

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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May 04 2020

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se Appellant,

v.

James Smith, Jr. Respondent.

**RESPONDENT’S RETURN TO APPELLANTS’ EMERGENCY MOTION
FOR STAY OR AN INJUNCTION PENDING APPEAL**

Pursuant to Rule 240, SCACR, Respondent James Smith, Jr., submits his Return to Appellants Rufus Rivers and Merle Rivers (together “Appellants”) Emergency Motion for Stay or an Injunction Pending Appeal.

STATEMENT OF THE CASE

Respondent Smith owns the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”), and he allowed Appellants to live there rent-free for a period of time. However, on July 2, 2018, Respondent Smith wrote to Appellants giving them 30 days to vacate the Property. On August 8, 2018, Respondent Smith filed

a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate's Court against Appellants Rivers. (Exhibit A.)¹

At the eviction hearing on September 18, 2018, the Magistrate Court ruled in favor of Respondent Smith and ruled that Appellants Rivers were unlawfully occupying the premises. (Exhibit B.) On October 17, 2018, Appellants filed a Notice of Intent to Appeal to the circuit court and a Corrected Notice of Appeal on October 18, 2018. (Exhibit C.) Appellants sought to stay the ejectment during the appeal to the circuit court. Accordingly, the Magistrate Court held a hearing to determine the appropriate amount of monthly rent for Appellants to pay into court during the appeal to the circuit court in order to stay the ejectment. Because Appellants had never paid rent on the Property, Respondent submitted the Affidavit of Connie Gaston, a local property manager, to aid the Magistrate Court in determining fair market rent for the Property. (Exhibit D.) The Magistrate Court determined appropriate rent to be \$700.00, and ordered it to be paid into the Magistrate Court registry each month as bond securing a stay of the eviction pending appeal. On January 6, 2020, the circuit court affirmed the eviction ordered by the Magistrate Court. (Exhibit E.)

¹ On August 6, 2018, Appellants initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Respondent's ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner. On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas. The case was referred to the Master in Equity. On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed Appellants' Amended Complaint for failure to state a cause of action upon which relief could be granted. Appellants did not appeal that decision and the time for appeal of that order has now expired.

On March 2, 2020, Appellants appealed their eviction to the South Carolina Court of Appeals. (Exhibit F.) On March 9, 2020, a Writ of Ejectment was issued against Appellants by the Magistrate Court. (Exhibit G.) Appellants have not made any more rental payments into the Magistrate Court's registry since February 7, 2020. (Exhibit H.)

On April 16, 2020, Appellants filed the instant Emergency Motion for Stay or an Injunction Pending Appeal. In this Motion, Appellants request for this Honorable Court to stay or modify the Magistrate Court's November 2, 2018 order requiring Appellants to continue to make rental payments into the Magistrate Court's registry pending appeal to the circuit court and instead order a stay of eviction proceedings without a bond.

ARGUMENT

I. Appellants must comply with the statutory requirements set forth in S.C. Code Ann. § 27-40-800(f) to obtain a Stay of Execution of the Writ of Ejectment.

Appellants bring their Emergency Motion pursuant to Rule 62, SCRPC. To obtain a stay of execution pending appeal under Rule 62, the appellant must post a supersedeas bond. Rule 62(d), SCRPC. “[T]he purpose of a supersedeas bond is to protect nonappealing parties by maintaining the status quo during the appeal by insuring that those who have obtained the judgment under review will not be prejudiced by a stay of the judgment pending final determination of the appeal.” 5 Am. Jur. 2d Appellate Review § 374. When a tenant appeals an eviction to the Court of Appeals:

[I]t is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due

periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

S.C. Code Ann. § 27-40-800(f).

Appellants request that this Court stay the writ of ejectment until this Court has resolved Appellants' appeal. (Appellants' Emerg. Mot. for Stay or Inj. Pending App., p. 4.) Pursuant to S.C. Code Ann. § 27-40-800(f), Appellants must sign the undertaking described in S.C. Code Ann. § 27-40-800(f) in order for the writ of ejectment to be stayed.

To the extent that Appellants request this Court for a stay of execution of the judgment for ejectment, Respondent has no objection, provided Appellants comply with the undertaking requirements set forth for such a stay pursuant to § 27-40-800(f). To that end, Respondent has petitioned the circuit court for a determination of the appropriate amount of rent due to Respondent during the pendency of the appeal. (Exhibit I.) Provided Appellants make the necessary payments required under such an undertaking, Respondent has no objection to a stay of the writ of execution.

II. Appellants are not entitled to a stay pending appeal without posting a supersedeas bond as required by statute.

To the extent Appellants argue in their Emergency Motion that they should not be required to post a bond pending appeal to secure a stay of the writ of ejectment because they believe they will prevail in the Appeal or present "adequate legal arguments" regarding the Appeal, they believe they will be irreparably harmed by being made to continue paying rent during the pendency of the Appeal, and Respondent nor the public will be harmed by such an Order, their argument fails. Respectfully, Respondent is unaware of any authority which would allow a litigant to obtain a stay of execution of a

writ of ejectment based upon this theory, however out of an abundance of caution, Respondent feels it necessary to respond to this argument.

a. Appellants will not prevail on the merits of this Appeal.

Appellants first argue that they will prevail on the merits of their Appeal, thus they are entitled to a stay. (Appellants' Emerg. Mot. for Stay or Inj. Pending App., p. 3.) Appellants argue that "[t]o demonstrate the likelihood of success Appellants need only show that they are pursuing legal questions that present a need for a more deliberative investigation." (*Id.*) Appellants do not explain what legal questions they believe need a "more deliberative investigation," however it appears that Appellants set forth three reasons which they believe they will prevail in this Appeal. None of these reasons show that Appellants should be granted a stay of the writ of ejectment pending Appeal.

First, Appellants argue that they should have been provided a copy of the Affidavit of Connie Gaston regarding the fair rental value of the Property prior to the November 2, 2018 hearing establishing the amount of rent due to be paid to stay execution pending appeal to the circuit court. (*Id.* p. 2.) However, Appellants not only fail to cite any authority which would require such a rental analysis to be presented to Appellants before the hearing, Appellants also fail to show how this prejudiced their rights in any way or how this increases the likelihood of their success on the merits of their Appeal. Appellants initially requested that the Magistrate Court stay eviction proceedings pending its appeal to the circuit court. Per S.C. Code § 27-40-800, eviction proceedings can be stayed upon appeal to the circuit court upon order of the magistrate, clerk, or circuit court judge. To stay eviction proceedings pending appeal to the circuit court, it is sufficient "that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the

magistrate in accordance with § 27-40-780, as it becomes due periodically after the judgment was entered.” S.C. Code Ann. § 27-40-800(b).

The Magistrate Court here ordered that Appellants make monthly rental payments of \$700.00 into the court’s registry until such time as the appeal before the circuit court was concluded. (Ex. E.) This amount was based upon the Affidavit of Connie Gaston, which Respondent presented to the Magistrate to show that a reasonable rental rate for the Property is between \$650-\$850. (Ex. D.) Appellants presented no evidence to the Magistrate regarding the fair rental rate of the property, instead electing to argue before the Magistrate (and then on appeal of the bond requirement to the circuit court) that they should not be required to pay any rent at all. Since Appellants presented no evidence which would show that the Affidavit is incorrect in its estimation of the fair-market rental value of the Property, Appellants cannot now argue that having the Affidavit of Connie Gaston in hand earlier than its presentment at the hearing would have benefited their case.

Second, Appellants argue that there is no landlord-tenant relationship because there was never a “rental agreement” regarding the Property. (Appellants’ Emerg. Mot. for Stay or Inj. Pending App., p. 2.) Under South Carolina law, a “landlord” is defined as “the owner, lessor, or sublessor of the premises.” S.C. Code Ann. § 27-40-210(6). An “owner” is defined as “one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.” S.C. Code Ann. § 27-40-210(8). “A tenant is one who occupies the premises of another in subordination to that other’s title and with his assent, express or implied.” *Bruce v. Durney*, 341 S.C. 563, 569, 534 S.E.2d

720, 724 (Ct. App. 2000). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code Ann. § 27-40-310(d). A “tenant at will” is defined as “Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing.” S.C. Code Ann. § 27-33-10(3).

Respondent holds legal title to the Property and thus owns the Property. (Exhibit J.) Respondent permitted Appellants to occupy the Property without a written lease, to the exclusion of others, and without a definite term to the agreement until July 2, 2018, when he asked them to vacate the premises. (Exhibit K.) Appellants’ argument that they cannot be evicted because they do not have a landlord-tenant relationship with Respondent is meritless.

Third, Appellants argue in that the Magistrate had no jurisdiction to determine that Respondent owns the Property. (Appellants’ Emerg. Mot. for Stay or Inj. Pending App., p. 2.) Appellants argue that the Magistrate Court’s jurisdiction is limited and cannot hear disputes as to real property matters per S.C. Code Ann. § 22-3-20. (*Id.*) However, it is well-established in South Carolina that “a proceeding to eject a tenant who claims title in himself is not an action involving the title to land but a summary proceeding, and it may be filed in magistrate’s court.” Hon. William P. Steele, Jr., *A Tale of Two Courts--Civil Procedure in Magistrate's Court and the Court of Common Pleas*, S.C. Law., MARCH/APRIL 1997, at 32, 33 (citing *State ex rel. O’Neale v. Fickling*, 10 S.C. 301 (1878).) Therefore, the Magistrate Court indeed had the jurisdiction to determine that Respondent owns the Property and that Appellants could be ejected upon Respondent’s application to the Magistrate Court.

b. Appellants will not be irreparably harmed absent injunctive relief.

Appellants argue that they will be irreparably financially harmed if they are required to pay monthly rents during the pendency of this Appeal. This argument is nonsensical. As described above, Respondent owns the Property and Appellants are tenants-at-will. Even if their Appeal is successful and Appellants are allowed to continue to occupy the Property, as the owner of the Property Respondent has the right to require Appellants to pay rent. If Appellants cannot now afford to pay fair-market rent on the Property during the pendency of their appeal, Respondent cannot fathom how Appellants expect to be able to pay rent in the event their appeal is successful.

c. Respondent will be substantially injured if Appellants are not required to pay rents during the pendency of this Appeal.

While Appellants have the right to pursue their case, they do not have the right to do so without providing some security to Respondent to ensure that Respondent will not be substantially harmed by the time it takes to resolve this Appeal. Appellants argue that since Respondent has no access to the funds in the Magistrate Court's registry which secured Appellants' appeal to the circuit court, Respondent cannot be not harmed if Appellants stop making rental payments in any form as their Appeal to this Court is pending. (Appellants' Emerg. Mot. for Stay or Inj. Pending App., p. 3.) This argument is meritless.

