

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers Appellant,

v.

James Smith, Jr.. Respondent.

SECOND AMENDED RECORD ON APPEAL

Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039

APPELLANTS *pro se*

Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar No. 104316)
BURNETTE SHUTT & MCDANIEL, PA
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Columbia, South Carolina 29202
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ATTORNEYS FOR JAMES SMITH, JR.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3801339

Rufus Rivers et al
PLAINTIFF(S)

James Smith, Jr.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter comes before the Court on a appeal from an eviction action in Magistrate's Court. Judge Jackson, MIE for Orangeburg County, currently has a motion to dismiss under advisement in an action filed in Circuit Court dealing with ownership of the subject property involved in this eviction action appeal. As such, this matter is not ripe to be heard until after Judge Jackson rules. This matter is continued until a later term of Court to be scheduled by the Chief Administrative Judge of the First Circuit. AND IT IS SO ORDERED

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/21/2019 .

Rufus Rivers for Rufus Rivers
James Smith for James Smith, Jr.
James Smith, Jr. for James Smith
Rufus Rivers for Rufus Rivers
Merle Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Orangeburg Common Pleas

Case Caption: Rufus Rivers VS James Smith Jr.

Case Number: 2018CP3801339

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-05-21 09:46:04 page 3 of 3

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3801339

Rufus Rivers et al
PLAINTIFF(S)

James Smith, Jr.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration of this appeal, the Court DENIES the Appellant's motion for reconsideration and opposition to Judge's order. Based on the Court's previous ruling and order, this case is DISMISSED and REMANDED to the Magistrate's court for compliance with the Magistrate's order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/21/2020 .

Rufus Rivers for Rufus Rivers
James Smith for James Smith, Jr.
James Smith, Jr. for James Smith
Rufus Rivers for Rufus Rivers
Merle Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Orangeburg Common Pleas

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

Case Number: 2018CP3801339

Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-02-21 10:14:29 page 3 of 3

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

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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:

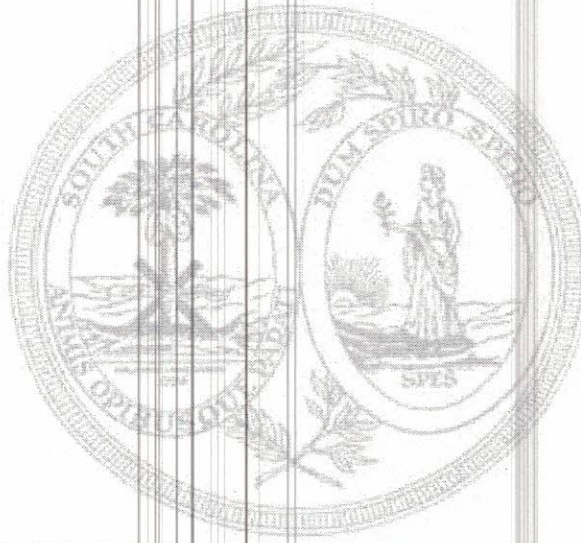
Total Paid: \$10.00

Non-Refundable

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

*We print our own
Writ of Ejectment.*



ROA--015

ReceiptSingleCase.rpt V6.1

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

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

RUFUS AND MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

SUMMONS

Case # 2018-CP-38-01010

TO THE REFENDANT(S) ABOVE-NAMED:

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

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

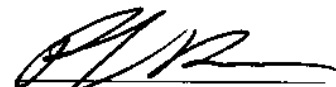
service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgement by default will be rendered against you for the relief demanded in the petition

Orangeburg, South Carolina

1429 Legrand Smoak Street

Cordova, SC 29039

Dated:


Rufus Rivers, PRO SE


Merle Rivers, PRO SE

FILED FOR RECORD
ANGELA B. CLARK
CLERK OF COURT

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
	]	
RUFUS RIVERS	]	CASE # 2016-LR 36-01014
MERLE RIVERS	]	BREACH OF FIDUCIARY DUTY
Plaintiffs	]	
VS.	]	EXPEDITED INJUNCTIVE RELIEF
	]	
JAMES SMITH, JR	]	COMPLAINT
Defendant	]	

FILED FOR RECORD
 WILLIAM B. CLARK
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

CAUSE OF ACTION

(breach of fiduciary duty)

(Jurisdiction)

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

(Constructive Fraud)

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

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

SECOND CAUSE OF ACTION

(Negligence)

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

THIRD CAUSE OF ACTION

(Conversion)

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

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

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

FIFTH CAUSE OF ACTION

(Invalid Owner)

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

Wherefore, plaintiffs pray for judgment against defendant as follows:

On the causes of actions:

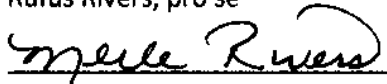
1. For judgment by voiding quitclaim deed.
2. For cost of this action.
3. For such other relief as the court deems just.
4. For the court to undo transactions conducted by the Power-of-Attorney.

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

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



Rufus Rivers, pro se



Merle Rivers, pro se

THE STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RUFUS RIVERS
MERLE RIVERS
Plaintiffs

vs.

JAMES SMITH, JR.
Defendant

IN THE COURT COMMONPLEAS

THE FIRST JUDICIAL CIRCUIT

Case # 2018-CP-38-01016

MOTION FOR INJUNCTIVE RELIEF
EXPEDITED REVIEW REQUESTED

FILED FOR RECORD
WINNIEFA B. CLARK

19 APR - 6 PM 10:10

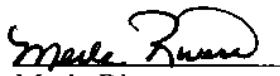
CLERK OF COURT

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

Dated: 8-6-2018

Respectfully submitted by,


Rufus Rivers, pro se


Merle Rivers, pro se

MEMORANDUM

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

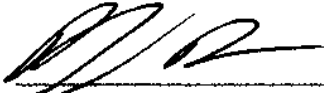
In conclusion , an injunction should be issued because:

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

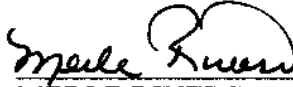
FILED 8/16/18
W. B. Clark
Clerk of Court
Orangeburg County SC

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

8-6-2018
Date


RUFUS RIVERS, pro se

8-6-2018
Date


MERLE RIVERS, pro se



BURNETTE SHUTT MCDANIEL

Moving law forward.

TRACI WOLFE- PARALEGAL
803.904-7921
twolfe@burnetteshutt.law

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202
O: 803.850.0912 F: 803.904.7910
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August 2, 2018

Via US. Postal

Orangeburg County Magistrate Court
Central Region
P.O. Box 9000
Orangeburg, South Carolina 29116

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

Re: James F. Smith v. Rufus Rivers and Merle Rivers
Application for Ejectment-149 Legrand Smoak Street, Cordova SC 29039
BSM File: 6301.002

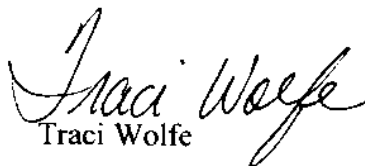
To Whom It May Concern:

Please find enclosed the original and one copy of the Application for Ejectment along with our firm's check for the requested \$40.00 filing fee in reference to the above matter. We respectfully request Mr. and Mrs. Rivers be served an eviction notice at your earliest convenience.

Should you have any questions or concerns, please do not hesitate to contact our office.

With warmest regards, I am

Sincerely yours,


Traci Wolfe

cc: James F. Smith, Jr. (via email and US Mail)

JE.



BURNETTE SHUTT MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

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Kathleen McDaniel - Partner

803-907-7913

kmcdaniel@burnetteshutt.law

August 17, 2018

Orangeburg County Magistrate Court

Central Region

P.O. Box 9000

Orangeburg, South Carolina 29116

RE: James Smith v. Rufus Rivers and Merle Rivers

C/A No.: 2018cv3810702780

BSM File No.: 6301.002

Dear Clerk:

On the previously filed Application for Ejectment in the above-referenced matter, the last digit in the address for the Defendants was incorrect. The address from which Mr. Smith is seeking to evict the Defendants is 1429 Legrand Smoak Street, Cordoba, SC 29039. My apologies for the mistake.

I have enclosed a check for \$10.00 made payable to the Orangeburg County Magistrates Court to cover the fee for the Sheriff to serve the ejectment papers on the Defendants at the correct address. It is my understanding that with this correction, the Sheriff will again attempt to serve the Defendants with the ejectment papers.

If you have any further questions or concerns, please contact me at your convenience.

With kind regards, I am

Sincerely,

Kathleen M. McDaniel

Encl.

