judicial Circuit Orangeburg, South Carolina, dated and filed August 6, 2018 With proof of mailing bearing the same date.

Defendants are requesting this court's actions be dismissed and defendants be permitted to incorporate this matter and proceed in the Court Of Common Pleas case #2018-CP-38-01016, where defendants will also be seeking damages for retaliation. The plaintiff and his attorney knew or should have known about the pending action regarding the validity of plaintiff's ownership of said property. Instead, plaintiff through his attorney , attempted unethical behavior while using this court to facilitate an unlawful eviction. In addition, defendants request a restraining order against plaintiff. Due to defendant's pending action in circuit court and plaintiff's attempt to use this court to facilitate an unlawful eviction, defendants see no need for any bond.

Dated: 09/17/2018



Rufus Rivers, pro se

To: Plaintiff Attorney: Kathleen M. McDaniel

Office Box 1929

Columbia, SC 29202

Merle Rivers

A-7

Merle Rivers

LED FOR: 000
MINIPA B. 1 00X
2019 APR 10 PM 4:40
CLERK OF COURT
ORANGEBURG, SC

Ex. C1

2018CV38107D2780

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

4

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

James Smith, Jr.

PLAINTIFF(S)

VS.

Rufus and Merle Rivers

DEFENDANT(S)

BOND UNDERTAKING
AND ORDER

FILED FOR RECORD
WARRIEN S. CLARK
2018 APR 10 PM 4:40
CLERK OF COURT
ORANGEBURG, SC

Rufus Rivers and Merle Rivers plaintiff/ defendant (circle one) desires to give an undertaking for the purpose of:

Covering costs incurred if defendants don't prevail in the appeal.

as provided by Section 22-3-1120, Code of Laws (1976), in the amount of \$ 2000.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

Name	_____	Name	_____
Business Address	_____	Business Address	_____
Amount	<u>\$2,000.00</u>	Amount	_____

2-2

I declare under penalty of perjury that the foregoing is true and correct.

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2019 APR 10 PM 4:40
CLERK OF COURT
ORANGEBURG, SC

(Signature of Surety)

(Signature of Surety)

ORDER

The above undertaking by surety(ies) is hereby approved by this court.

Dated: _____

MAGISTRATE



**ORANGEBURG COUNTY
CENTRAL REGION
MAGISTRATE COURT**

5



1540 Ellis Avenue
P.O. Box 9000
Orangeburg, South Carolina 29116
Phone: (803) 533-5843
Fax: (803) 516-4011
Judge Stephanie McKune-Grant

October 18, 2018

VIA CERTIFIED MAIL 7006 0100 0005 3013 1252

Kathleen M. McDaniel, Esquire
Attorney for James F. Smith, Jr.
Post Office Box 1929
Columbia, South Carolina 29202

Dear Attorney McDaniel:

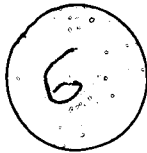
As representative for your client Mr. James F. Smith, Jr., this letter is to advise you that a Notice of Appeal has been filed in the First Judicial Circuit Court of Common Pleas and delivered to my office regarding my judgement in the matter of James F. Smith, Jr. vs. Rufus and Merle Rivers issued on October 17, 2018.

Please notify my office immediately if you have any motion concerning the appropriate amount of an appeal bond.

I Am,

Stephanie McKune-Grant
Magistrate
County of Orangeburg

CC: VIA CERTIFIED MAIL 7006 0100 0005 3013 1276
Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE MAGISTRATE'S COURT
)
) C/A no. 2018CV3810702780

James F. Smith, Jr.,

)
)
) Plaintiff,

AFFIDAVIT OF
CONNIE GASTON

Rufus Rivers and Merle Rivers,

)
)
) Defendants.

Personally appeared before me Connie Gaston, who, first being duly sworn, reports as follows:

FILED FOR RECORD
ANGELICA B. CLARK
2018 NOV 21 PM 3:18
CLERK OF COURT
ORANGEBURG, SC

1. My name is Connie Gaston.
2. This affidavit is based upon my personal knowledge and expertise.
3. I am over 18 years old.
4. I have worked in rental property management since 2011.
5. I am currently employed as a rental property manager with Century 21 The Moore Group in Orangeburg, South Carolina.
6. In my job in rental property management, I have facilitated leases between residential tenants and landlords, determined rental rates for residential property, and handled residential evictions.
7. I have been asked to give an opinion as to the amount of rent that should be charged per month for the occupation of the house located at 1429 Legrand Smoak Street, Cordova, SC 29039.
8. The Orangeburg County tax map number for this property is 0127-00-05-009-000.
9. In order to reach a determination on the amount of rent, I viewed the property through Google Street View.