Respondent owns a home in which he cannot live (as Appellants currently occupy it and refuse to leave upon Respondent's request), which is generating no rental income to which he currently has access, which he cannot rent, and which he cannot sell to any purchaser who expects to be able to immediately use the home. Respondent further is being forced to expend attorneys' fees to defend his interest in the Property while being

unable to access the income the Property could be generating as a rental property. While Appellants have benefitted from the drawing-out of the underlying eviction action for over a year and a half, Respondent has been damaged every month he has been unable to fully use his Property and will continue to be damaged if Respondents are not ordered to secure a stay by paying the statutorily required rents.

d. The public interest will be harmed if Appellants are not required to pay rent during the pendency of their Appeal.

The public interest will be harmed if Appellants are not required to pay rent during the pendency of their Appeal. The requirement to post bond during the pendency of certain appeals protects the status quo, which in turn protects the public from frivolous appeals made simply to draw out litigation and extend the time between a judgment and collection of that judgment. The requirement to post bond during the pendency of an appeal over an eviction likewise serves the purpose of discouraging litigants from filing frivolous appeals in order to occupy properties without paying rent. If Appellants are allowed to pursue this Appeal without posting bond simply because they believe they cannot afford to make rental payments, the door would be open to future litigants facing eviction to appeal their evictions, plead poverty to avoid paying rent, and then drag out the appeal as long as possible to maximize the amount of time they are not required to pay for housing. This is not in the public interest.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that Appellants' Emergency Motion for Stay or an Injunction Pending Appeal be denied. In the alternative, Respondent requests that Appellants be required to sign an undertaking as required by

S.C. Code Ann. § 27-40-800(f) in order to secure a stay of execution of the writ of
ejectment on Appeal.

Respectfully submitted,

s/ Sarah J.M. Cox _____
Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar No. 104316)
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ATTORNEYS FOR JAMES SMITH, JR.

Columbia, South Carolina

May 4, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 04 2020

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se Appellant,

v.

James Smith, Jr. Respondent.

**RESPONDENT’S RETURN TO APPELLANTS’ EMERGENCY MOTION FOR STAY
OR AN INJUNCTION PENDING APPEAL**

INDEX TO EXHIBITS

- EXHIBIT A:** Rule to Vacate or Show Cause (Eviction), dated August 8, 2018
- EXHIBIT B:** Magistrate’s Return of Civil Appeal, dated November 21, 2018
- EXHIBIT C:** Notice of Intent to Appeal to Circuit Court (Corrected), dated October 18, 2018
- EXHIBIT D:** Affidavit of Connie Gaston, dated November 2, 2018
- EXHIBIT E:** Order, dated April 18, 2019
- EXHIBIT F:** Notice of Appeal, dated March 2, 2020
- EXHIBIT G:** Writ of Ejectment (Eviction), dated March 9, 2020
- EXHIBIT H:** Printout showing Magistrate Court Registry payments

- EXHIBIT I:** Petition for Determination of Rent Due Respondent During the Pendency of Appeal to the Court of Appeals, plus Exhibits, dated May 1, 2020
- EXHIBIT J:** Quitclaim Deed of Real Property, dated September 19, 2014
- EXHIBIT K:** Letter from Respondent to Appellants, dated July 2, 2018

EXHIBIT A

STATE OF SOUTH CAROLINA)

2018CV3810702780

3563

COUNTY OF Orangeburg)

CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

230

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 3:44

CLERK OF COURT
ORANGEBURG, SC

89-18
Can not reach by phone
stated # 12-20-18
[Signature]

PLAINTIFF(S)

VS.

RULE TO VACATE OR SHOW CAUSE
(Eviction)

Rufus & Merle Rivers
1428 Legrand Smoak
Cordova, SC 29039

DEFENDANT(S)

CCSS CIVIL DIVISION

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at 1428 Legrand Smoak, 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) 533-5844** 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: 8-8-18

[Signature]
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
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	SETTLED/DATE	_____
3.	_____	_____	_____	VACANT/DATE	_____

SWORN to and Subscribed before me
This _____ Day of _____

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

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

Page 1 of 1

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EXHIBIT B

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF ORANGEBURG)
)
)
 RUFUS AND MERLE RIVERS)
 PRO SE)
)
 APPELLANTS)
)
 -vs-)
)
)
 ATTORNEY KATHLEEN M.)
 MCDANIEL FOR)
 JAMES F. SMITH, JR.)
)
)
 RESPONDENT)

IN THE FIRST JUDICIAL CIRCUIT
 COURT OF COMMON PLEAS
 MAGISTRATE'S RETURN
 OF CIVIL APPEAL
 CASE NO. 2018CV3810702780

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

In response to the Appellant's appeal, the Court provides the following return.

On August 8, 2018, the Respondent James F. Smith, Jr., represented by Attorney Kathleen M. McDaniel, filed a Rule to Vacate or Show Cause for Eviction.

On August 23, 2018, the Rule to Vacate the Premises or Show Cause within 10 Days was personally served on the Appellants, Rufus and Merle Rivers. The hearing was set for September 18, 2018 at 2:00 p.m. All parties were notified of the hearing date and time by court generated Summons.

On September 18, 2018, the cause of action was heard in Magistrate's Court in Orangeburg County before Judge Stephanie McKune-Grant as a bench trial. Present at the hearing were the Appellants Rufus and Merle Rivers and Attorney Kathleen M. McDaniel, appearing on behalf of her client, Respondent, James F. Smith, Jr.

This case is an eviction matter filed by Respondent James F. Smith, Jr. who currently resides in the state of New York. Respondent Smith is the current property owner of 1429 LeGrand Smoak Street in Cordova, South Carolina. The Appellants Rufus and Merle Rivers have lived at the residence for a period of nine years and have paid no rent which they claim was based on a prior oral agreement with the former property owner, Jessie Mae Smith, who was the mother of the Respondent and aunt of the Appellant. There is no record of a written lease agreement.

As a result of a transfer in ownership of the property that occurred in September 2014, the property owner and Respondent James F. Smith, Jr. wrote a letter to the Appellants in July of 2018 giving them 30 days to vacate the property. Appellants have failed to vacate the property to current,

claiming that the late Jessie Mae Smith, (the former property owner), intended to give the property to them.

Attorney Kathleen McDaniel presented to the court a copy of a Power of Attorney designating James F. Smith, Jr. as authorized agent of Jessie Mae Smith and granting authority for Mr. Smith to spend finances, to sell or dispose of property and make healthcare decisions during the lifetime of Jessie Mae Smith. The Power of Attorney was executed on July 1, 2013 reflecting the signatures of Jessie Mae Smith, James F. Smith Jr., Vicki Castro as Notary Public of the State of New York and Witnesses Kristi DeLa Cruz and Barbara Cioffi.

Attorney McDaniel presented to the court a Quitclaim Deed of Real Property made on September 19, 2014 reflecting a transfer in ownership from Jessie Mae Smith to James F. Smith, Jr. for the property located at 1429 LeGrand Smoak Street, Cordova, South Carolina. The Quitclaim Deed reflects a recording date of October 9, 2014 at 2:30 p.m. in the Orangeburg County Register of Deeds Office in book 01587, pages 0114 through 0117 bearing instrument number 2014004020 and also entered into the Office of the Assessor of Orangeburg County on October 10, 2014 assigning tax map number 0127-00-05-009.000). The Quitclaim Deed was executed by Jessie M. Smith by James F. Smith Jr., as authorized agent and signed by witnesses Ernestine Edghill and Veda Taylor.

Attorney McDaniel presented to the court a printed document from the online registry of the Orangeburg County Tax Assessor's Office identifying the same property address and tax number as being registered to James F. Smith, Jr. of Brentwood, New York as the current owner of record effective as of the property transfer date of September 19, 2014.

Appellant Merle Rivers stated she would not testify in the hearing. Appellant Rufus Rivers stated he would testify on their behalf.

Appellant Rufus Rivers testified as follows:

That in 2009, a verbal agreement transpired between Appellants Rufus and Merle Rivers and Jessie Mae Smith, allowing the Appellants to live on the property without paying rent and also claiming that Jessie Mae Smith verbally agreed to gift the property to Appellants Rufus and Merle Rivers. Appellants presented no evidence of said agreement.

That Appellants Rufus and Merle Rivers are challenging the validity of the Power of Attorney and the Transfer of Property as presented by the Respondent because they feel Jessie Mae Smith would not have signed it based on a previous conversation between herself and the Appellants, in which she allegedly agreed to gift the property to them.

That Appellants Rufus and Merle Rivers were notified of the death of Jessie Mae Smith by Respondent James F. Smith, Jr. in May of 2016.

That on July 2, 2018, Respondent James F. Smith, Jr. did send a letter to Appellants giving them 30 days to vacate the property.

That Appellants presented to the court as evidence, a copy of a letter by Appellant dated July 3, 2018, of which he mailed to Respondent Smith, asking him to cease and desist displacement on the grounds of an invalid Power of Attorney and a breach of fiduciary duties.

That Appellants presented to the court as evidence, a copy of a letter from Appellant dated August 1, 2018, which was mailed to Respondent James F. Smith, Jr. stating their dissension with burial arrangements for Jessie Mae Smith. Also stated in Appellant's letter was mention of them receiving no response from Respondent James F. Smith from their July 3, 2018 letter and the Respondent's payment of property taxes.

Appellants presented to the court as evidence, a copy of an Affidavit and Request to Enter Default Judgment written by Appellants and dated September 14, 2018 for Respondent's failure to answer or appear in a Summons and Complaint action filed in Circuit Court.

Appellant presented to the court as evidence, a copy of a letter dated September 14, 2018 from Burnette Shutt McDaniel, PA to Appellants, notifying them that a Notice of Motion and Motion to Dismiss was filed in the Summons and Complaint action as filed in Circuit Court. Appellant stated a Motion to Dismiss was filed and a Default Judgement was entered as of the September 14th filing. An objection was made by Attorney Kathleen McDaniel stating there has been no Order from the court regarding a Default Judgement in favor of the Appellants.

Appellants presented as evidence to the court a copy of a Request to be Appointed as Personal Representatives written by Appellants and dated September 17, 2018 as a result of Respondent failing to answer the Summons and Complaint.

Appellants presented as evidence to the court a copy of a Request to Clerk to Enter Default Judgement for Respondent failing to answer or otherwise appear in action filed in Circuit Court.

Attorney McDaniel responded to Appellant's testimony by stating there was a need to clarify some confusion of the Appellants timeline of events. A Notice of Eviction/Rule to Vacate was sent to the Appellants in early July of 2018. The Appellants did not file their lawsuit in Circuit Court until early August of 2018. Attorney McDaniel stated she conducted research to find the specific filing as alleged by the Appellants but the only record available is an Amended Complaint. Attorney McDaniel stated a Motion to Dismiss was filed on September 13, 2018 and was answered within the 30 day period.