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2018 NOV 21 PM 3:15
CLERK OF COURT
ORANGEBURG, SC

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WINNIPA B. CLARK

2018 NOV 21 PM 3:14

2018CV3810702780
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
CLERK OF COURT
ORANGEBURG, SC

IN THE MAGISTRATE'S COURT

James F. Smith, Jr.

PLAINTIFF(S)

VS.

Rufus Rivers and Merle Rivers

DEFENDANT(S)

APPLICATION FOR
EJECTMENT
(Eviction)

I, Kathleen M. McDaniel, Esq., attorney for James F. Smith, Jr., plaintiff in this action, state that James F. Smith, Jr. is the landlord-lessor of premises within the jurisdiction of Magistrate located at 1540 Ellis Avenue, Orangeburg, SC 29116, which is described as: (address and description of premises – apartment, house, etc.)

1428 Legrand Smoak Street, Cordova, SC 29039

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between the plaintiff James F. Smith, Jr. and the defendants Rufus Rivers and Merle Rivers, the tenant-lessees, as evidenced by the following: (Attach lease papers or other written proof.)

James F. Smith, Jr. permitted Rufus Rivers and Merle Rivers to occupy the dwelling unit located at 1428 Legrand Smoak Street without a written lease. The defendants have failed to pay rent and refused to vacate the premises upon proper written notice. The attached correspondence is the notice for Rufus Rivers and Merle Rivers to vacate the premises, which they have failed to do.

Grounds for this ejectment are one or more of the following:

- ☒ The tenant fails or refuses to pay the rent when due or when demanded; or
- ☒ The term of tenancy or occupancy has ended; or
- ☐ The terms or conditions of the lease have been violated as follows:

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

Kathleen M. McDaniel
Magistrate or Notary Public for South Carolina

My Commission expires 1/8/2019

James F. Smith, Jr.
PLAINTIFF (or his attorney)

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

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

FILED FOR RECORD
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2018 NOV 21 PM 3:44

CLERK OF COURT
ORANGEBURG, SC

2018CV3810702780

CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

3563

230

PLAINTIFF(S)

VS.

Rufus & Merle Rivers
1428 Legrand Smoak
Cordova, SC 29039

DEFENDANT(S)

RULE TO VACATE OR SHOW CAUSE
(Eviction)

CSS 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

Peggy D. Foreman
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
1.	_____	_____	_____	TIME OF SERVICE _____
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

ROA--028

Frnier

EX A-1

STATE OF SOUTH CAROLINA

]

IN THE MAGISTRATES COURT

COUNTY OF ORANGEBURG

]

CASE NO. 2018CV1810702780

JAMES SMITH, JR.

]

REPLY: TO RULE TO SHOW CAUSE

Plaintiff

]

REQUEST TO INCORPORATE CASES IN

VS

]

COURT OF COMMON PLEAS

RUFUS RIVERS RUFUS AND MERLE RIVERS

]

Defendants

]

*Case to Magistrate
She gave it back
Opposing attorney has copy of SC*

FILED
2019 APR 10 PM 4:40
CLERK
RECORD
OFFICE OF CLERK
ORANGEBURG, SC

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

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

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

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

Dated: 09/17/2018


Rufus Rivers, pro se

To: Plaintiff Attorney: Kathleen M. McDaniel

Office Box 1929

Columbia, SC 29202

Merle Rivers

Merle Rivers

A-7

LED FOR
INIPA B.C.
2019 APR 10 PM 4:40
CLERK OF COURT
ORANGEBURG, SC

OCTOBER 18, 2019

ORANGEBURG, SOUTH CAROLINA

A P P E A R A N C E S:

KATHERINE A. SPIRES
REGISTERED PROFESSIONAL REPORTER

1 THE COURT: This is Case Number 2018-CP-38-01339.
2 Rufus Rivers and Merle Rivers, Appellants verses James
3 R. Smith, Appellee.

4 Mr. Rivers, you are representing yourself on this?

5 MR. RIVERS: Yes, sir.

6 THE COURT: Okay. And, Mr. Rivers, I have your
7 memorandum in support of motion --

8 MR. RIVERS: Yes, sir.

9 THE COURT: -- of your motion? And you oppose --
10 and we're dealing with -- let me just make sure.
11 Ms. McDaniel, did you file a Motion to Dismiss this
12 appeal?

13 MS. MCDANIEL: Your Honor, the procedural matter is
14 a little bit complicated. If I may give -- do that for
15 a minute.

16 THE COURT: Okay. And, Mr. Rivers, she's going to
17 tell me just the procedural outline. If she tells me
18 something that's incorrect, I'm going to let you correct
19 it. Okay?

20 MR. RIVERS: Thank you, sir.

21 THE COURT: All right.

22 MS. MCDANIEL: So, Your Honor, this was -- is an
23 appeal from an eviction matter. We had the eviction
24 started. And Mr. Rivers, he and his wife, filed
25 contemporaneously either just before or just after the

1 eviction was noticed, filed a lawsuit in the Court of
2 Common Pleas contending that they actually own the
3 property that my client is trying to evict them from.

4 We went forward with the eviction proceeding. The
5 magistrate granted the eviction. And we -- Mr. Rivers
6 then appealed that to this court, so that's the appeal
7 that we're on now. We had a hearing on that appeal
8 several months ago. And at the time the matter in the
9 Court of Common Pleas, which had been transferred to the
10 Master-In-Equity, was still pending. And the judge who
11 heard it continued this appeal until after the
12 Master-In-Equity had made his determination on
13 Mr. Rivers's lawsuit.

14 That lawsuit has now been dismissed. The purpose of
15 that lawsuit was, Mr. Rivers claimed that they owned the
16 property. That lawsuit has been dismissed. Now we can
17 proceed with this appeal.

18 THE COURT: Okay. And you said you already had the
19 eviction hearing and Mr. Rivers appealed the eviction
20 hearing?

21 MS. MCDANIEL: Yes, Your Honor. This is his appeal
22 from the eviction.

23 THE COURT: Okay. And, Mr. Rivers, let me make
24 sure, I need for you to stand up if you don't mind,
25 please, sir.

1 MR. RIVERS: Yes, sir.

2 THE COURT: That's okay. Let me just make sure. I
3 guess Mr. Smith filed an eviction notice against you and
4 your wife?

5 MR. RIVERS: Yes, sir.

6 THE COURT: Okay.

7 MR. RIVERS: But -- excuse me. May I finish?

8 THE COURT: Go ahead.

9 MR. RIVERS: It was not in the manner in which she
10 states.

11 THE COURT: Okay. Well, that's what I'm going over
12 -- that's what I'm trying to go over with you right now
13 just make sure I get it straight.

14 MR. RIVERS: Yes, sir.

15 THE COURT: Okay. And around the same time you
16 filed the eviction, you and your wife filed a lawsuit in
17 Common Pleas --

18 MR. RIVERS: We filed a lawsuit in Common Pleas
19 prior to them filing the eviction.

20 THE COURT: Okay. But, nevertheless, you filed
21 saying that you and your wife own this property; is that
22 correct?

23 MR. RIVERS: I didn't say that we owned it. We
24 filed alleging that Mr. Smith fraudulently did a Power
25 of Attorney and transferred the property to himself

1 after the property was -- we were granted possession by
2 his mother. And we had been there since 2009.

3 THE COURT: Okay. All right. And the magistrate
4 went ahead and ordered an eviction; is that correct?

5 MR. RIVERS: Yes, sir.

6 THE COURT: And then you appealed the eviction?

7 MR. RIVERS: Yes, sir.

8 THE COURT: Okay. Then you had the hearing in front
9 of the Master-In-Equity?

10 MR. RIVERS: Yes, sir.

11 THE COURT: Okay. And you and your wife appeared at
12 that hearing?

13 MR. RIVERS: Yes, sir. The second one.

14 THE COURT: Okay. The second one. And were you --
15 you and your wife able to testify at that hearing?

16 MR. RIVERS: Yes, sir.

17 THE COURT: Okay. Now, it's my understanding the
18 Master-In-Equity determined that the property was
19 Mr. Smith's?

20 MR. RIVERS: No, sir, he didn't determine that.
21 Matter of fact, he dismissed it. Saying that we didn't
22 have any legal standing.

23 THE COURT: He dismissed your lawsuit?

24 MR. RIVERS: Yes, sir.

25 THE COURT: Saying that you didn't have any legal

1 standing?