Plaintiff's Exhibit A

10. The property is located about 6 miles outside the City of Orangeburg in a rural area.
11. The exterior of the house appears to be in excellent condition.
12. I was unable to gain access to view the inside of the house.
13. I am informed by the attorney for James Smith, Jr. that the house contains three bedrooms and two bathrooms.
14. From the Orangeburg County Tax Assessor's records available online I determined the following:
 - a. The house was constructed in 1986.
 - b. The house is 2,016 square feet in size.
 - c. There is a detached shed and detached carport on the property.
15. I also reviewed the deed conveying the property to James Smith, Jr., recorded at Book 01075, page 0331 in the Office of the Orangeburg County Register of Deeds. The property description in the deed states that the property contains two acres of land.
16. I have reviewed the following comparable rental properties:
 - a. 251 Rivelon Rd, 3 bedroom, 2 bathroom mobile home, good condition, \$650 per month
 - b. 206 Mack Rd, 3 bedroom, 2 bathroom, brick home, good condition, \$850 per month
 - c. 1001 Norway Rd, 4 bedroom, 2 bathroom, brick home, fair condition, \$750 per month
17. Based upon the foregoing factors, I have determined that a reasonable rental rate for the property is between \$650-850 per month.

FURTHER AFFIANT SAYETH NOT.

7

STATE OF SOUTH CAROLINA	]	IN THE CIRCUIT COURT
COUNTY OF ORANGEBURG	]	CASE NO. 2018-CP-38-01339
RUFUS RIVERS AND MERLE RIVERS]	
APPELLANTS	]	MOVANTS' MOTION TO REVIEW
VS.	]	APPEAL BOND REQUIRING
JAMES SMITH, JR.	]	RENTAL PAYMENTS
RESPONDENT]	

FILED FOR RECORD
 WINNIFRA B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2018 NOV -5 PM 2:39


JB


PLEASE TAKE NOTICE Rufus Rivers and Merle Rivers hereby motions this court to hold a hearing to review movants Appeal Bond requiring rental payments of \$700.00 because:

1. Movants resided at 1429 Legrand Smoak Street for 9 years as a gift from aunt without having to pay rent.
2. Movants maintained the property inside and out for the entire time and never were required to pay rent, this included installing a new roof and repairs after hurricanes.
3. Movants filed a summons and complaint regarding respondent's unlawful transfer of title through questionable power-of-attorney by quitclaim deed to himself.
4. By respondent's own admission in his application for ejectment, there was no landlord-tenant agreement or rental payments.
5. Documentation was provided opposing counsel and Magistrate's court in writing through movants' reply to rule to show cause, that title to real estate was questionable and action was pending in circuit court.
6. Magistrate's court lacked subject matter jurisdiction.

THEREFORE, movants motion this court to review appeal bond requiring rental payments.

November 5, 2018


 Rufus Rivers, pro se


 Merle Rivers, pro se

April 10, 2019



RUFUS RIVERS, PRO SE



MERLE RIVERS, PRO SE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
)	
Rufus Rivers and Merle Rivers,	)	C/A No.: 2018-CP-38-01339
)	
Appellants,)	
)	
v.	)	ORDER
)	
James Smith, Jr.,)	
)	
Respondent.)	
_____)	

This matter came before this Court on April 8, 2019, for a hearing on Appellants Rufus and Merle Rivers' Motion to Review Appeal Bond Requiring Rental Payments, filed on November 5, 2018. Present at the hearing were Kathleen McDaniel, Esq., counsel for Respondent. Rufus Rivers appeared *pro se*. Merle Rivers did not appear.

The only issue before the Court at this time is whether the monthly rent amount set by the Magistrates Court is proper. I have reviewed the record from the Magistrates Court. It appears that Appellants were paying no rent prior to the initiation of the underlying eviction proceedings. Following the Magistrates Court granting a writ of ejectment, Appellants appealed to this Court. In order to stay the ejectment, Appellants were required to begin paying monthly rent. The only evidence regarding the amount of rent payments is the Affidavit of Connie Gaston giving an expert opinion that monthly rent ranges from \$650.00 to \$850.00 per month for similar residential rental properties.