Attorney McDaniel stated her client was not in default for failing to answer the complaint and the lawsuit filed in Circuit Court by the Appellants have no merit because the property transfer took effect three years prior to the Appellants filing their action in Circuit Court.

At the conclusion of all testimony and evidence as presented at the hearing on September 18, 2018, the court ruled that Respondent, James F. Smith, Jr. is the current and lawful owner of the property and the tenants Mr. Rufus and Mrs. Merle Rivers are unlawfully occupying the premises.

On September 19, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court a Motion for Reconsideration stating that the court ruled in error because of the following:

- That the court lacked jurisdiction when presiding and rendering a judgment in the matter;
- That the court did not address Attorney Kathleen McDaniel on the basis of Appellant alleging the attorney perjured herself when she misquoted the date on a cover letter submitted to Circuit Court referencing the Plaintiff's Notice of Motion to Dismiss the case pending in Circuit Court;
- That the court did not take into consideration of Appellants time at residence;
- That the court proceed after being advised verbally and by documentation of pending action in Circuit Court questioning plaintiff's ownership and validity of the Power of Attorney and Quitclaim;
- That Respondent James F. Smith, Jr., through his attorney, was able to circumvent pending litigation and file eviction in Magistrate's court in an attempt to derail the case in Circuit Court;
- And, that the court notify Appellants of bond requirements.

A Motion Hearing was scheduled by the court on October 1, 2018 then later rescheduled to October 9, 2018 due to a scheduling conflict.

On October 1, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court an Ex-Parte Motion to Vacate Writ of Ejectment stating that Magistrate's Court is barred from presiding in a matter where there is a question in title.

The October 9, 2018 Motion Hearing was rescheduled to October 16, 2018 at the request of Attorney McDaniel due to a scheduling conflict. The hearing was set to convene for the purpose of hearing motion arguments on the Appellant's September 19th and October 1st Motion for Reconsideration and Defendant's Ex-Parte Motion to Vacate.

During the Motion Hearing on October 16, 2018, Appellants Rufus and Merle Rivers presented to the court a copy of an electronically filed cover sheet stating that the coversheet reflected that a decision had been made by the Master-In-Equity on the Summons and Complaint they previously filed in Circuit Court. An objection was made by Attorney McDaniel stating the document was a cover sheet reflecting an electronic submission of the case being referred to the Master-in-Equity and not that of a ruling of the court. Attorney McDaniel also pointed out that the language on the coversheet reflects that the Order to Transfer the matter to Master-in-Equity does not end the case.

Appellant Rufus Rivers stated that no landlord-tenant relationship existed and as a result he should not have been evicted from the property. Appellant Rufus Rivers also stated he did not agree with

the validity of the Power of Attorney and current property deed as presented as earlier evidence, therefore creating a defense of questionable title. Attorney McDaniel reiterated the property transfer of ownership was completed three years prior to this action being filed in court and the deed is registered in Orangeburg County.

The Appellant's September 19, 2018 Motion for Reconsideration of the court's ruling was denied based on prior evidence presented to the court establishing Respondent James F. Smith Jr. to be the current property owner as of a property transfer made and filed in Orangeburg County in 2014.

The Appellant's September 19, 2018 request to be notified of bond requirements was made in conjunction with his Motion for Reconsideration which was respectfully denied by the court based on this request being made at the wrong stage of the of the proceedings also noting that a Notice of Appeal had not at that point been filed in Circuit Court stating the grounds for appeal.

On October 16, 2018, it was the ruling of the court to deny the Appellant's Motion for Reconsideration and Ex-Parte Motion to Vacate Writ of Ejectment on the basis that evidence had previously been submitted to the court establishing the identity of the current property owner of 1429 Legrand Smoak Street as being Respondent James F. Smith, Jr., and that the occupancy of the Appellants following the property transfer constituted a tenant-at-will relationship. A Tenant At Will relationship is defined by statute in SC Code of Laws 27-33-10 as a person other than the owner of real estate, except a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing, shall be deemed a "tenant at will".

It was also the opinion of the court that Magistrate's Court had maintained proper jurisdiction over landlord-tenant matters where in this case, there was no question in title regarding the owner's identity as stated in SC Code of Laws section 22-3-1110 as past and current ownership had already been established numerous times throughout the trial proceedings.

On October 16, 2018, the court denied the above motions and issued a ruling in favor of the Respondent James F. Smith, Jr. authorizing a Writ of Ejectment to be processed for service upon payment of the applicable fees to the court.

Appellants filed with Magistrate's Court a Notice of Intent to Appeal on October 17, 2018 in Circuit Court and served a copy of the Notice with the Magistrate's office. The Notice filed did not state specific grounds for the appeal.

Appellant re-filed a corrected Notice of Intent to Appeal on October 18, 2018 in Circuit Court and served a copy of the Notice with the Magistrate's office stating a defense of questionable title, the absence of a landlord-tenant relationship and the previous filing of a Summons and Complaint in Circuit Court.

A Motion Hearing was set for October 26, 2018 to establish appeal bond requirements. A continuance was requested by the Appellants and the hearing date was rescheduled for November 2, 2018. Notices of the hearing date were sent to all parties in this case.

The Motion Hearing convened on Friday, November 2, 2018 and was attended by Mr. Rufus and Mrs. Merle Rivers and Attorney Kathleen McDaniel as Attorney for the Plaintiff/Respondent James F. Smith, Jr. Attorney McDaniel waived the presence of her client for the purpose of the court proceedings. The purpose of the hearing was to establish the bond amount that was required to stay an ejectment on appeal as outlined in SC Code of Laws 27-37-130.

A fair market analysis was completed by a local Rental Property Manager of 7 years, Connie Gaston of Century 21 The Moore Group at the request of Attorney Kathleen McDaniel and presented to the court. A copy of that analysis was also previously mailed to the Appellants by regular U.S. mail prior to the hearing.

Attorney Kathleen McDaniel presented to the court the fair market analysis which concluded the average monthly rent amount for comparable homes with the size and features of that located at 1429 LeGrand Smoak Street range to be between \$650 and \$800 per month.

Appellant Rufus Rivers stated this was not a landlord-tenant matter and he should not have to pay rent because he had never paid rent while previously living in the home based off of a verbal agreement with the previous owner.

At the discretion of the court, the Appellants were instructed to pay a monthly rent in the amount of \$700 to the Magistrate's Court no later than the 2nd of every month until the final disposition of this case. The Appellants first payment would begin in November and the November 2nd due date would apply, however, the Appellants were allowed until November 9, 2018 to make their payment for the full amount of \$700 into the court. Every payment thereafter should be made no later than the 2nd of each month. Payment must be made my cash, check or money order.

Appellant Rufus Rivers presented to the court a blank form regarding a Surety Bond stating that a Surety Bond was sufficient to cover the rent payment and stated the law does not compel him to pay rent.

Appellants Rufus and Merle Rivers were told that the court could not provide legal advice. SC Code of Laws 27-40-800 (b) states that it is sufficient to stay an execution of a judgement for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate as it becomes due periodically after the judgement was entered.

On November 5, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court a Movants Motion to Review Appeal Bond Requirements Requiring Rental Payments which requested the court's review of the appeal bond rental payments based on reasons that were

previously addressed in the Appellant's September 19th and October 1st motions and repeatedly throughout the course of the trial.

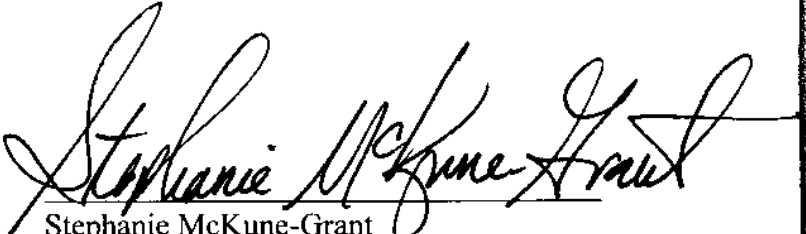
On November 6, 2018 a letter was sent to Appellants and copied to Attorney Kathleen McDaniel for Respondent, James F. Smith, Jr. denying the Movants Motion to Review Appeal Bond Requirements Requiring Rental Payments as presented based on the same arguments being presented to the court and properly addressed throughout prior motions, testimony and evidence presented.

On November 9, 2018, Appellants Rufus and Merle Rivers paid the November 2nd rent payment to the Orangeburg County Magistrate's Office in the amount \$700 which was in compliance with 5 day deadline under the appeal bond statute in the SC Code of Laws 27-37-130.

All of the proceedings were digitally recorded by the court.

Copies of the evidence and pleadings in this case are attached.

Respectfully Submitted,


Stephanie McKune-Grant
Magistrate, Orangeburg County

November 21, 2018

EXHIBIT C

STATE OF SOUTH CAROLINA	]	COMMON PLEAS NO. 2018-CP-38-01339
COUNTY OF ORANGEBURG]	
RUFUS RIVERS AND MERLE RIVERS	]	MAGISTRATE COURT NO. 2018CV3810702780
APPELLANTS, PRO SE]	
VS.	]	NOTICE OF INTENT TO APPEAL
JAMES SMITH, JR.	]	TO CIRCUIT COURT(CORRECTED)
RESPONDENT]	

The Defendant's Rufus Rivers and Merle Rivers hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas in the county of Orangeburg.

This notice of appeal is made subsequent to personal notice of the judgment which was received on 17th day of October, 2018.

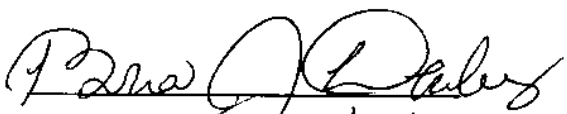
The appellants exceptions to the judgment of the magistrate are set forth as follows:


Pursuant Title 22 Chapter 3 section 20, Jurisdiction and Procedure in Magistrates' Court, and 22-3-1120, defense to questionable title in defendants' answer. Defendants believe the court erred when proceeding in deciding the case and rendering judgment in favor of Plaintiff because;


1. There no was no Landlord-Tenant relationship
2. Defendants provided in writing to the court and Plaintiffs' attorney a written reply to Rule to Show Cause and it given back to the Defendants without being entered into the record as evidence.
3. Defendants had already filed a summons and complaint in Circuit Court regarding ownership of the property as of August 6, 2018, and that was provided in court as well.

The magistrate's court lacked subject matter jurisdiction in the matter and the matter should have been dismissed.

Sworn before me this ^{18th} ~~25th~~ day of October 2018


 NOTARY PUBLIC 09/19/2024


 Rufus Rivers, pro se


 Merle Rivers, pro se

FILED FOR RECORD
 WINNIFA B. CLARK
 2018 OCT 18 PM 2:04
 CLERK OF COURT
 ORANGEBURG SC

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
)	
COUNTY OF ORANGEBURG	)	C/A no. 2018CV3810702780
)	
James F. Smith, Jr.,)	
)	
	)	<u>AFFIDAVIT OF</u>
	)	<u>CONNIE GASTON</u>
)	
Rufus Rivers and Merle Rivers,)	
)	
)	
Defendants.)	