2 MR. RIVERS: Yes, sir.

3 THE COURT: Okay. All right. And so now we're here
4 on the eviction?

5 MR. RIVERS: The eviction.

6 THE COURT: Yes, sir.

7 MR. RIVERS: And my thing is that the eviction
8 shouldn't have never taken place in the first place.
9 And how it turned out, why it ended up being, is that
10 when the eviction was done, it should not have been held
11 pursuant to magistrate's jurisdiction and procedures.
12 Because there were pending action in Circuit Court at
13 the time of that eviction.

14 THE COURT: Okay. All right. So what you're saying
15 is the eviction hearing should have taken place after
16 the master had his hearing?

17 MR. RIVERS: After the Circuit Court's hearing; yes,
18 sir.

19 THE COURT: Right. Is there anything else that the
20 magistrate did wrong legally from your prospective?

21 MR. RIVERS: Yes.

22 THE COURT: What was that?

23 MR. RIVERS: The main thing there was no never a
24 landlord/tenant relationship. She didn't find there was
25 existence of a landlord/tenant relationship. Which

1 actually should have, you know. The magistrate lacked
2 subject matter of jurisdiction for number one.

3 THE COURT: Okay. Now tell me why the magistrate
4 lacked subject matter jurisdiction to determine an
5 eviction.

6 MR. RIVERS: I'm just going by the South Carolina --
7 I mean, jurisdiction and procedures of the magistrate,
8 the things they can and cannot do. And the thing is,
9 based on Chapter 22-3-20, and no matter should have
10 cognizance of any civil action when title to real estate
11 should come into question. And it doesn't say that, you
12 know, the magistrate determines who -- whether the title
13 is in question or not. It says that under no
14 circumstances should she be able to adjudicate a case
15 pertaining to realty -- real property.

16 And we're saying at that particular time the case
17 should have been discontinued.

18 THE COURT: It should have been continued until
19 after the Circuit Court decided -- until after the
20 master made his decision.

21 MR. RIVERS: No, sir. I'm not saying that.

22 THE COURT: Okay. What are you saying?

23 MR. RIVERS: Is that what you're saying?

24 THE COURT: Well, that's what I'm saying. I was
25 trying to find out what you were saying.

1 MR. RIVERS: What I'm saying is that the master -- I
2 mean, the Circuit Court decision should have been made
3 before they even held the eviction is what I'm saying.

4 THE COURT: Okay.

5 MR. RIVERS: She didn't have jurisdiction over the
6 matter at the time that she adjudicated the case; is
7 what I'm saying.

8 THE COURT: Okay. Yeah, that was the first thing
9 you said too and we're just getting back to that again.

10 MR. RIVERS: Yes, sir.

11 THE COURT: Okay. Well, let me ask you a question,
12 now that the master has heard the case, okay?

13 MR. RIVERS: Yes, sir.

14 THE COURT: Is there anything different that would
15 be presented to the magistrate regarding the eviction?

16 MR. RIVERS: Just the fact that she adjudicated a
17 case that she should not have.

18 THE COURT: Right.

19 MR. RIVERS: Just saying, there was no
20 landlord/tenant relationship.

21 THE COURT: Well, now, have you -- since you have
22 appealed this, are you still on the property?

23 MR. RIVERS: Yes, sir.

24 THE COURT: Okay. Because you filed an appellate
25 bond?

1 MR. RIVERS: Yes, sir.

2 THE COURT: Okay. Anything other than the fact that
3 the magistrate should have waited until after the
4 Master-In-Equity ruled to go forward with the eviction?
5 Anything else?

6 MR. RIVERS: I'm trying to be clear on what you're
7 asking me.

8 THE COURT: Well, what -- okay. Your first argument
9 is -- or the main argument, I'm taking it, is that the
10 magistrate should have not addressed the eviction until
11 after the Master-In-Equity ruled on the ownership of
12 your lawsuit? Until they ruled on your lawsuit; is that
13 correct?

14 MR. RIVERS: Partially, yes, sir.

15 THE COURT: Okay. What's the other part?

16 MR. RIVERS: I'm saying that the magistrate should
17 not have ruled on the eviction period not until a
18 Master-In-Equity ruled. Because at the time we didn't
19 know that the Master-In-Equity would be handled until
20 the Circuit Court had, had a chance to show whose
21 ownership. Because the magistrate court doesn't have
22 jurisdiction to determine who owns the property.

23 THE COURT: Right. Okay.

24 MR. RIVERS: I'm just going by what the procedures
25 say.

1 THE COURT: No, I understand exactly what you're
2 saying. Just out of curiosity, Mr. Rivers, do you have
3 any -- have you ever worked in law before?

4 MR. RIVERS: I took a few courses. No, sir.

5 THE COURT: You prepared your memorandum and like
6 that yourself?

7 MR. RIVERS: Yes, sir.

8 THE COURT: Okay. You did good work.

9 MR. RIVERS: Thank you.

10 THE COURT: All right. Anything else you want to
11 tell me?

12 MR. RIVERS: Other than I request the Court to
13 dismiss the action and let the Plaintiff -- I mean,
14 Mr. Smith, proceed in the manner that it was designed to
15 proceed. Him filing his own Summons and Complaint.

16 THE COURT: Okay. All right. Thank you, sir.

17 MR. RIVERS: Yes, sir.

18 THE COURT: All right. Ms. McDaniel?

19 MS. MCDANIEL: Yes, Your Honor. Your Honor, the
20 eviction proceedings certainly proceeded properly.
21 Mr. Rivers brought up the question of ownership at the
22 magistrate's hearing on the eviction. And at that time,
23 in the record that has been returned to this court,
24 you'll see that we presented to the magistrate a copy of
25 the deed, deeding the property from Ms. Smith to James

1 Smith documenting his actual ownership of the property.

2 In addition, we provided the magistrate with a copy
3 of the Power of Attorney giving Mr. Smith the authority
4 to make that conveyance. Those are the types of
5 documents that any magistrate would need to look at to
6 make sure that the person who claims they own the
7 property actually does in fact own the property.

8 Mr. Rivers presented no evidence contradicting the
9 validity of the deed or the validity of the Power of
10 Attorney.

11 And for that reason, the magistrate, Judge Stephanie
12 McKune-Grant, she issued -- she granted the request for
13 the eviction. And there was no question of who owned
14 the property. There was no question of title. The
15 magistrates' court definitely had jurisdiction of this.
16 If any person who is seeking to be evicted from a piece
17 of property could come into court and just allege that
18 they owned the property thereby stopping the eviction,
19 we would have no eviction process in this state because
20 everyone would do that.

21 And that's all that Mr. Rivers had done. They
22 simply came into the magistrates' court and had no
23 evidence to contradict the ownership -- the true
24 ownership of the property.

25 THE COURT: Ms. McDaniel, just out of curiosity, did

1 Mr. McDaniel [verbatim] file his lawsuit over the
2 ownership issue with Mr. Smith prior to the eviction?

3 MS. MCDANIEL: Your Honor, it's my understanding
4 that it was after. We filed the eviction -- we send the
5 eviction notice -- let's see, we filed the Rule to
6 Vacate or Show Cause on August 8, 2018.

7 THE COURT: August 8, 2018, was your eviction?

8 MS. MCDANIEL: That's correct, Your Honor. And
9 let's see if I have the -- I may not have the
10 Master-In-Equity pleadings with me in this notebook.

11 THE COURT: Just for the record, the
12 Master-In-Equity proceedings appear to be
13 2018-CP-38-01016.

14 MS. MCDANIEL: I believe that's correct, Your Honor.

15 MR. RIVERS: Yes, sir.

16 THE COURT: And that hearing before the master was
17 on April 17, 2019?

18 MS. MCDANIEL: That's correct, Your Honor.

19 THE COURT: Okay.

20 MS. MCDANIEL: And I do have a copy of the Master's
21 order if you would like that.

22 THE COURT: No, I've got a copy of the Master's
23 report. I was just trying to find when Mr. Rivers'
24 Complaint was filed.

25 MR. RIVERS: I have it right here if you need a copy

1 of it.

2 THE COURT: You've got a copy of -- a clocked in
3 copy?

4 MR. RIVERS: Yes, sir.

5 THE COURT: Okay. Would you mind showing it to
6 Ms. McDaniel before you hand it up to me. Thank you,
7 sir. Hold on and I will give it right back to you.

8 All right. Mr. Rivers, this is a copy of -- and I
9 see it's of your Complaint and you drew up this
10 Complaint as well?