After reviewing the record and considering the arguments of the parties presented at the hearing on April 8, 2019, I find that the Magistrates Court ruling on the amount of monthly rent was proper. Appellants shall continue to pay \$700.00 per month in rent as ordered by the Magistrates Court while their appeal is pending before this Court.

IT IS SO ORDERED.

The Honorable George M. McFaddin, Jr.
Presiding Judge

_____, South Carolina
April ____, 2019

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
JAMES SMITH, JR.	]	CASE NO. 2018CV3810702780
PLAINTIFF	]	HON. STEPHANIE MCKUNE-GRANT
Vs.]	MOTION FOR RECONSIDERATION
RUFUS RIVERS AND MERLE RIVERS]	
DEFENDANT]	

9

FILED FOR RECORD
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 2019 APR 10 PM 4:50
 CLERK OF COURT
 ORANGEBURG, S.C.

Defendants hereby move this court, as soon as possible, to hold a hearing for the reconsideration of Judgment in the above referenced case. Defendants believe the court erred when it ruled in favor of plaintiff because this court lacked subject matter jurisdiction. Pursuant Title 22 Article 1 22-3-20(2) and 22-3-1110, defendants assert that this court also;

1. lacked jurisdiction when presiding and ultimately rendering judgment in the matter.
2. did not address plaintiff's attorney perjuring herself under oath as regards to the date and time stamped on documents that were submitted to the court.
3. did not take in to consideration of defendants time at residence.
4. Proceeded after being advised verbally and by documentation of pending action in the Circuit Court questioning plaintiff's ownership and validity of the power of attorney and quitclaim deed.
5. Verbal agreements or valid contracts as well when performance is involved. There never written agreement and was never ordered any to pay rent.
6. Plaintiff through his attorney used this court to circumvent the judicial process. Plaintiff was well aware of the pending litigation, and was able to file for eviction in this court and attempt to derail the case in the circuit court at the same time with this court as the facilitator. That is unethical behavior.

Defendants ask the court to stay the courts judgment until the matter can be revisited and advise if there is any bond requirements.

Dated : September 19, 2018

NEXT PAGE SIGNATURE PAGE

RECEIVED

SEP 19 2018 *JP*

Orangenburg County
 Central Region

STATE OF SOUTH CAROLINA

IN THE MAGISTRATES COURT

COUNTY OF ORANGEBURG

CASE NO. 2018CV18107022780

RUFUS RIVERS AND MERLE RIVERS

DEFENDANTS' EX-PARTE MOTION TO VACATE

PLAINTIFFS

WRIT OF EJECTMENT

VS.

JAMES SMITH, JR.


10
2019 APR 10 PM 4:40
FILED FOR
MINNIPA B.
ERD
ORANGEBURG, SC


PLEASE TAKE NOTICE, defendants, Rufus Rivers and Merle Rivers, pro se, hereby moves this court to vacate the above- referenced matter because this court is "barred" by South Carolina Code Of Laws, unannotated, Title 22 Section 22-3-20, and Section 22-03-1110, defense of questionable title in defense's answer. There was no landlord-tenant relationship, as stated in the application for ejectment.

See Hargrove v. Cox, 180, N.C. 360, 104 S.E. 757,759, "If the magistrate finds insufficient evidence of a landlord-tenant relationship, the magistrate should make a finding that the court lacks subject matter jurisdiction and dismiss the action".

Entry of Default Judgment has been filed in circuit court voiding James Smith, Jr's Quitclaim Deed and appointing Rufus Rivers and Merle Rivers as personal representatives over the property. The default judgment has been in effect as of September 17, 2018, and will continue to be in effect until it is vacated. There is no legal basis for plaintiff to continue this matter in this court. Defendants pray that this court dismiss this matter as provided in Article 22 of the South Carolina Code Of Laws. This court should dismiss this matter with Prejudice because the writ of ejectment was never valid.

October 1, 2018


RUFUS RIVERS, pro se


MERLE RIVERS, pro se

10-5-2018 9:25 am
Sylvia called research Dept
10-16-2018 2:30 pm

OCT 1 2018