Personally appeared before me Connie Gaston, who, first being duly sworn, deposes and says as follows:

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.

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.

Connie Gaston

Connie Gaston

Sworn to before me this 2nd day of November, 2018

Leah D. Bozard

Notary Public for South Carolina

My commission expires: May 24, 2026

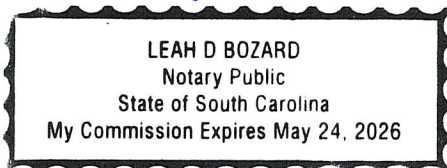


EXHIBIT E

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



Orangeburg Common Pleas

Case Caption: Rufus Rivers VS James Smith Jr.

Case Number: 2018CP3801339

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

EXHIBIT F

**FORM 1
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
[The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

V.


James Smith, Jr.

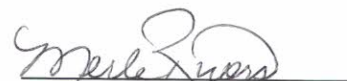
Respondent

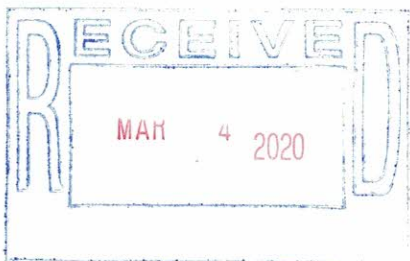
NOTICE OF APPEAL

Rufus Rivers and Merle Rivers appeals the order[judgment] of the honorable Edgar W. Dickson dated February 21, 2020. Appellants received written notice of entry of this order [judgment] on February 24, 2020.

March 2, 2020
Dated


Rufus Rivers, pro se


Merle Rivers, pro se



1429 Legrand Smoak Street
Cordova, SC 29039
803-218-9573

FORM 7
PROOF OF SERVICE OF NOTICE OF APPEAL

IN THE STATE OF SOUTH CAROLINA
In Thr Court Of Appeals
[In The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Administrative Judge

Case No. 2018-CP-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

James Smith, Jr.

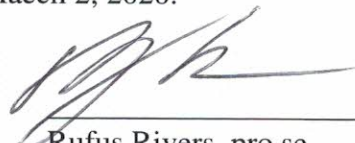
Appellee

PROOF OF SERVICE


We certify that we have served the Notice of Appeal on James Smith, Jr. by depositing a copy of it in the United States mail, postage paid, on March 2, 2020, addressed to his attorney of record, Kathleen McDaniel, P.O. Box 1929, Columbia, South Carolina 29202 [by emailing to his attorney of record, Kathleen McDaniel at twolfe@burnetteshutte.law on March 2, 2020.

March 2, 2020





Rufus Rivers, pro se



Merle Rivers, pro Se

Robert Rivers & Mende Rivers
1429 Legroad, Smoak Street
Columbia, SC 29039



COLUMBIA, SC 290

NOV 11 2020

MAIL

4 2020

Kathleen McDaniel, Attorney
P.O. Box 1929
Columbia, SC 29202



29202-192929

J

EXHIBIT G

BURNETTE SHUTT MCDANIEL PA

1265

03/02/2020

Orangeburg County Magistrates Court
#6301.002

10.00



11002 Checking - Pinnacle Bank

10.00

BURNETTE SHUTT MCDANIEL PA

1265

03/02/2020

Orangeburg County Magistrates Court
#6301.002

10.00

11002 Checking - Pinnacle Bank

10.00



Central Region Magistrate

Judge : Robert Neal Clariday

1540 Ellis Avenue

Orangeburg, SC 29116

Phone:(803) 533-5844 Fax:(803) 516-4011

Received From: Burnette Shutt Mcdaniel Pa
Post Office Box 1929
Columbia, SC 29202

Date: 3/ 9/2020

Receipt #: 372390

Clerk: c38swhite

Paying for: Smith, James
Transaction Type: Civil Payment

Reference #: 1265

Payment Type: Check \$10.00

Comment:

Non-Refundable

Total Paid: \$10.00

You may check the status of your Orangeburg case at:
<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2018CV3810702780	James Smith Jr VS Rufus Rivers , defendant, et al	\$10.00	\$10.00	\$0.00



Total Cases: 1		\$10.00	\$10.00	\$0.00
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*We print our own
Writ of Ejectment.*

RECEIVED
MAR 13 2020

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE MAGISTRATE'S COURT

James Smith Jr.

PLAINTIFF(S)

VS.

WRIT OF EJECTMENT
(Eviction)

Rufus Rivers and Merle Rivers

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon the judgment of this court, rendered on 6th day of January, 2020; you are hereby ordered to proceed to the premises located at 1429 LeGrand Smoak Street, Cordova SC.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them that they have **twenty-four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty-eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty-eight (48) hours.

Dated: _____

MAGISTRATE

_____, being duly sworn state that:

- I personally served a copy of this Writ on _____, an occupant of the rental unit.
- On _____, 20_____, at _____, the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premises. On _____, 20_____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- Informed by Plaintiff that case is settled.

Date: _____, 20_____

Sheriff/Deputy Sheriff/Constable

RECEIVED
MAR 09 2020
Orangeburg County
Central Region

EXHIBIT H

12/06/2019	371077	c38sedward	ES	\$700.00
11/08/2019	370720	c38lprovea	ES	\$700.00
10/04/2019	370153	c38swhite	ES	\$700.00
09/06/2019	369654	c38bfranks	ES	\$700.00
08/02/2019	369112	c38sedward	ES	\$700.00
07/02/2019	368617	c38swhite	ES	\$700.00
05/31/2019	368145	c38swhite	ES	\$700.00
05/02/2019	367662	c38lprovea	ES	\$700.00
04/02/2019	367165	c38swhite	ES	\$700.00
03/01/2019	366656	c38lprovea	ES	\$700.00
02/01/2019	366187	c38lprovea	ES	\$700.00
01/02/2019	365637	c38lprovea	ES	\$700.00
11/30/2018	365196	c38sedward	ES	\$700.00
11/09/2018	364857	c38bfranks	ES	\$700.00
08/20/2018	363401	c38swhite	CV	\$10.00
08/06/2018	363088	c38sedward	CV	\$40.00

EXHIBIT I

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Rufus Rivers and Merle Rivers,)
)
Appellants,)
)
v.)
)
James Smith, Jr.,)
)
Respondent.)
)
)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
C/A No.: 2018-CP-38-01339

**PETITION FOR DETERMINATION
OF RENT DUE RESPONDENT
DURING THE PENDANCY OF
APPEAL TO THE COURT OF APPEALS**

Respondent James Smith, Jr. (hereinafter "Respondent Smith") respectfully requests that this Honorable Court:

1. Order Appellants Rufus Rivers and Merle Rivers (hereinafter "Appellants Rivers") to continue to pay rent during the pendency of their appeal to the South Carolina Court of Appeals; and,
2. Determine that the amount of rent Appellants are required to pay should be increased to an amount consistent with comparable fair market rents.

Respondent Smith owns the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the "Property"), and he allowed Appellants to live there rent-free for a period of time. However, on July 2, 2018, Respondent Smith wrote to Appellants Rivers giving them 30 days to vacate the Property. On August 8, 2018, Respondent Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate's Court against Appellants Rivers. (Exhibit A.)

At the eviction hearing on September 18, 2018, the Magistrate's Court ruled in favor of Respondent Smith and ruled that Appellants Rivers were unlawfully occupying

the premises. (Exhibit B.) On October 17, 2018, Appellants filed a Notice of Intent to Appeal to this Court and a Corrected Notice of Appeal on October 18, 2018. (Exhibit C.) Appellants sought to stay the ejectment during the appeal to the Circuit Court. Accordingly, the Magistrate Court held a hearing to determine the appropriate amount of monthly rent for Appellants to pay into court during the appeal in order to stay the ejectment. Because Appellants had never paid rent on the Property, Respondent submitted the Affidavit of Connie Gaston, a local property manager, to aid the Magistrate Court in determining fair market rent for the Property. (Exhibit D.) The Magistrate Court determined appropriate rent to be \$700.00, and ordered it to be paid into the Magistrate Court registry each month as bond securing a stay of the eviction pending appeal. (Magistrate Court Order, attached as Exhibit E.)

On January 6, 2020, this Court affirmed the eviction ordered by the Magistrate Court. (Exhibit F.) On March 2, 2020, Appellants Rivers appealed their eviction to the South Carolina Court of Appeals. (See Exhibit G.)

In order to stay ejectment during the pendency of the appeal to the Court of Appeals, Appellants Rivers must continue to pay rent into the court. The Circuit Court has jurisdiction to determine the appropriate amount of rent. S.C. Code Ann. § 27-40-800(f).

As of the date of this Petition, Appellants have paid \$11,200.00 into the Magistrate Court registry as a bond to secure a stay of eviction pending appeal. (Statement of Court's Registry, attached as Exhibit H.) However, Appellants have not made a payment since February 7, 2020. (*Id.*) Respondent Smith requests that this Court direct Appellants

Rivers to pay their previously set amount of rent of \$700 per month for March and April immediately into court.

In addition, Respondent Smith requests that this Court increase the amount of rent due from Appellants Rivers each month to \$725 per month. The rental payments ordered by the Magistrate Court were based upon the Affidavit of Connie Gaskins dated November 2, 2018. (Ex. D.) As it has been over a year since rent has been determined for the Property, and since rent generally increases over time, Respondent Smith requests that this Court increase the amount of rent due from Appellants Rivers. Connie Gaston has testified in her second Affidavit that the fair market rental rate of the Property is now between \$725-750 per month. (Exhibit I.) Therefore, Respondent respectfully requests that Appellants Rivers be ordered to pay a monthly rent of \$725 to Respondent Rivers, with such amount to be paid into court beginning May 1, 2020, and continuing during the pendency of their Appeal or until this Court determines that further changes to the monthly amount of rent are warranted..

CONCLUSION

Based upon the foregoing, Respondent Smith requests that this Court:

1. Order Appellants Rivers to pay rent in the amount of \$700 per month for March and April 2020 into court and
2. Order Appellants Rivers to begin paying rent into court in the amount of \$725 per month beginning with May 2020 in order to avoid ejectment during the pendency of their appeal to the Court of Appeals.

Respectfully submitted,

By: s/Kathleen McDaniel
Kathleen McDaniel (SC Bar No. 74826)
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
Columbia, South Carolina 29202
Tel. (803) 904-7913
Fax (803) 904-7910
kmcdaniel@burnetteshutt.law

ATTORNEY FOR JAMES SMITH, JR.