11 MR. RIVERS: Yes, sir, I did. It was time stamped
12 August 6th.

13 THE COURT: Well, actually it's stamped May 8th.

14 MR. RIVERS: That's because I came back in. It
15 wasn't included in the appeals court file. So I came
16 back in and asked the clerk to enter it into this
17 particular files.

18 THE COURT: I see. I've got three different stamps
19 on this.

20 MR. RIVERS: Yes. August 6th is the initiating day.

21 THE COURT: Okay. August 6, 2018?

22 MR. RIVERS: Yes, sir. And the magistrate's
23 ejectment notice was not filed until August 23rd.

24 THE COURT: Well, now, you told me it was August
25 8th; is that correct?

1 MS. MCDANIEL: Yes, Your Honor. In the magistrate's
2 order, return of the civil appeal, you will note that it
3 says on August 8th respondent James R. Smith filed the
4 rule to vacate or show cause for eviction.

5 MR. RIVERS: And I was served on August 23rd and my
6 document showed August 20th is when the magistrate judge
7 signed the document.

8 THE COURT: Okay.

9 MS. MCDANIEL: Your Honor, I don't really see how
10 that matters.

11 THE COURT: I understand. I was just -- all right.
12 Ms. McDaniel, anything else you want to tell me?

13 MS. MCDANIEL: Your Honor, the timing of when the
14 eviction verses the lawsuit was filed, really has no
15 bearing on this case. The eviction and the lawsuit are
16 two separate proceedings. The magistrate had the deed,
17 had the Power of Attorney in front of her that showed --
18 confirmed the ownership in Mr. Smith at the time that
19 she made the decision. There was no cloud on the title.
20 There was no evidence presented that would have called
21 the title into question.

22 The Rivers' certainly, you know, fought hard and
23 filed a separate lawsuit. But that case has been
24 dismissed, so there is no question but that Mr. Smith
25 owns the property and owned it at the time that the

1 eviction was proceeding. And we would ask Your Honor to
2 dismiss the appeal and issue a writ of eviction. Thank
3 you.

4 THE COURT: Okay. All right. Mr. Rivers, anything
5 in reply?

6 MR. RIVERS: Yes, sir.

7 THE COURT: Yes, sir.

8 MR. RIVERS: Ms. McDaniel made reference to the fact
9 that nothing matter other than who owned the property.
10 But in the magistrates' court, it's not the magistrate's
11 decision to determine or make a finding of who owns the
12 property. That's left to the superior courts.

13 And with her lacking subject matter jurisdiction,
14 then when the appeal came about, then that makes the
15 Circuit Court a superior court lacks subject matter of
16 jurisdiction as well and the case should be dismissed.
17 Pursuant to Hargrove and Cox. It's a Supreme Court
18 decision. This case is on point with that.

19 THE COURT: Okay. Yeah, I noticed you picked a
20 North Carolina case.

21 MR. RIVERS: That's the only one that I could find
22 at the time.

23 THE COURT: Okay. But you do realize we're not in
24 North Carolina?

25 MR. RIVERS: Yes, sir, I do.

1 THE COURT: Okay. Just want to make sure.

2 MR. RIVERS: I do understand that it is precedent.

3 I know we don't have to use it here. But, I mean, I
4 wanted to bring that to the attention of the court.

5 THE COURT: No, I appreciate it. I've never read
6 Hargrove, so I'll look at it. Okay.

7 What I'll do is, let me read over and -- the filings
8 and like that, and I'll get back to y'all with my
9 decision. Okay?

10 MR. RIVERS: Yes, sir.

11 THE COURT: Thank y'all. Appreciate it.

12 MR. RIVERS: Thank you, Your Honor.

13 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
14
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25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 18th of October, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 22, 2020

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
)

2018CV3810702780
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

RETURN OF THE CIVIL APPEAL

James Smith Jr

PLAINTIFF(S)

Vs

Rufus Rivers
1429 Legrand Smoak Street
Cordova, SC 29039

Merle Rivers
1429 Legrand Smoak Street
Cordova, SC 29039

DEFENDANT(S)

The attached documents comprise the case file of the Central Region Magistrate. As required by Section 18-7-60, SC Code of Laws, this file is transmitted to the Court of Common Pleas as the result of an appeal. The following documents are attached:

- ☒ Summons, Complaint and Proof of Service
- ☒ Pretrial Motions and Orders granting or denying
- ☐ Jury Strike Proceedings (if applicable)
- ☒ Trial proceedings, summary of trial
- ☐ Instructions given to jury or denied
- ☐ Order of Judgment signed by the Trial Judge
- ☒ Post-trial Motions and Orders granting or denying
- ☒ All papers and notices of hearings and trial
- ☒ Notice of Appeal and date filed with the Court
- ☐ Other (describe):

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

Stephanie McFune-Fran
JUDGE/CLERK

Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011

November 21, 2018

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.

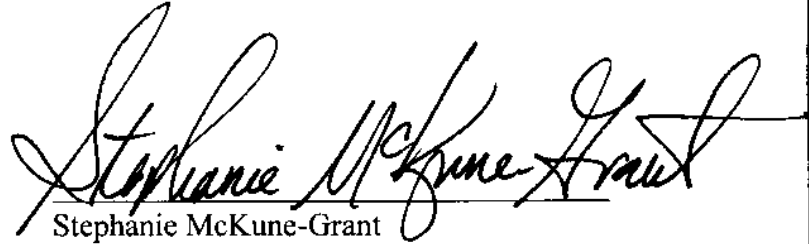
On November 6, 2018 a letter was sent to Appellants and copied to Attorney Kathleen McDaniel for Respondent, James F. Smith, Jr. denying the Movants Motion to Review Appeal Bond Requirements Requiring Rental Payments as presented based on the same arguments being presented to the court and properly addressed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

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

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

PLAINTIFF(S)

VS.

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

DEFENDANT(S)

2018CV3810702780

CIVIL CASE NUMBER

IN THE MAGISTRATES COURT

FILED FOR RECORD
WINNIP A. CLARK

2018 NOV 21 PM 3:13

CLERK OF COURT
ORANGEBURG, SC

230
3792

CCSO CIVIL DIVISION

RULE TO VACATE OR SHOW CAUSE
(Eviction)

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

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

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

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

Dated: August 20, 2018

Reggy D. Doremus
MAGISTRATE JUDGE

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

	DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1.							
2.							
3.							

SWORN to and Subscribed before me

This 24 Day of August, 2018

Melissa G. Brubaker
NOTARY PUBLIC OR JUDGE

[Signature]
SIGNATURE OF SERVER

Frazier

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

Rule to Vacate or Show Cause

Page 1 of 2

ROA--056

Rufus Rivers



BURNETTE SHUTT MCDANIEL

Moving law forward.

TRACI WOLFE- PARALEGAL
803.904-7921
twolfe@burnetteshutt.law

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202
O: 803.850.0912 F: 803.904.7910
burnetteshutt.law

August 2, 2018

Via US. Postal

Orangeburg County Magistrate Court
Central Region
P.O. Box 9000
Orangeburg, South Carolina 29116

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

Re: James F. Smith v. Rufus Rivers and Merle Rivers
Application for Ejectment-149 Legrand Smoak Street, Cordova SC 29039
BSM File: 6301.002

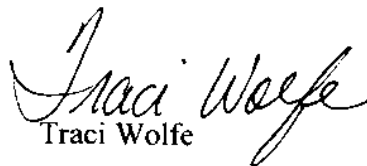
To Whom It May Concern:

Please find enclosed the original and one copy of the Application for Ejectment along with our firm's check for the requested \$40.00 filing fee in reference to the above matter. We respectfully request Mr. and Mrs. Rivers be served an eviction notice at your earliest convenience.

Should you have any questions or concerns, please do not hesitate to contact our office.

With warmest regards, I am

Sincerely yours,


Traci Wolfe

cc: James F. Smith, Jr. (via email and US Mail)

JE.



BURNETTE SHUTT MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

O: 803.850.0912 F: 803.904.7910

burnetteshutt.law

Kathleen McDaniel - Partner

803-907-7913

kmdaniel@burnetteshutt.law

August 17, 2018

Orangeburg County Magistrate Court

Central Region

P.O. Box 9000

Orangeburg, South Carolina 29116

RE: James Smith v. Rufus Rivers and Merle Rivers

C/A No.: 2018cv3810702780

BSM File No.: 6301.002

Dear Clerk:

On the previously filed Application for Ejectment in the above-referenced matter, the last digit in the address for the Defendants was incorrect. The address from which Mr. Smith is seeking to evict the Defendants is 1429 Legrand Smoak Street, Cordoba, SC 29039. My apologies for the mistake.

