

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
Bethany Aloha Rich, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
New Heights Property Management, )  
 )  
Appellee-Plaintiff. )  
 )  
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COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2020-CP-08-00718

**RECEIVED**  
**Dec 21 2020**  
**SC Court of Appeals**

**ORDER ON APPEAL**  
  
On appeal from 2020-CV-08-10600651 (Goose Creek Magistrate)

This appeal of an order of eviction was heard virtually via WebEx on October 20, 2020. Robert Darby argued on behalf of the appellant. Scott Riddell argued on behalf of the respondent. The two issues on appeal are: 1) Did the magistrate err by not dismissing the matter pursuant to the parties' agreement? and 2) Did the magistrate err by concluding that the Plaintiff provided proper notice prior to filing for ejection/eviction?

**STANDARD OF REVIEW**

“Upon 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. 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.” S.C. Code Ann. 18-7-170; see, e.g., Bowers v. Thomas, 644 S.E.2d 751, 753, 373 S.C. 240 (Ct. App. 2007) (affirmance of order of residential eviction, quoting S.C. Code Ann. 18-7-170). “Sections 18-7-140 and 18-7-170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses.”

Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984).

### FACTS

On or about December 10, 2018, Appellant entered into a lease with Joseph and Denise Pastre (“Owners”), through their agent, New Heights Property Management (“Respondent”) to live at 169 Decatur Drive in Summerville, South Carolina (the “Premises”); the lease reflected an end date of December 9, 2019, and it contained a provision that either party could terminate the lease “at the end of the initial term with thirty (30) days written notice.” R. at 15. On December 23, 2019, the parties entered into an addendum to the original lease to amend the rental rate moving forward and to formally extend the initial lease term to January 31, 2020; the addendum otherwise incorporated the lease’s terms including that regarding the 30 days’ written notice. R. at 14. On February 3, 2020, after having learned that appellant had not yet moved out of the Premises, Respondent filed an Application for Ejectment. R. at 12.

During both the addendum’s term and into February of 2020, appellant communicated by phone calls and texts with the owners’ real estate agent about both purchasing the home and dismissing the eviction proceeding after the initial filing had occurred. In text messages to Appellant on February 14 and 15, 2020, Owners’ real estate agent, Barbara Daniels, stated with regard to the eviction: “Seller said as soon as we have paperwork, she will stop it[.]” In response, Appellant asked: “What paperwork are they looking for[?] Last we spoke it was a preapproval letter.” Daniels replied, “Yes. That’s what I need[.]” Ms. Daniels testified that she intended “paperwork” to mean a ratified contract and not just a preapproval letter and that the preapproval letter that had been provided by Appellant was insufficient in any event because it did not include

a dollar amount. Transcript at 11:53:33-11:57:43.<sup>1</sup> Appellant testified that she understood this paperwork-requirement to mean only providing a pre-approval letter. Transcript at 11:52:40-11:53:02.

### **ARGUMENTS ON APPEAL**

Counsel for the appellant argued that the lease obligated the respondent to give the appellant 30 days' written notice before filing for eviction, such that the respondent lacked the right to file for eviction on February 3, 2020. Counsel also argued that the parties had entered into a binding contract to dismiss the eviction, on account of the phone calls and text communications described above.

Counsel for the respondent argued that notwithstanding the lease's 30 day notice provision, the respondent had, under state statute, the right to file for eviction when it did. Counsel also argued that the phone calls and text messages regarding dismissing the eviction proceedings did not amount to a binding contract, and to that respondent retained the right to pursue eviction proceedings in full.

### **CONCLUSIONS OF LAW**

Appellant's tenancy ended on January 31, 2020 as stated in the addendum, and the respondent had the right on February 3, 2020 to file for eviction. See S.C. Code Ann. § 27-35-110 ("When there is an express agreement, either oral or written, as to the term of the tenancy of a tenant for term or for years such tenancy shall end without notice upon the last day of the agreed term."). On February 1, 2020, when appellant still had not moved out, she became a holdover tenant, and the respondent demonstrated its lack of consent to appellant's continued occupancy

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<sup>1</sup> References to the audio recording of the transcript are in clock-time designations, as the .trm files reflect the actual clock-time of the lower court's hearing ("HH:MM:SS").

when it filed for eviction on February 3, 2020. See S.C. Code Ann. § 27-40-770(c) (“If the tenant remains in possession without the landlord’s consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. . . .”).

The phone calls and texts between the appellant and the owner’s real estate agent did not create a binding contract to dismiss the eviction because there was no meeting of the minds about what home-purchase paperwork the appellant had to provide as a condition precedent. See, e.g., Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (“South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.”).

### JUDGMENT

The court finds no error in the magistrate’s decision and AFFIRMS the judgment upholding the eviction. Per S.C. Code Ann. Sec. 27-40-800(f)(1). The court orders that the writ of ejectment may not be executed prior to December 1, 2020, as Appellant has paid rent for the month of November pursuant the magistrate's bond order dated March 17, 2020. Additionally, if Appellant pays \$1,600 to Respondent no later than December 1, 2020, the writ of ejectment shall not be executed prior to January 1, 2021, giving Appellant 30 days to file a timely appeal of this order in the Court of Appeals (as provided by Rule 203(b)(1), SCACR)<sup>2</sup>, should she choose to do so.

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<sup>2</sup>“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR.



**Berkeley Common Pleas**

**Case Caption:** Bethany Aloha Rich VS New Heights Property Mgmt

**Case Number:** 2020CP0800718

**Type:** Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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