Columbia, South Carolina

May 1, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA)

2018CV3810702780

3563

COUNTY OF Orangeburg

CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

230

FILED FOR RECORD
WINNIPA B. CLARK

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

2018 NOV 21 PM 3:44

CLERK OF COURT
ORANGEBURG, SC

89-18
Can not reach by phone
stated # 12-20-18
K. B. [unclear]

PLAINTIFF(S))

VS.)

Rufus & Merle Rivers
1428 Legrand Smoak
Cordova, SC 29039

DEFENDANT(S))

RULE TO VACATE OR SHOW CAUSE
(Eviction)

CCSS CIVIL DIVISION

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at **1428 Legrand Smoak, 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) 533-5844** 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: 8-8-18

[Signature]
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.	_____	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____	_____

SWORN to and Subscribed before me
This _____ Day of _____)

NOTARY PUBLIC OR JUDGE)

SIGNATURE OF SERVER _____

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

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF ORANGEBURG)
)
)
RUFUS AND MERLE RIVERS)
PRO SE)
APPELLANTS)
)
-vs-)
)
ATTORNEY KATHLEEN M.)
MCDANIEL FOR)
JAMES F. SMITH, JR.)
)
RESPONDENT)

IN THE FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

MAGISTRATE'S RETURN
OF CIVIL APPEAL

CASE NO. 2018CV3810702780

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

In response to the Appellant's appeal, the Court provides the following return.

On August 8, 2018, the Respondent James F. Smith, Jr., represented by Attorney Kathleen M. McDaniel, filed a Rule to Vacate or Show Cause for Eviction.

On August 23, 2018, the Rule to Vacate the Premises or Show Cause within 10 Days was personally served on the Appellants, Rufus and Merle Rivers. The hearing was set for September 18, 2018 at 2:00 p.m. All parties were notified of the hearing date and time by court generated Summons.

On September 18, 2018, the cause of action was heard in Magistrate's Court in Orangeburg County before Judge Stephanie McKune-Grant as a bench trial. Present at the hearing were the Appellants Rufus and Merle Rivers and Attorney Kathleen M. McDaniel, appearing on behalf of her client, Respondent, James F. Smith, Jr.

This case is an eviction matter filed by Respondent James F. Smith, Jr. who currently resides in the state of New York. Respondent Smith is the current property owner of 1429 LeGrand Smoak Street in Cordova, South Carolina. The Appellants Rufus and Merle Rivers have lived at the residence for a period of nine years and have paid no rent which they claim was based on a prior oral agreement with the former property owner, Jessie Mae Smith, who was the mother of the Respondent and aunt of the Appellant. There is no record of a written lease agreement.

As a result of a transfer in ownership of the property that occurred in September 2014, the property owner and Respondent James F. Smith, Jr. wrote a letter to the Appellants in July of 2018 giving them 30 days to vacate the property. Appellants have failed to vacate the property to current,

claiming that the late Jessie Mae Smith, (the former property owner), intended to give the property to them.

Attorney Kathleen McDaniel presented to the court a copy of a Power of Attorney designating James F. Smith, Jr. as authorized agent of Jessie Mae Smith and granting authority for Mr. Smith to spend finances, to sell or dispose of property and make healthcare decisions during the lifetime of Jessie Mae Smith. The Power of Attorney was executed on July 1, 2013 reflecting the signatures of Jessie Mae Smith, James F. Smith Jr., Vicki Castro as Notary Public of the State of New York and Witnesses Kristi DeLa Cruz and Barbara Cioffi.

Attorney McDaniel presented to the court a Quitclaim Deed of Real Property made on September 19, 2014 reflecting a transfer in ownership from Jessie Mae Smith to James F. Smith, Jr. for the property located at 1429 LeGrand Smoak Street, Cordova, South Carolina. The Quitclaim Deed reflects a recording date of October 9, 2014 at 2:30 p.m. in the Orangeburg County Register of Deeds Office in book 01587, pages 0114 through 0117 bearing instrument number 2014004020 and also entered into the Office of the Assessor of Orangeburg County on October 10, 2014 assigning tax map number 0127-00-05-009.000). The Quitclaim Deed was executed by Jessie M. Smith by James F. Smith Jr., as authorized agent and signed by witnesses Ernestine Edghill and Veda Taylor.

Attorney McDaniel presented to the court a printed document from the online registry of the Orangeburg County Tax Assessor's Office identifying the same property address and tax number as being registered to James F. Smith, Jr. of Brentwood, New York as the current owner of record effective as of the property transfer date of September 19, 2014.

Appellant Merle Rivers stated she would not testify in the hearing. Appellant Rufus Rivers stated he would testify on their behalf.

Appellant Rufus Rivers testified as follows:

That in 2009, a verbal agreement transpired between Appellants Rufus and Merle Rivers and Jessie Mae Smith, allowing the Appellants to live on the property without paying rent and also claiming that Jessie Mae Smith verbally agreed to gift the property to Appellants Rufus and Merle Rivers. Appellants presented no evidence of said agreement.

That Appellants Rufus and Merle Rivers are challenging the validity of the Power of Attorney and the Transfer of Property as presented by the Respondent because they feel Jessie Mae Smith would not have signed it based on a previous conversation between herself and the Appellants, in which she allegedly agreed to gift the property to them.

That Appellants Rufus and Merle Rivers were notified of the death of Jessie Mae Smith by Respondent James F. Smith, Jr. in May of 2016.

That on July 2, 2018, Respondent James F. Smith, Jr. did send a letter to Appellants giving them 30 days to vacate the property.

That Appellants presented to the court as evidence, a copy of a letter by Appellant dated July 3, 2018, of which he mailed to Respondent Smith, asking him to cease and desist displacement on the grounds of an invalid Power of Attorney and a breach of fiduciary duties.

That Appellants presented to the court as evidence, a copy of a letter from Appellant dated August 1, 2018, which was mailed to Respondent James F. Smith, Jr. stating their dissension with burial arrangements for Jessie Mae Smith. Also stated in Appellant's letter was mention of them receiving no response from Respondent James F. Smith from their July 3, 2018 letter and the Respondent's payment of property taxes.

Appellants presented to the court as evidence, a copy of an Affidavit and Request to Enter Default Judgment written by Appellants and dated September 14, 2018 for Respondent's failure to answer or appear in a Summons and Complaint action filed in Circuit Court.

Appellant presented to the court as evidence, a copy of a letter dated September 14, 2018 from Burnette Shutt McDaniel, PA to Appellants, notifying them that a Notice of Motion and Motion to Dismiss was filed in the Summons and Complaint action as filed in Circuit Court. Appellant stated a Motion to Dismiss was filed and a Default Judgement was entered as of the September 14th filing. An objection was made by Attorney Kathleen McDaniel stating there has been no Order from the court regarding a Default Judgement in favor of the Appellants.

Appellants presented as evidence to the court a copy of a Request to be Appointed as Personal Representatives written by Appellants and dated September 17, 2018 as a result of Respondent failing to answer the Summons and Complaint.

Appellants presented as evidence to the court a copy of a Request to Clerk to Enter Default Judgement for Respondent failing to answer or otherwise appear in action filed in Circuit Court.

Attorney McDaniel responded to Appellant's testimony by stating there was a need to clarify some confusion of the Appellants timeline of events. A Notice of Eviction/Rule to Vacate was sent to the Appellants in early July of 2018. The Appellants did not file their lawsuit in Circuit Court until early August of 2018. Attorney McDaniel stated she conducted research to find the specific filing as alleged by the Appellants but the only record available is an Amended Complaint. Attorney McDaniel stated a Motion to Dismiss was filed on September 13, 2018 and was answered within the 30 day period.

Attorney McDaniel stated her client was not in default for failing to answer the complaint and the lawsuit filed in Circuit Court by the Appellants have no merit because the property transfer took effect three years prior to the Appellants filing their action in Circuit Court.

At the conclusion of all testimony and evidence as presented at the hearing on September 18, 2018, the court ruled that Respondent, James F. Smith, Jr. is the current and lawful owner of the property and the tenants Mr. Rufus and Mrs. Merle Rivers are unlawfully occupying the premises.

On September 19, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court a Motion for Reconsideration stating that the court ruled in error because of the following:

- That the court lacked jurisdiction when presiding and rendering a judgment in the matter;
- That the court did not address Attorney Kathleen McDaniel on the basis of Appellant alleging the attorney perjured herself when she misquoted the date on a cover letter submitted to Circuit Court referencing the Plaintiff's Notice of Motion to Dismiss the case pending in Circuit Court;
- That the court did not take into consideration of Appellants time at residence;
- That the court proceed after being advised verbally and by documentation of pending action in Circuit Court questioning plaintiff's ownership and validity of the Power of Attorney and Quitclaim;
- That Respondent James F. Smith, Jr., through his attorney, was able to circumvent pending litigation and file eviction in Magistrate's court in an attempt to derail the case in Circuit Court;
- And, that the court notify Appellants of bond requirements.

A Motion Hearing was scheduled by the court on October 1, 2018 then later rescheduled to October 9, 2018 due to a scheduling conflict.

On October 1, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court an Ex-Parte Motion to Vacate Writ of Ejectment stating that Magistrate's Court is barred from presiding in a matter where there is a question in title.

The October 9, 2018 Motion Hearing was rescheduled to October 16, 2018 at the request of Attorney McDaniel due to a scheduling conflict. The hearing was set to convene for the purpose of hearing motion arguments on the Appellant's September 19th and October 1st Motion for Reconsideration and Defendant's Ex-Parte Motion to Vacate.

During the Motion Hearing on October 16, 2018, Appellants Rufus and Merle Rivers presented to the court a copy of an electronically filed cover sheet stating that the coversheet reflected that a decision had been made by the Master-In-Equity on the Summons and Complaint they previously filed in Circuit Court. An objection was made by Attorney McDaniel stating the document was a cover sheet reflecting an electronic submission of the case being referred to the Master-in-Equity and not that of a ruling of the court. Attorney McDaniel also pointed out that the language on the coversheet reflects that the Order to Transfer the matter to Master-in-Equity does not end the case.

Appellant Rufus Rivers stated that no landlord-tenant relationship existed and as a result he should not have been evicted from the property. Appellant Rufus Rivers also stated he did not agree with

the validity of the Power of Attorney and current property deed as presented as earlier evidence, therefore creating a defense of questionable title. Attorney McDaniel reiterated the property transfer of ownership was completed three years prior to this action being filed in court and the deed is registered in Orangeburg County.

The Appellant's September 19, 2018 Motion for Reconsideration of the court's ruling was denied based on prior evidence presented to the court establishing Respondent James F. Smith Jr. to be the current property owner as of a property transfer made and filed in Orangeburg County in 2014.