I have enclosed a check for \$10.00 made payable to the Orangeburg County Magistrates Court to cover the fee for the Sheriff to serve the ejectment papers on the Defendants at the correct address. It is my understanding that with this correction, the Sheriff will again attempt to serve the Defendants with the ejectment papers.

If you have any further questions or concerns, please contact me at your convenience.

With kind regards, I am

Sincerely,

Kathleen M. McDaniel

Encl.

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

FILED FOR RECORD
WINNIPA B. CLARK

2018 NOV 21 PM 3:14

2018CV3810762780
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA
CLERK OF COURT
COUNTY OF ORANGEBURG
ORANGEBURG, SC

IN THE MAGISTRATE'S COURT

James F. Smith, Jr.

PLAINTIFF(S)

VS.

Rufus Rivers and Merle Rivers

DEFENDANT(S)

APPLICATION FOR
EJECTMENT
(Eviction)

I, Kathleen M. McDaniel, Esq., attorney for James F. Smith, Jr., plaintiff in this action, state that James F. Smith, Jr. is the landlord-lessor of premises within the jurisdiction of Magistrate located at 1540 Ellis Avenue, Orangeburg, SC 29116, which is described as: (address and description of premises – apartment, house, etc.)

1428 Legrand Smoak Street, Cordova, SC 29039

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between the plaintiff James F. Smith, Jr. and the defendants Rufus Rivers and Merle Rivers, the tenant-lessees, as evidenced by the following: (Attach lease papers or other written proof.)

James F. Smith, Jr. permitted Rufus Rivers and Merle Rivers to occupy the dwelling unit located at 1428 Legrand Smoak Street without a written lease. The defendants have failed to pay rent and refused to vacate the premises upon proper written notice. The attached correspondence is the notice for Rufus Rivers and Merle Rivers to vacate the premises, which they have failed to do.

Grounds for this ejectment are one or more of the following:

- ☒ The tenant fails or refuses to pay the rent when due or when demanded; or
- ☒ The term of tenancy or occupancy has ended; or
- ☐ The terms or conditions of the lease have been violated as follows:

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

Kathleen M. McDaniel
Magistrate or Notary Public for South Carolina

My Commission expires 1/8/2019

James F. Smith, Jr.
PLAINTIFF (or his attorney)

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

From: James F Smith Jr

FILED FOR RECORD
WINNIEPA B. CLARK
2018 NOV 21 PM 3: 14
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

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

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

FILED FOR RECORD
WINNIP B. CLARK

2018 NOV 21 PM 3:44

CLERK OF COURT
ORANGEBURG, SC

2018CV3810702780

CIVIL CASE NUMBER
IN THE MAGISTRATES COURT

3563

230

PLAINTIFF(S)

VS.

Rufus & Merle Rivers
1428 Legrand Smoak
Cordova, SC 29039

DEFENDANT(S)

RULE TO VACATE OR SHOW CAUSE
(Eviction)

CSS 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

Peggy D. Foreman
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

Page 1 of 1

ROA--061

Frnier

Civil Paper - RULE TO VACATE

CP3563

Civil ID 3563	Case ID	File/Docket #
Officer FRAZIER, A.	Location of Original Copy	Local # 18CV3810702780
PLAINTIFF NAME & ADDRESS JAMES F SMITH JR.		Court Orangeburg Magistrate Court
		Date Issued 08/08/2018
		Disposition Returned To Court / Not Served
		Court Date 08/08/2018
		Disposition Date 08/09/2018

VERSUS

DEFENDANT NAME & ADDRESS RUFUS AND MERLE RIVERS, 1428 LEGRAND SMOAK ST CORDOVA, SC 29039	SERVE TO ADDRESS: 1428 LEGRAND SMOAK ST CORDOVA, SC 29039 Zone: NRTH District: ReportArea: Tract: OCSO Neighbhd: SubDivsn:
Race / Sex / DOB / Dob: NA Employer Information	SSN SSN: NA
Home Phone (H) NA Alerts	Work Phone (W) NA
Notes (for above Defendant)	

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

SERVICE NOTES

ADDED FROM MFR - RETURNED TO COURT NOT SERVED

Address does not exist on this street.

1420-1429 are the addresses

[08/10/2018 10:39, MBOCHETTE, 207, OCSO]

FIRST ATTEMPT

Successful ☐ Yes ☐ No	Date	Time	Officer	Who Served
Where Served Serve To Address:			Comments (include new address)	

SECOND ATTEMPT

Successful ☐ Yes ☐ No	Date	Time	Officer	Who Served
Where Served			Comments (include new address)	

THIRD ATTEMPT

Successful ☐ Yes ☐ No	Date	Time	Officer	Who Served
Where Served			Comments (include new address)	

STATE OF SOUTH CAROLINA

]

IN THE MAGISTRATES COURT

COUNTY OF ORANGEBURG

]

]

CASE NO. 2018CV1810702780

JAMES SMITH, JR.

]

PLAINTIFF

]

VS.

]

REQUEST FOR HEARING

RUFUS AND MERLE RIVERS

]

DEFENDANTS

]

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

Rufus Rivers and Merle Rivers, defendants in the above referenced action hereby request a
Hearing to show why they should not be evicted from property at 1429 Legrand Smoak Street, Columbia,
SC, 29039

Dated: August 31, 2018


Rufus Rivers

218-9373


Merle Rivers

RECEIVED

AUG 31 2018

Orangeburg County
Central Region

D-BK: 01587 PG:0098
POWER OF ATTORNEY
NEW YORK STATUTORY SHORT FORMBOSTIC LAW FIRM
834 Wappoo Road
Charleston, SC 29407

(a) **CAUTION TO THE PRINCIPAL:** Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority. When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. "Important Information for the Agent" at the end of this document describes your agent's responsibilities. Your agent can act on your behalf only after signing the Power of Attorney before a notary public. You can request information from your agent at any time. If you are revoking a prior Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where your accounts are located. You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly. Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this. The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, www.senate.state.ny.us or www.assembly.state.ny.us. If there is anything about this document you do not understand you should ask a lawyer of your own choosing to explain it to you.

(b) **DESIGNATION OF AGENT(S):**

I, *Jessie Mae Smith*, residing at, **66 Thomas St., Brentwood, New York 11717**

(name and address of principal)

hereby appoint (you may appoint 2 or more agents)

James F. Smith, Jr., residing at, **66 Thomas St., Brentwood, New York 11717**

(name(s) and address(es) of agent(s))

as my agent(s)

If you designate more than one agent above, they must act together unless you initial the statement below

() My agents may act SEPARATELY

(c) **DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)**

If every agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

Qiana T. Smith, residing at,

(name(s) and address(es) of successor agent(s))

Successor agents designated above must act together unless you initial the statement below.

() My successor agents may act SEPARATELY

FILED Oct 09, 2014 02:29:10 pm
BOOK 01587
PAGE 0098 THRU 0113
INSTRUMENT # 2014004019

Elaine G. Alexander
Signature

FILED
ORANGEBURG
COUNTY
ELAINE G. ALEXANDER,
REGISTER
OF DEEDS



1587
0099

You may provide for specific succession rules in this section. Insert specific succession provisions here:
Each successor agent shall serve as successor agent in the order in which they are listed above.

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications".

(e) This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previously executed by me unless I have stated otherwise below, under "Modifications". If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in this Power of Attorney as you granted to another agent in a prior Power of Attorney, each agent can act separately unless you indicate under "Modifications" that the agents with the same authority are to act together.

(f) **GRANT OF AUTHORITY:** To grant your agent some or all of the authority below, either

(1) Initial the bracket at each authority you grant, or

(2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- () (A) real estate transactions;
- () (B) chattel and goods transactions;
- () (C) bond, share and commodity transactions;
- () (D) banking transactions;
- () (E) business operating transactions;
- () (F) insurance transactions;
- () (G) estate transactions;
- () (H) claims and litigation;
- () (I) personal relationships, affairs, and family maintenance. If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five hundred dollars;
- () (J) benefits from governmental programs or civil or military service;
- () (K) health care billing and payment matters; records, reports and statements;
- () (L) retirement benefit transactions;
- () (M) tax matters;
- () (N) all other matters;
- () (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
- Jas* (P) EACH of the matters identified by the following letters A, B, C, D, E, F, G, H, I, J, K, L, M, N & O. You need not initial the other lines if you initial line (P).

