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Jan 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case No. 2020-001626

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2020-CP-18-1709

Exquis Event Center, et al.,

Appellant,

v.

BRE Retail NP Festival Center,

Respondent.

RESPONSE TO PETITION FOR *EN BANC* REVIEW OF DENIAL OF *SUPERSEDEAS*

A rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. SCACR 219(a). Appellant has demonstrated neither requirement here.

As established by the Affidavit of David Carpio filed December 17, 2020, and by the completed Writ of Ejectment filed December 16, 2020, both filed of record in this appeal, the ejectment has been completed and tenant's personal property, furniture, fixtures and equipment have been removed from the premises. There is no right of possession to "maintain" as alleged

by Appellant because Appellant is no longer in possession of the premises. In fact, Appellant has not been in possession of the premises since at least December 15, 2020.

That Appellant may suffer some financial hardship through lost bookings/reservations as a result of the ejectment is not the kind of question that this Court should consider to be “of exceptional importance.” The simple fact of the matter is that Appellant failed to comply with the express terms of the appeal bond ordered by the magistrate court, after having raised no objection to the amount ordered to be paid to maintain the appeal. Upon Appellant’s failure to comply with the appeal bond, the magistrate court properly dismissed the appeal, and the dismissal was properly affirmed by the circuit court. Appellant’s request for reconsideration and motion for temporary restraining order filed with the circuit court were both denied. Likewise, Appellant’s original petition for *supersedeas* filed before this Court was properly denied as moot. Thus, there has been complete uniformity of decision that Appellant’s appeal should be dismissed and that, under the circumstances, Appellant is not entitled to any extraordinary relief that would enable her to “regain” possession of the premises when such right of possession has already been properly terminated. Nothing has changed that should alter or amend the prior rulings on this matter. The appeal was rendered moot when the eviction was completed on December 15, 2020. For these reasons and based upon the documents previously submitted, Appellant’s petition for *en banc* review should be DENIED.

This the 4th day of January, 2021.

/s/ Christian H. Staples
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE TO PETITION FOR EN BANC REVIEW OF DENIAL OF SUPERSEDEAS was electronically filed by emailing a copy thereof to ctappfilings@sccourts.org, and I further certify that it was served on all counsel of record in this action by emailing a copy to tristan@shafferlawsc.com.

This the 4th day of January, 2021.

/s/ Christian H. Staples

Christian H. Staples

Shumaker, Loop & Kendrick, LLP