The Appellant's September 19, 2018 request to be notified of bond requirements was made in conjunction with his Motion for Reconsideration which was respectfully denied by the court based on this request being made at the wrong stage of the of the proceedings also noting that a Notice of Appeal had not at that point been filed in Circuit Court stating the grounds for appeal.

On October 16, 2018, it was the ruling of the court to deny the Appellant's Motion for Reconsideration and Ex-Parte Motion to Vacate Writ of Ejectment on the basis that evidence had previously been submitted to the court establishing the identity of the current property owner of 1429 Legrand Smoak Street as being Respondent James F. Smith, Jr., and that the occupancy of the Appellants following the property transfer constituted a tenant-at-will relationship. A Tenant At Will relationship is defined by statute in SC Code of Laws 27-33-10 as a person other than the owner of real estate, except a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing, shall be deemed a "tenant at will".

It was also the opinion of the court that Magistrate's Court had maintained proper jurisdiction over landlord-tenant matters where in this case, there was no question in title regarding the owner's identity as stated in SC Code of Laws section 22-3-1110 as past and current ownership had already been established numerous times throughout the trial proceedings.

On October 16, 2018, the court denied the above motions and issued a ruling in favor of the Respondent James F. Smith, Jr. authorizing a Writ of Ejectment to be processed for service upon payment of the applicable fees to the court.

Appellants filed with Magistrate's Court a Notice of Intent to Appeal on October 17, 2018 in Circuit Court and served a copy of the Notice with the Magistrate's office. The Notice filed did not state specific grounds for the appeal.

Appellant re-filed a corrected Notice of Intent to Appeal on October 18, 2018 in Circuit Court and served a copy of the Notice with the Magistrate's office stating a defense of questionable title, the absence of a landlord-tenant relationship and the previous filing of a Summons and Complaint in Circuit Court.

A Motion Hearing was set for October 26, 2018 to establish appeal bond requirements. A continuance was requested by the Appellants and the hearing date was rescheduled for November 2, 2018. Notices of the hearing date were sent to all parties in this case.

The Motion Hearing convened on Friday, November 2, 2018 and was attended by Mr. Rufus and Mrs. Merle Rivers and Attorney Kathleen McDaniel as Attorney for the Plaintiff/Respondent James F. Smith, Jr. Attorney McDaniel waived the presence of her client for the purpose of the court proceedings. The purpose of the hearing was to establish the bond amount that was required to stay an ejectment on appeal as outlined in SC Code of Laws 27-37-130.

A fair market analysis was completed by a local Rental Property Manager of 7 years, Connie Gaston of Century 21 The Moore Group at the request of Attorney Kathleen McDaniel and presented to the court. A copy of that analysis was also previously mailed to the Appellants by regular U.S. mail prior to the hearing.

Attorney Kathleen McDaniel presented to the court the fair market analysis which concluded the average monthly rent amount for comparable homes with the size and features of that located at 1429 LeGrand Smoak Street range to be between \$650 and \$800 per month.

Appellant Rufus Rivers stated this was not a landlord-tenant matter and he should not have to pay rent because he had never paid rent while previously living in the home based off of a verbal agreement with the previous owner.

At the discretion of the court, the Appellants were instructed to pay a monthly rent in the amount of \$700 to the Magistrate's Court no later than the 2nd of every month until the final disposition of this case. The Appellants first payment would begin in November and the November 2nd due date would apply, however, the Appellants were allowed until November 9, 2018 to make their payment for the full amount of \$700 into the court. Every payment thereafter should be made no later than the 2nd of each month. Payment must be made my cash, check or money order.

Appellant Rufus Rivers presented to the court a blank form regarding a Surety Bond stating that a Surety Bond was sufficient to cover the rent payment and stated the law does not compel him to pay rent.

Appellants Rufus and Merle Rivers were told that the court could not provide legal advice. SC Code of Laws 27-40-800 (b) states that it is sufficient to stay an execution of a judgement for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate as it becomes due periodically after the judgement was entered.

On November 5, 2018, Appellants Rufus and Merle Rivers filed with Magistrate's Court a Movants Motion to Review Appeal Bond Requirements Requiring Rental Payments which requested the court's review of the appeal bond rental payments based on reasons that were

previously addressed in the Appellant's September 19th and October 1st motions and repeatedly throughout the course of the trial.

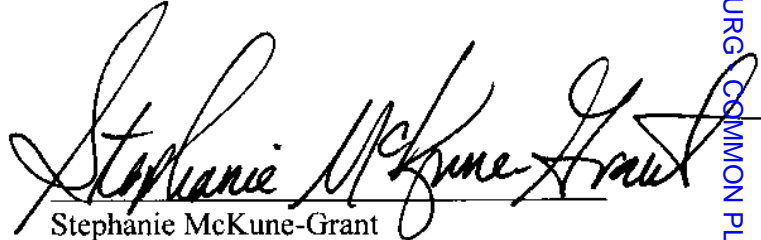
On November 6, 2018 a letter was sent to Appellants and copied to Attorney Kathleen McDaniel for Respondent, James F. Smith, Jr. denying the Movants Motion to Review Appeal Bond Requirements Requiring Rental Payments as presented based on the same arguments being presented to the court and properly addressed throughout prior motions, testimony and evidence presented.

On November 9, 2018, Appellants Rufus and Merle Rivers paid the November 2nd rent payment to the Orangeburg County Magistrate's Office in the amount \$700 which was in compliance with 5 day deadline under the appeal bond statute in the SC Code of Laws 27-37-130.

All of the proceedings were digitally recorded by the court.

Copies of the evidence and pleadings in this case are attached.

Respectfully Submitted,



Stephanie McKune-Grant
Magistrate, Orangeburg County

November 21, 2018

EXHIBIT C

STATE OF SOUTH CAROLINA	]	COMMON PLEAS NO. 2018-CP-38-01339
COUNTY OF ORANGEBURG]	
RUFUS RIVERS AND MERLE RIVERS	]	MAGISTRATE COURT NO. 2018CV3810702780
APPELLANTS, PRO SE]	
VS.	]	NOTICE OF INTENT TO APPEAL
JAMES SMITH, JR.	]	TO CIRCUIT COURT(CORRECTED)
RESPONDENT]	

The Defendant's Rufus Rivers and Merle Rivers hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas in the county of Orangeburg.

This notice of appeal is made subsequent to personal notice of the judgment which was received on 17th day of October, 2018.

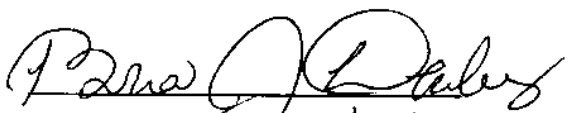
The appellants exceptions to the judgment of the magistrate are set forth as follows:

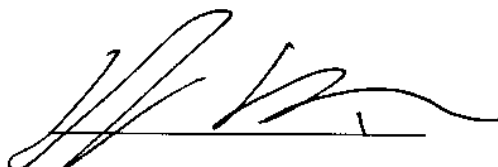
Pursuant Title 22 Chapter 3 section 20, Jurisdiction and Procedure in Magistrates' Court , and 22-3-1120, defense to questionable title in defendants' answer. Defendants believe the court erred when proceeding in deciding the case and rendering judgment in favor of Plaintiff because;


1. There no was no Landlord-Tenant relationship
2. Defendants provided in writing to the court and Plaintiffs' attorney a written reply to Rule to Show Cause and it given back to the Defendants without being entered into the record as evidence.
3. Defendants had already filed a summons and complaint in Circuit Court regarding ownership of the property as of August 6, 2018, and that was provided in court as well.

The magistrate's court lacked subject matter jurisdiction in the matter and the matter should have been dismissed.

Sworn before me this 18th day of October 2018


 NOTARY PUBLIC 09/19/2024


 Rufus Rivers, pro se


 Merle Rivers, pro se

FILED FOR RECORD
 WINNIFA B. CLARK
 CLERK OF COURT
 ORANGEBURG SC
 2018 OCT 18 PM 2:04

EXHIBIT D

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
)
 COUNTY OF ORANGEBURG) C/A no. 2018CV3810702780
)
 James F. Smith, Jr.,)
)
 Plaintiff,) AFFIDAVIT OF
) CONNIE GASTON
)
 Rufus Rivers and Merle Rivers,)
)
 Defendants.)

FILED FOR RECORD
WINGIPPA B. CLARK
2018 NOV 21 PM 3:15
CLERK OF COURT
ORANGEBURG, SC

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

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.

Connie Gaston
Connie Gaston

Sworn to before me this 2nd day of November, 2018

Leah D. Bozard
Notary Public for South Carolina
My commission expires: May 24, 2026

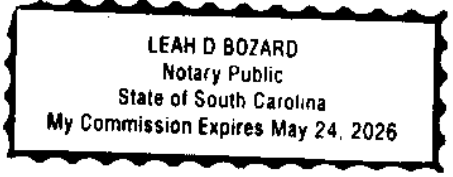


EXHIBIT E

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 ON APPEAL**
James Smith, Jr.,)
Respondent.)
_____)

This appeal came before the court on October 18, 2019, for a hearing on Rufus and Merle Rivers’ appeal from an Eviction Order of the Orangeburg County Magistrate’s Court. Present at the hearing were Kathleen McDaniel, Esq., counsel for Respondent, and Appellant Rufus Rivers. This case concerns an eviction from the property located at 1429 LeGrand Smoak Street in the County of Orangeburg, South Carolina. For the reasons set forth below, I affirm the decision of the Magistrate’s Court.

STATEMENT OF THE CASE

On July 2, 2018, James Smith, Jr. wrote to Rufus and Merle Rivers giving them 30 days to vacate the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”).

On August 6, 2018, the Rivers initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Smith’s ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner.

On August 8, 2018, Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate’s Court.

On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas, alleging that Smith used an invalid Power of Attorney to convey the Property from his mother Jessie Mae Smith, the previous owner of the Property, to himself. The Rivers also alleged in the Amended Complaint that Ms. Smith, at some point during her life, had orally given or promised the Property to the Rivers. The case was referred to the Master in Equity.

At the eviction hearing on September 18, 2018, the Magistrate's Court ruled that Smith is the current and lawful owner of the Property and that the Rivers were unlawfully occupying the premises. The Rivers objected to this ruling by way of a Motion for Reconsideration filed on October 1, 2018. Following a hearing on October 16, 2018, the Magistrate's Court denied the Rivers' Motion for Reconsideration and authorized the issuance of a Writ of Ejectment.

On October 17, 2018, the Rivers filed a Notice of Intent to Appeal and a Corrected Notice of Appeal on October 18, 2018.

On November 2, 2018, a hearing was held in the Magistrate's Court on the issue of rental payments required to be paid by the Rivers during the pendency of this appeal. The Magistrate's Court determined appropriate rent to be \$700.00, to be paid into the Court each month as bond.