(g) MODIFICATIONS: (OPTIONAL)

In this section you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.

- () (Q) to enter into and manage estate transactions, including waivers and consents;
() (R) to make statutory elections and renounce or disclaim any interest by testate or intestate succession or by intervivos transfer pursuant to Internal Revenue Code, Section 2518 or Section 2-1.11 of the Estates, Powers and Trusts Law of the State of New York or any similar or successor law;
() (S) to enter into buy/sell agreements;
() (T) to make loans, and forgive debts;
() (U) to represent me with the Social Security Administration, Veterans Administration, Social Services, Medicare, Medicaid, US Treasury, Bureau of the Public Dept and all other government benefits or entitlements, including claims, planning for eligibility, submission of applications and appeals;
() (V) to change or maintain my domicile for any and all purposes and to take any and all actions to effectuate said change or maintenance of domicile (including by not limited to a Declaration of Intent to Return Home);
() (W) to serve as the guardian of my person and property, to serve without bond, in the event that I shall be declared unable to manage my affairs pursuant to Article 81 of the Mental Hygiene Law of the State of New York or any statute corresponding thereto;
() (X) to act as my surrogate for all decisions which may be delegated to a surrogate under the provisions of Article 29-B of the Public Health law of the State of New York;
() (Y) to disclose medical records and other personal information;
() (Z) to accept transfers or distributions from any trustee of any trust;
() (AA) to retain, discharge and pay for the services of attorneys, accountants, financial planners, geriatric care managers, social workers and other health care professionals;
() (BB) to commence legal proceedings for actual and punitive damages against any third party who refuses to honor and accept this instrument;
() (CC) I authorize my attorney-in-fact to enter any safety deposit box and to remove the contents and to make additions, substitutions and replacements.
() (DD) I authorize my attorney-in-fact to create, amend and fund trusts on my behalf.
() (EE) This Power of Attorney revokes any and all prior Powers of Attorney executed by me.
JMS) (FF) EACH of the matters above identified by the following letters Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE. You need not initial the other lines if you initial line (FF).

In the event that a power granted in this section (g) conflicts with any power granted in section (f) of this Power of Attorney, then the broadest power shall supersede and replace the conflicting power.

1587
0101**CERTAIN GIFT TRANSACTIONS: STATUTORY GIFTS RIDER (OPTIONAL)**

In order to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), you must initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider should be supervised by a lawyer.

(*gns*) (SGR) I grant my agent authority to make gifts in accordance with the terms and conditions of the Statutory Gifts Rider that supplements this Statutory Power of Attorney.

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)

If you wish to appoint monitor(s), initial and fill in the section below:

() I wish to designate _____, whose address(es) is (are) _____, as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL)

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications".

() My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES:

I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) TERMINATION:

This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law. Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGEMENT:

In Witness Whereof I have hereunto signed my name on this 1 day of July, 2013

PRINCIPAL signs here: → Jessie M. Andmuth

ACKNOWLEDGMENT IN NEW YORK STATE

D-BK: 01587 PG:0102

STATE OF NEW YORK

COUNTY OF Suffolk ss.:

On the 1 day of July in the year 2013 before me, the undersigned, personally appeared **JESSIE MAE SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their capacity(ies), and that by his/her/ their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



(Signature and Office of individual taking acknowledgment)

VICKI CASTRO
Notary Public, State of New York
No. 01CA4761748
Qualified in Suffolk County
Commission Expires Nov. 30, 2014

ACKNOWLEDGEMENT OUTSIDE NEW YORK STATE

STATE OF _____ COUNTY OF _____ ss.:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared **JESSIE MAE SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____

(Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

(Signature and office of individual taking acknowledgment)

**1587
0103 (n) IMPORTANT INFORMATION FOR THE AGENT:**

When you accept the authority granted under this Power of Attorney, a special legal relation is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record of all receipts, payments, and transactions conducted for the principal; and
- (5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either the following manner: (Principal's Name) by (Your Signature) as Agent, or (Your Signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or anyone else or make gifts to yourself or anyone else unless the principal has specifically granted you that authority in this document, which is either a Statutory Gifts Rider attached to a Statutory Short Form Power of Attorney or a Non-Statutory Power of Attorney. If you have that authority, you must act according to any instruction of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of Agent: The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

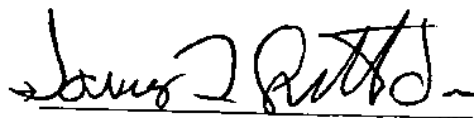
AGENT'S SIGNATURE AND ACKNOWLEDGEMENT OF APPOINTMENT:

It is not required that the principal and the Agent(s) sign at the same time, nor that multiple Agents sign at the same time.

I/we, **JAMES F. SMITH, JR.**, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as Agent (s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

AGENT (S) sign(s) here:



ACKNOWLEDGMENT IN NEW YORK STATE

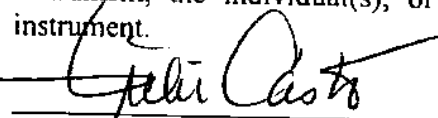
STATE OF NEW YORK

COUNTY OF

Suffolk

SS.:

On the 1 day of July in the year 2013 before me, the undersigned, personally appeared **JAMES F. SMITH, JR.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their capacity(ies), and that by his/her/ their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



(Signature and Office of individual taking acknowledgment)

VICKI CASTRO
Notary Public, State of New York
No. 01CA4761748
Qualified in Suffolk County
Commission Expires Nov. 30, 2014

ACKNOWLEDGEMENT OUTSIDE NEW YORK STATE

STATE OF

COUNTY OF

SS.:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared **JAMES F. SMITH, JR.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____.

(Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

(Signature and office of individual taking acknowledgment)

**POWER OF ATTORNEY
NEW YORK STATUTORY GIFTS RIDER
AUTHORIZATION FOR CERTAIN GIFT TRANSACTIONS**

D-BK: 01587 PG: 0105

CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney (under personal and family maintenance), or certain other gift transactions during your lifetime. You do not have to execute this rider if you only want your agent to make gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney and you initialed "(I)" on that section of that form. Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. "Certain gift transactions" are described in section 5-1514 of the General Obligations Law. This Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest. This Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument. Before signing this document authorizing your agent to make gifts, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS

Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property. If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below. To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.

- () I grant authority to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code. This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(b) MODIFICATIONS:

Use this section if you wish to authorize gifts in amounts smaller than the gift tax exclusion amount, in amounts in excess of the gift tax exclusion amount, gifts to other beneficiaries or other gift transactions. Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

- (95) I grant the following authority to my agent to make gifts or transfers pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest:

- (1) To make gifts, of any amount, to any person or entity, in the sole and absolute discretion of my agent(s), which my agent(s) deem to be in my best interest and for my benefit, considering my financial, estate and/or tax planning objectives, the minimization of income, estate, inheritance, generation-skipping, transfer or gift taxes as well as asset protection planning in the context of medical assistance.
- (2) With respect to any joint accounts existing at the creation of the agency or at any time hereafter, to change the title of the account by the addition of a new joint tenant or deletion of an existing joint tenant.

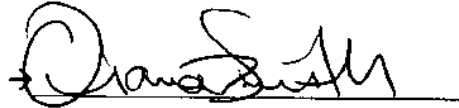
SUCCESSOR AGENT'S SIGNATURE AND ACKNOWLEDGEMENT OF APPOINTMENT:

It is not required that the principal and the Successor Agent(s) sign at the same time, nor that multiple Successor Agents sign at the same time.

I/we, **QLANA T. SMITH**, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as Successor Agent (s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

SUCCESSOR AGENT (S) sign(s) here:



ACKNOWLEDGMENT IN NEW YORK STATE

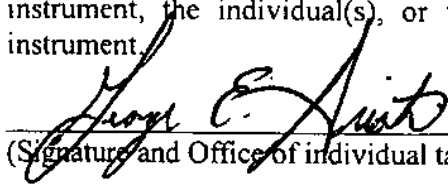
STATE OF NEW YORK

COUNTY OF

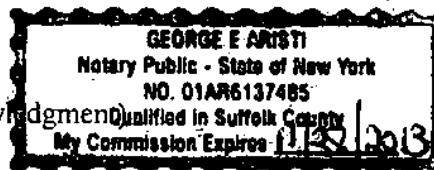
Suffolk

SS.:

On the 1 day of JULY in the year 2013 before me, the undersigned, personally appeared **QLANA T. SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their capacity(ies), and that by his/her/ their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



(Signature and Office of individual taking acknowledgment)



ACKNOWLEDGEMENT OUTSIDE NEW YORK STATE

STATE OF _____

COUNTY OF _____

SS.:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared **QLANA T. SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____.

(Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

(Signature and office of individual taking acknowledgment)

- (3) With respect to any totten trust accounts existing at the creation of the agency or at any time hereafter, to add, delete, or otherwise change the designation of the beneficiaries in effect for any such accounts.
- (4) With respect to any contract of life, accident, health, disability or liability insurance, to add, delete or otherwise change the designation of beneficiaries in effect and to borrow from, transfer ownership or surrender any such policies.
- (5) With respect to any retirement benefit or plan, to add, delete, or otherwise change the designation of beneficiaries in effect.
- (6) To create, amend, fund, add to or terminate revocable or irrevocable trusts.
- (7) To forgive debts.
- (8) To waive benefits and/or elect out of survivor annuity payment(s) under Section 417 of the Internal Revenue Code, or any successor statute, and the regulations promulgated thereunder.
- (9) To enter any safe deposit box or other place of safekeeping standing in my name alone or jointly with another and to remove the contents and to make additions, substitutions or replacements.

(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE MAJOR GIFTS OR OTHER TRANSFERS TO HIMSELF OR HERSELF: (OPTIONAL)

If you wish to authorize your agent to make gifts or transfers to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

(792) I grant specific authority for the following agent(s) to make the following gifts or other transfers to himself or herself: James Brinkley Jr. and wife. This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

- (1) To make gifts, of any amount, to any person or entity, in the sole and absolute discretion of my agent(s), which my agent(s) deem to be in my best interest and for my benefit, considering my financial, estate and/or tax planning objectives, the minimization of income, estate, inheritance, generation-skipping, transfer or gift taxes as well as asset protection planning in the context of medical assistance.
- (2) With respect to any joint accounts existing at the creation of the agency or at any time hereafter, to change the title of the account by the addition of a new joint tenant or deletion of an existing joint tenant.
- (3) With respect to any totten trust accounts existing at the creation of the agency or at any time hereafter, to add, delete, or otherwise change the designation of the beneficiaries in effect for any such accounts.
- (4) With respect to any contract of life, accident, health, disability or liability insurance, to add, delete or otherwise change the designation of beneficiaries in effect and to borrow from, transfer ownership or surrender any such policies.

- (5) With respect to any retirement benefit or plan, to add, delete, or otherwise change the designation of beneficiaries in effect.
- (6) To create, amend, fund, add to or terminate revocable or irrevocable trusts.
- (7) To forgive debts.
- (8) To waive benefits and/or elect out of survivor annuity payment(s) under Section 417 of the Internal Revenue Code, or any successor statute, and the regulations promulgated thereunder.
- (9) To enter any safe deposit box or other place of safekeeping standing in my name alone or jointly with another and to remove the contents and to make additions, substitutions or replacements.

(d) **ACCEPTANCE BY THIRD PARTIES:** I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Statutory Gifts Rider.

(e) **SIGNATURE OF PRINCIPAL AND ACKNOWLEDGEMENT:**

In Witness Whereof I have hereunto signed my name on 7/1, 2013

PRINCIPAL signs here: → Jessie M. Smith

ACKNOWLEDGMENT IN NEW YORK STATE

STATE OF NEW YORK

COUNTY OF Suffolk ss.:

On the 1 day of July in the year 2013 before me, the undersigned, personally appeared **JESSIE MAE SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their capacity(ies), and that by his/her/ their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



(Signature and Office of individual taking acknowledgment)

VICKI CASTRO
Notary Public, State of New York
No. 01CA4761748
Qualified in Suffolk County
Commission Expires Nov. 30, 2014

ACKNOWLEDGEMENT OUTSIDE NEW YORK STATE

STATE OF _____ COUNTY OF _____ ss.:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared **JESSIE MAE SMITH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____

(Insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

(Signature and office of individual taking acknowledgment)

(f) SIGNATURE OF WITNESSES:

By signing as a witness, I acknowledge that the principal signed the Statutory Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Statutory Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of gifts.

Kristie De La Cruz
Signature of witness 1

7/1/13
Date

Kristie De La Cruz
Print name

3 Village Dr W.
Address

Dix Hills, NY.
City, State, Zip code

Barbara Cioffi
Signature of witness 2

7/1/13
Date

Barbara Cioffi
Print name

1 Cobb Lane
Address

Medford NY
City, State, Zip code

(g) This document prepared by: **Feldman, Kramer & Monaco, P.C.**, 330 Vanderbilt Motor Parkway, Hauppauge, NY 11788 (631) 231-1450.

**POWER OF ATTORNEY
FULL FORCE AND EFFECT AFFIDAVIT**

(this form is not required by statute, but is permitted by statute, if requested by the third party)

STATE OF NEW YORK)
 ss.:
COUNTY OF SUFFOLK)

_____, being duly sworn deposes and says:

1. I reside at _____.
2. I am the true and lawful agent for _____, by Power of Attorney dated _____ (myself hereinafter referred to as "agent").
3. I hereby certify the following:
 - (a) The agent does not have, at the time of the transaction, actual notice of the termination or revocation of the power of attorney, or notice of any facts indicating that the power of attorney has been terminated or revoked;
 - (b) The agent does not have, at the time of the transaction, actual notice that the power of attorney has been modified in any way that would affect the ability of the agent to authorize or engage in the transaction, or notice of any facts indicating that the power of attorney has been so modified;
 - (c) If the agent was named as a successor agent, the prior agent is no longer able or willing to serve.

_____, agent

Sworn to before me on
this ____ day of _____, _____

- (1) I, **JESSIE MAE SMITH**, hereby appoint **JAMES F. SMITH, JR.**, 66 Thomas St., Brentwood, New York 11717, (631) 231-9592 as my health care agent to make any and all health care decisions for me, except to the extent that I state otherwise. This proxy shall take effect only when and if I become unable to make my own health care decisions.
- (2) **Optional: Alternate Agent**—If the person I appoint is unable, unwilling or unavailable to act as my health care agent, I hereby appoint: **QIANA T. SMITH**, health care agent(s) to make any and all health care decisions for me, except to the extent that I state otherwise.
- (3) Unless I revoke it or state an expiration date or circumstances under which it will expire, this proxy shall remain in effect indefinitely. (Optional: If you want this proxy to expire, state the date or conditions here.) This proxy shall expire (specify date or conditions): _____
- (4) **Optional:** I direct my health care agent to make health care decisions according to my wishes and limitations, as he or she knows or as stated below. (If you want to limit your agent's authority to make health care decisions for you or to give specific instructions, you may state your wishes or limitations here.) I direct my health care agent to make health care decisions in accordance with the following limitations and/or instructions (attach additional pages as necessary): I authorize my health care agent and alternate agent(s), if any, to make all decisions regarding the provision or withdrawal of artificial nutrition and hydration, as I have discussed my wishes with them. I authorize my health care agent and alternate agent(s), if any, to be my representative(s) for the purposes of the Health Insurance Portability and Accountability Act (HIPAA)

In order for your agent to make health care decisions for you about artificial nutrition and hydration (nourishment and water provided by feeding tube and intravenous line), your agent must reasonably know your wishes. You can either tell your agent what your wishes are or include them in this section. See instructions for sample language that you could use if you choose to include your wishes on this form, including your wishes about artificial nutrition and hydration.

(5) **Your Identification (please print):**

Your Name

Your Signature

Your Address

Jessie Mae Smith

Jessie Mae Smith

Date

7-1-13

66 Thomas St. Brentwood, NY

(6) **Optional: Organ and/or Tissue Donation**—I hereby make an anatomical gift, to be effective upon my death, of: (check any that apply)

☐ Any needed organs and/or tissues

☐ The following organs and/or tissues _____

☐ Limitations _____

If you do not state your wishes or instructions about organ and/or tissue donation on this form, it will not be taken to mean that you do not wish to make a donation or prevent a person, who is otherwise authorized by law, to consent to a donation on your behalf.

Your Signature

Date

(7) **Statement by Witnesses** (Witnesses must be 18 years of age or older and cannot be the health care agent or alternate.)