The Rivers appealed the imposition of rental payments, and on April 8, 2019, a hearing was held in this Court on the issue of whether the monthly rent amount to be paid by the Rivers into court was proper. This Court issued its ruling on April 18, 2019, affirming the amount of bond set by the Magistrate's Court.

On May 20, 2019, a hearing was held on the appealed Magistrate's Court eviction action. The Rivers contended that title to the property was still in question because of their pending lawsuit. On May 21, 2019, Judge Gibbons issued an Order continuing the hearing on this appeal until such time as the Master in Equity could rule on the issues raised in the Rivers' Amended Complaint.

On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed the Rivers' Amended Complaint for failure to state a cause of action upon which relief could be granted. The Rivers did not appeal that decision.

On October 14, 2019, this Court took up again the Rivers' appeal from the Magistrate's Court's eviction decision.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is that "[u]pon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." S.C. Code Ann. § 18-7-170. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. *Hadfield v. Gilchrist*, 343 S.C. 88, 92, 538 S.E.2d 268, 270 (Ct. App. 2000).

DISCUSSION

The Rivers state three grounds for this appeal:

1. That the Rivers had filed an Amended Complaint in Circuit Court regarding ownership of the property.

2. That the Rivers provided a written reply to Rule to Show Cause that was not entered into the record as evidence.
3. That there was no landlord-tenant relationship between the parties.

I. Pending Circuit Court Case

The Rivers contended in their Corrected Notice of Appeal that this appeal should not proceed while there was pending before the Master in Equity a case that the Rivers claimed brought into doubt the ownership of the Property. On August 28, 2019, the Master in Equity dismissed the Rivers' Amended Complaint pending before him for the Rivers' failure to state a claim. The Rivers did not appeal that decision. Thus, that matter is no longer pending before the Master in Equity or any other court.

II. Reply to Rule to Show Cause

The Rivers contend in their Corrected Notice of Appeal that they provided a written reply to the Rule to Show Cause that was not "entered into the record as evidence." The Rivers provided no explanation to this Court how this fact, if true, would show that the Magistrate's Court erred in its ruling on the issues in this case. Therefore, I find no error on the part of the Magistrate's Court in regard to this ground for appeal.

III. Landlord-Tenant Relationship

The Rivers contend in their Corrected Notice of Appeal that there was no landlord-tenant relationship between them and Respondent Smith. Under South Carolina law, a "landlord" is defined as "the owner, lessor, or sublessor of the premises." S.C. Code Ann. § 27-40-210(6). An "owner" is defined as "one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises." S.C. Code Ann. § 27-0-210(8). A "tenant" is defined as "a person entitled under a rental agreement to

occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). A “rental agreement” is defined as “all agreements, written or oral, and valid rules and regulations adopted under § 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.” S.C. Code Ann. § 27-40-210(12). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code § 27-40-310(d). All that is required to terminate a month-to-month tenancy is written notice to the tenant thirty days before the termination date in the notice. S.C. Code § 27-40-770(b).

Smith owns the Property at issue here. Smith holds recorded title to the Property, proof of which he presented to the Magistrate and which is included in the Magistrate’s Court Return for Appeal. Although the Rivers attempted to challenge Smith’s title to the Property, this challenge was dismissed by the Master in Equity for failure to state a claim upon which relief could be granted. There is no evidence in the record that would indicate that Smith is not the owner of the Property.

Until July 2, 2018, Smith permitted the Rivers to occupy the Property without a written lease, to the exclusion of others, without a definite term. Thus, the Rivers are the tenants of Smith. The Magistrate’s Court properly determined there was a landlord-tenant relationship between the parties.

THEREFORE, IT IS HEREBY ORDERED, that the decision of the Magistrate’s Court is hereby affirmed, and the Writ of Ejectment should be issued. I further order the rental payments currently held in the Orangeburg County Magistrate’s Court’s registry be disbursed to Smith James Smith, Jr. at the earliest possible date.

IT IS SO ORDERED.

The Honorable Edgar W. Dickson.
Presiding Judge

_____, South Carolina
December ____, 2019



Orangeburg Common Pleas

Case Caption: Rufus Rivers , plaintiff, et al VS James Smith Jr.

Case Number: 2018CP3801339

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-01-06 12:40:28 page 7 of 7

EXHIBIT F

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 ON APPEAL
)	
James Smith, Jr.,)	
)	
Respondent.)	
_____)	

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STATEMENT OF THE CASE

On July 2, 2018, James Smith, Jr. wrote to Rufus and Merle Rivers giving them 30 days to vacate the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”).

On August 6, 2018, the Rivers initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Smith’s ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner.

On August 8, 2018, Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate’s Court.

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At the eviction hearing on September 18, 2018, the Magistrate's Court ruled that Smith is the current and lawful owner of the Property and that the Rivers were unlawfully occupying the premises. The Rivers objected to this ruling by way of a Motion for Reconsideration filed on October 1, 2018. Following a hearing on October 16, 2018, the Magistrate's Court denied the Rivers' Motion for Reconsideration and authorized the issuance of a Writ of Ejectment.

On October 17, 2018, the Rivers filed a Notice of Intent to Appeal and a Corrected Notice of Appeal on October 18, 2018.

On November 2, 2018, a hearing was held in the Magistrate's Court on the issue of rental payments required to be paid by the Rivers during the pendency of this appeal. The Magistrate's Court determined appropriate rent to be \$700.00, to be paid into the Court each month as bond.

The Rivers appealed the imposition of rental payments, and on April 8, 2019, a hearing was held in this Court on the issue of whether the monthly rent amount to be paid by the Rivers into court was proper. This Court issued its ruling on April 18, 2019, affirming the amount of bond set by the Magistrate's Court.

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On October 14, 2019, this Court took up again the Rivers' appeal from the Magistrate's Court's eviction decision.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is that "[u]pon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." S.C. Code Ann. § 18-7-170. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. *Hadfield v. Gilchrist*, 343 S.C. 88, 92, 538 S.E.2d 268, 270 (Ct. App. 2000).

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The Rivers state three grounds for this appeal:

1. That the Rivers had filed an Amended Complaint in Circuit Court regarding ownership of the property.

2. That the Rivers provided a written reply to Rule to Show Cause that was not entered into the record as evidence.
3. That there was no landlord-tenant relationship between the parties.

I. Pending Circuit Court Case

The Rivers contended in their Corrected Notice of Appeal that this appeal should not proceed while there was pending before the Master in Equity a case that the Rivers claimed brought into doubt the ownership of the Property. On August 28, 2019, the Master in Equity dismissed the Rivers' Amended Complaint pending before him for the Rivers' failure to state a claim. The Rivers did not appeal that decision. Thus, that matter is no longer pending before the Master in Equity or any other court.

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occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). A “rental agreement” is defined as “all agreements, written or oral, and valid rules and regulations adopted under § 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.” S.C. Code Ann. § 27-40-210(12). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code § 27-40-310(d). All that is required to terminate a month-to-month tenancy is written notice to the tenant thirty days before the termination date in the notice. S.C. Code § 27-40-770(b).

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Until July 2, 2018, Smith permitted the Rivers to occupy the Property without a written lease, to the exclusion of others, without a definite term. Thus, the Rivers are the tenants of Smith. The Magistrate’s Court properly determined there was a landlord-tenant relationship between the parties.

THEREFORE, IT IS HEREBY ORDERED, that the decision of the Magistrate’s Court is hereby affirmed, and the Writ of Ejectment should be issued. I further order the rental payments currently held in the Orangeburg County Magistrate’s Court’s registry be disbursed to Smith James Smith, Jr. at the earliest possible date.

IT IS SO ORDERED.

The Honorable Edgar W. Dickson.
Presiding Judge

_____, South Carolina
December ____, 2019



Orangeburg Common Pleas

Case Caption: Rufus Rivers , plaintiff, et al VS James Smith Jr.

Case Number: 2018CP3801339

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

EXHIBIT G

**FORM 1
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
[The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

V.


James Smith, Jr.

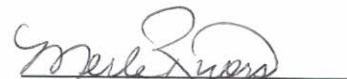
Respondent

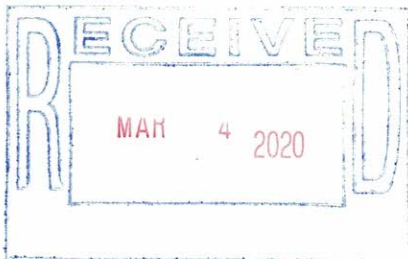
NOTICE OF APPEAL

Rufus Rivers and Merle Rivers appeals the order[judgment] of the honorable Edgar W. Dickson dated February 21, 2020. Appellants received written notice of entry of this order [judgment] on February 24, 2020.

March 2, 2020
Dated


Rufus Rivers, pro se


Merle Rivers, pro se



1429 Legrand Smoak Street
Cordova, SC 29039
803-218-9573

FORM 7
PROOF OF SERVICE OF NOTICE OF APPEAL

IN THE STATE OF SOUTH CAROLINA
In Thr Court Of Appeals
[In The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Administrative Judge

Case No. 2018-CP-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

James Smith, Jr.

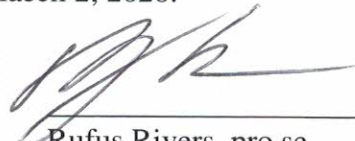
Appellee

PROOF OF SERVICE


We certify that we have served the Notice of Appeal on James Smith, Jr. by depositing a copy of it in the United States mail, postage paid, on March 2, 2020, addressed to his attorney of record, Kathleen McDaniel, P.O. Box 1929, Columbia, South Carolina 29202 [by emailing to his attorney of record, Kathleen McDaniel at twolfe@burnetteshutte.law on March 2, 2020.

March 2, 2020





Rufus Rivers, pro se



Merle Rivers, pro Se

Robert Rivers & Mende Rivers
1429 Legroad Street
Columbia, SC 29039

COLUMBIA, SC 290

POSTAGE WILL BE PAID BY ADDRESSEE

MAY

4 2020



Kathleen McDaniel, Attorney
P.O. Box 1929
Columbia, SC 29202

6256261-20262

EXHIBIT H



Orangeburg County First Judicial Circuit Public Index



[Orangeburg County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

James Smith Jr VS Rufus Rivers , defendant, et al

Case Number:	2018CV3810702780	Court Agency:	Central Region Magistrate	Filed Date:	08/06/2018
Case Type:	Civil	Case Sub Type:	Rule to Vacate \$40	File Type:	
Status:	Appeal	Assigned Judge:	Clariday, Robert Neal		
Disposition:	Find for Plaintiff	Disposition Date:	09/18/2018	Disposition Judge:	Mckune-Grant (Magistrate), Stephanie
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#)
[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Summary

Fine/Costs:	\$11,260.00	Total Paid for fine/costs:	\$11,260.00	Balance Due:	\$0.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee County 44%/100%	CVFFCN	\$20.00		\$20.00
Service Fee \$10	SRVFEE	\$10.00		\$10.00
SCJD Filing Fee Other Summary \$10	SCJDFF	\$10.00		\$10.00
Service Fee \$10	SRVFEE	\$10.00		\$10.00
Service Fee \$10	SRVFEE	\$10.00		\$10.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
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Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00
Escrow for Civil Case	ESCROW	\$700.00		\$700.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
03/09/2020	372390	c38swhite	CV	\$10.00
02/07/2020	371987	c38sedward	ES	\$700.00
01/06/2020	371419	c38swhite	ES	\$700.00

ELECTRONICALLY FILED - 2020 May 01 2:50 PM - ORANGEBURG - COMMON PLEAS - CASE#2018CP3801339

12/06/2019	371077	c38sedward	ES	\$700.00
11/08/2019	370720	c38lprovea	ES	\$700.00
10/04/2019	370153	c38swhite	ES	\$700.00
09/06/2019	369654	c38bfranks	ES	\$700.00
08/02/2019	369112	c38sedward	ES	\$700.00
07/02/2019	368617	c38swhite	ES	\$700.00
05/31/2019	368145	c38swhite	ES	\$700.00
05/02/2019	367662	c38lprovea	ES	\$700.00
04/02/2019	367165	c38swhite	ES	\$700.00
03/01/2019	366656	c38lprovea	ES	\$700.00
02/01/2019	366187	c38lprovea	ES	\$700.00
01/02/2019	365637	c38lprovea	ES	\$700.00
11/30/2018	365196	c38sedward	ES	\$700.00
11/09/2018	364857	c38bfranks	ES	\$700.00
08/20/2018	363401	c38swhite	CV	\$10.00
08/06/2018	363088	c38sedward	CV	\$40.00

EXHIBIT I

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, deposes and says as follows:

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 increase that should be charged per month for the occupation of the house located at 1429 Legrand Smoak Street, Cordova, SC 29039.
8. I am already familiar with this property because on November 2, 2018, I executed a previous affidavit giving my opinion on the fair market rent that would be charged per month for residential rental of this property.

9. In this area for similar dwellings, monthly rent increases approximately 3-5% per year.

10. I am informed that the Rivers are currently paying \$700 per month in rent to continue residing at 1429 Legrand Smoak Street, Cordova, SC 29039.

11. Accordingly, in the local real estate rental market, the amount the Rivers are paying in rent would likely increase to \$725-750 per month.

FURTHER AFFIANT SAYETH NOT.

Connie Gaston
Connie Gaston

Sworn to before me this 27th day of April, 2020

Laura A. Davis

Notary Public for
My commission expires: Oct. 4, 2020

LAURA G. DAVIS
Notary Public, State of South Carolina
My Commission Expires Oct. 4, 2020

EXHIBIT J

Orangeburg County, South Carolina

generated on 7/31/2018 9:54:08 AM CDT

Parcel

Parcel ID	Map #	Parcel Address	Total Land & Improvements	Data as of
0325050	0127-00-05-009.000	1429 LEGRAND SMOAK ST, CORDOVA	\$121,810	7/28/2018

Owner SMITH JAMES F Jr
Owner Address 66 THOMAS ST
 BRENTWOOD NY 11717-1217
Transfer Date 09/19/2014
Document Reference No. 01587 0114

FILED FOR RECORD
 WINNIPA B. CLARK
 2018 NOV 21 PM 3:14
 CLERK OF COURT
 ORANGEBURG, SC

GIS	0127-00-05-009.000	Section & Plat
Township No.	001	Tax District No. 40
Parcel Address	1429 LEGRAND SMOAK ST, CORDOVA	Routing No. 01310003056000
		Legal Desc. HWY 33 4004210078

Parcel Information

Zoning*
Property Class Code 211-Res One Family <10ac
Neighborhood Code 3139 LEGRAND SMOAK
Street or Road Code

		Assessment Year - 2017	
Owner Occupied Residential	0		0
Lots	0	Market Value	0
Acres	0	Taxable Value	0
		Ratio	0.04
		Assessment	0
Other Property	0		
Lots	0	Market Value	\$121,500
Acres	2	Taxable Value	\$121,500
		Ratio	0.06
		Assessment	\$7,290
Market Value Ag/MLD	0		
Lots	0	Market Value	0
Acres	0	Taxable Value	0
Use Value Ag/MLD	0		
Lots	0	Market Value	0
Acres	0	Taxable Value	0
		Ratio	0.04
		Assessment	0
		Total Assessment (NOT TAXES)	\$7,290



FILED Oct 09, 2014 02:30:05 pm
BOOK 01587
PAGE 0114 THRU 0117
INSTRUMENT # 2014004020

FILED
ORANGEBURG
COUNTY
ELAINE G. ALEXANDER
REGISTER
OF DEEDS

Elaine G. Alexander
Signature

AFTER RECORDING MAIL TO:
Bostic Law Firm, PA
834 Wappoo Road
Charleston, SC 29407

QUITCLAIM DEED OF REAL PROPERTY

This Quitclaim Deed, made this 19 day of September, 2014, by and between **Jessie M. Smith a/k/a Jesse M. Smith, a/k/a Jessie Mae Smith** of Suffolk County, State of New York, hereinafter called Grantor, and **James F. Smith, Jr.**, hereafter called Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of One (\$1.00) Dollar and love and affection to her in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, and quitclaimed, and by these presents does hereby give, grant, bargain, sell, convey and quitclaim unto the Grantee, its heirs and/or successors and assigns forever, the following described property, to wit:

ALL that certain piece parcel or tract situate lying and being in Zion Township County of Orangeburg State of South Carolina approximately five miles southwest of the City of Orangeburg South Carolina on South Carolina Highway S-38-33 approximately one half mile east of U.S. Highway 301 containing two (2) acres and bounded and measuring as follows: On the Southwest by South Carolina Highway S-38-33 three hundred and nineteen (319) feet; on the West and Northwest by lands of David Gassentanna two hundred seventy-three and one-tenth (273.1) feet, on Northeast by other lands of grantors three hundred and nineteen (319) feet; on the South and Southeast by other lands of grantors two hundred seventy-three and one tenth (273.1) feet.

The above-described tract of land being more fully shown and delineated on plat of property of James F. Smith and Jessie M. Smith by Earle A. Thompson Reg. Engr. And L. S. dated August 2 1972 and recorded in the office of the Clerk of Court in Orangeburg County in Plat Book 36 at page 154.

The above-entitled lot of land being subject to the following restrictions and conditions

1. The above lots shall be used for residential purposes only
2. No building shall be erected on any lot nearer than twenty feet from lot line on said lot.



ENTERED IN THE OFFICE OF ASSESSOR
MAP 0127 SHEET 02 BLOCK 05 PARCEL 009
THIS 19 DAY OF October 2014
ORANGEBURG COUNTY JIM MCLEAN, COUNTY ASSESSOR

3. No obnoxious or offensive trade or activity shall be carried on any lot nor shall anything be erected thereon which may be or may become an annoyance or nuisance.
4. These covenants are to run with the land and shall be binding on all parties or persons claiming under them.
5. If any persons shall violate or attempt to violate these covenants it shall be lawful for any person or persons owning any lot or interest in said development to bring a proceeding at law or in equity against the person or persons violating or attempting to violate any covenant herein above set forth and to recover damages or have what relief the Court affords for the violation of said covenant.

SUBJECT to all restrictions, easements and rights-of-way of record.

Being the same property conveyed to Jesse M. Smith by deed of James F. Smith, Jr., dated July 7th, 2007 and recorded in the RMC Office for Orangeburg County on August 17, 2007 in Book 01224 at Page 0022

**James F. Smith, Jr. is named as Attorney-In-Fact for Jessie Mae Smith, a/k/a Jessie M. Smith, a/k/a Jesse M. Smith as set forth in Power of Attorney recorded in Orangeburg County simultaneously herewith

TMS Number: 0127-00-05-009 0325050

Grantee's Address: 66 Thomas St. Brentwood, NY 11717

TO HAVE AND TO HOLD the above described premises, with all the appurtenances thereunto belonging, or in any wise appertaining, unto the Grantee, its heirs and/or successors and assigns forever.

TO HAVE AND TO HOLD The above described premises, with all the appurtenances thereunto belonging, or in any wise appertaining, unto the Grantee, its heirs and/or successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed the day and year first written above.

Ernestine Edgfield
Witness:
Jeda Taylor
Witness:

Jessie M. Smith By James F. Smith, Jr. Her
Jessie M. Smith, a/k/a Jesse M. Smith, a/k/a attorney in
Jessie Mae Smith, by James F. Smith, Jr.,
her Attorney-in-Fact Fact.

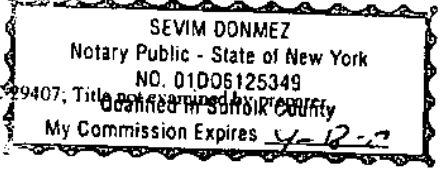
STATE OF NEW YORK)
COUNTY OF Schoharie) SS:

I, the undersigned Notary Public for and in the state aforesaid, do hereby certify that Jessie M. Smith, a/k/a Jesse M. Smith, a/k/a Jessie Mae Smith, by James F. Smith, Jr., her Attorney-in-Fact personally appeared before me and acknowledged the within instrument to be their deed and act.

Sworn before me this 19 day of September, 2014

My commission expires: 4-18-17

Sevim Donmez
NOTARY PUBLIC



PREPARED BY: The Bostic Law Firm, P.A., 834 Wappoo Road, Charleston, SC 29407, Title not recorded in Schoharie County

EXHIBIT K

To: Rufus and Myrtle Rivers
1429 Le Grand Smoak St
Cordova S C 29039-9538

From: James F Smith Jr

FILED FOR RECORD
WINNIPPA B. CLARK
2018 NOV 21 PM 3: 44
CLERK OF COURT
ORANGEBURG, SC

The last time we spoke I expressed to you my desire to sell the house located at 1429 Le Grand Smoak St. Cordova, S C 29039-9538. Since the last that we spoke I've tried to contact you by both land line

and cell phone, but to no avail, both line both were dysfunctional. So I'm writing this letter to serve you

notice that you have 30 days from the receipt of this notice to vacate the above stated property.



James F Smith Jr

66 Thomas St

Brentwood, N Y 11717-1217

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 04 2020

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se Appellant,

v.

James Smith, Jr. Respondent.

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same by first class U.S. Mail postage pre-paid on the date below to the following:

DOCUMENT SERVED: Respondent's Return to Appellants' Emergency Motion for Stay or an Injunction Pending Appeal

PARTIES SERVED: Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, SC 29039
Pro Se Appellants

Traci D. Wolfe

Traci Wolfe, PP