I declare that the person who signed this document is personally known to me and appears to be of sound mind and acting of his or her own free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Date

(print)

7/1/13

Kristie DeLaCruz

Name of Witness 1

Date

(print)

7/1/13

Barbara Goff

Name of Witness 2

Signature

Address

Kristie DeLaCruz
3 Village Dr. W.
Dix Hills, NY

Signature

Address

Barbara Goff
1 Cobb Lane
Medford, NY

LIVING WILL

To My Family, My Physician, My Lawyer, D-BK: 01587 PG:0113

and All Others Whom It May Concern:

Death is as much a reality as birth, growth, maturity, and old age - it is one certainty of life. If the time comes when I, **Jessie Mae Smith**, can no longer take part in decisions for my own future, let this statement stand as an expression of my wishes and directions, while I am still of sound mind.

If at such time the situation should arise in which there is no reasonable expectation of my recovery from extreme physical or mental disability, I direct that I be allowed to die and not be kept alive by medications, artificial means, or "heroic measures". I do, however, ask that medication be mercifully administered to me to alleviate suffering even though such medication may shorten my life. I do not want cardiac resuscitation, mechanical respiration, tube feeding, or antibiotics. I would additionally prefer to be allowed to die at home, if possible.

This statement is made after careful consideration and is in accordance with my strong convictions and beliefs. I want the wishes and directions here expressed carried out to the extent permitted by law. Insofar as they are not legally enforceable, I hope that those to whom this Living Will is addressed will regard themselves as morally bound by these provisions. These instructions apply even if I am in an unconscious or conscious state.

NOTE: Must be signed in the presence of two capable witnesses.

Signed: Jessie M. Smith
Jessie Mae Smith

Date: 7/1/13

Witness: Kristen DeLoach
Signature

Address: 3 Village Dr. W. Dix Hills, NY

Witness: Barbara A. Gipe
Signature

Address: 1 Cobble Lane Medford, NY

Copies of this request have been given to:

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
WINNIPPA 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

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

Elaine G. Alexander
Signature

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 Edgell
Witness:
Heda 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., Fact.
her Attorney-in-Fact

STATE OF NEW YORK

COUNTY OF Suffolk

)
)
)
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 guaranteed by notary
located in Suffolk County



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

AFFIDAVIT

Date of Transfer of Title
Sept. 19th, 2014

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

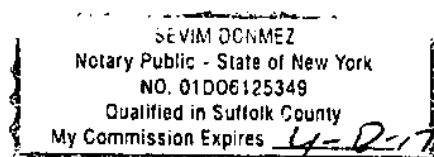
1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Jessie M. Smith, a/k/a Jesse M. Smith, a/k/a Jessie Mae Smith TO James F. Smith, Jr.
3. Check one of the following: The DEED is
 - (A) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in Money or Money's worth.
 - (B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (C) X EXEMPT from the deed recording fee because (exemption # 1)
(If Exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(A) or item 3(B) above has been checked.
 - (A) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (B) _____ The fee is computed on the fair market value of the realty, which is \$ _____
 - (C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
 - (A) _____ the amount listed in item 4 above
 - (B) _____ the amount listed in item 5 above (no amount place zero)
 - (C) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor(s).
8. Check if Property other than Real Property is being transferred on this Deed.
 - (A) _____ Mobile Home
 - (B) _____ Other
9. _____ DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____ Personally appeared before me the undersigned attorney who, being duly sworn, certified that he is licensed to practice law in the State of South Carolina; that he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this 19 day of Sept, 2014

[Signature]
Notary Public for New York
My Commission Expires: _____

Jessie M. Smith By [Signature] her attorney in
fact.
Jessie M. Smith, a/k/a Jesse M. Smith, a/k/a
Jessie Mae Smith, By: James F. Smith, Jr., her
Attorney-in-Fact



1429 Legrand Smoak Street

Cordova, SC 29039

July 03, 2018

James Smith

66 Thomas Street

Brentwood, NY 11717

RE: Cease & Desist:

Dear James Smith:

At unlawfully Attempting to displace residents.

Invalid Power-Of-Attorney/Quitclaim Deed.

Breach of fiduciary duties.

We demand that you cease and desist from all activity as soon as possible and, in any event within 10 days from your receipt of this letter, if action is not taken by you to cease and desist within the given timeframe, we will have no choice but to take appropriate action against you.

Sincerely,

*Sent - July 3 5:07/18
Aug 1 - signed 9/6/18*

Rufus Rivers

Merle Rivers

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

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Addressee Addressed to:

James Smith
66 Thanae Street
Brantwood, NY 11717



9590 9402 3574 7305 9245 97

2. Article Number (Transfer from service label)

6680 0000 8423 0068

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* ☒ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

7/10/2018

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

August 1, 2018

James Smith, Jr.

66 Thomas Street

Brentwood, NY 11717

Re: Cease and Desist/ Intent to sue:

Dear James Smith,

We are writing you to follow-up on our previous letter to you. We have not received any response from you. There are a lot of unanswered questions. You have not attempted to contact us since Jessie's death. You told us that you would advise us on what you were going to do about her burial. We have called you numerous times and left messages, but you never returned our calls. You did not even show us the courtesy of letting us know anything, unbelievable.

You could have asked us to pay the taxes. Obviously, you did not think this through. Non-owner occupied property's taxes are 3-4 times what the owner-occupied property taxes would be. To make a long story short, we intend to file a suit against you on Monday August 6, 2018 if we have not resolved this matter. Our telephone number is 803-218-9573.

Sincerely yours,

Rufus Rivers

Merle Rivers

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

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, on the front if space permits.		A. Signature <i>[Signature]</i> ☐ Agent ☐ Addressee	
1. Addressee to: <i>James Smith, Jr.</i> <i>66 Thomas Street</i> <i>Brentwood, NY 11717</i>		B. Received by (Printed Name) _____ C. Date of Delivery <i>8/16/18</i>	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation™ ☐ Insure ☐ Signature Confirmation™ ☐ Insure (over \$500) ☐ Signature Confirmation™		PS Form 3811, July 2015 PSN 7530-02-000-9053 \$6.20	

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
*Certified Mail Fee \$3.45 Postage \$0.50 Total Postage and Fees \$8.70	0115 26 Postmark Here 08/02/2018
Sent To <i>James Smith, Jr.</i> Street and Apt. No., or PO Box No. <i>66 Thomas Street</i> City, State, ZIP+4® <i>Brentwood, NY 11717</i>	
PS Form 3800, April 2015 PSN 7530-02-000-3047 See Reverse for Instructions	

2018 NOV 21 PM 3:14
 CLERK OF COURT
 ORANGEBURG, SC

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Total Postage and Fees
James Smith, Jr.
66 Thomas Street
Bratwood NY 11717

PS Form 3800, April 2015 PSN 7530-02-000-9057

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
James Smith, Jr.
 B. Received by (Printed Name) *JAMES SMITH, JR.* C. Date of Delivery *8/14/18*
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
James Smith, Jr.
66 Thomas St
Bratwood, NY 11717

9590 9402 3325 7227 4500 02

2. Art 7018 0360 0000 3392 7807

PS Form 3811, July 2015 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
James Smith, Jr.
66 Thomas St
Bratwood, NY 11717

9590 9402 3325 7227 4500 02

2. Art 7018 0360 0000 3392 7807

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
James Smith, Jr.
 B. Received by (Printed Name) *JAMES SMITH, JR.* C. Date of Delivery *8/14/18*
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

TRUE COPY
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

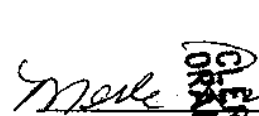
REQUEST TO CLERK TO ENTER DEFAULT

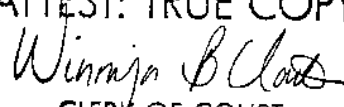
TO: CLERK:

Defendant, James Smith, Jr., having failed to answer or otherwise appear in the above entitled action, and the time for appearance having expired, you are requested to enter his default pursuant to 54(c) of the South Carolina Rules of Civil Procedures

Dated: 9-17-2018


RUFUS RIVERS


MERLE RIVER
CLERK OF COURT
ORANGEBURG, SC
2018 SEP 21 PM 3:14
FILED FOR RECORD
WINNIE B. CLARK

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC



BURNETTE SHUTT MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

O: 803.850.0912 F: 803.904.7910

burnetteshutt.law

Traci B. Wolfe - Paralegal
D. 803-804-7921

Twolfe@burnetteshutt.law

September 14, 2018

Via US. Postal

Rufus and Merle Rivers
1429 Legrand Smoak Stress
Cordova, South Carolina 29039

Re: James F. Smith v. Rufus Rivers and Merle Rivers
Civil Action No.: 2018-cp-38-01016
BSM File: 6301.002

Mr. & Mrs. Rivers

Please find enclosed the Notice of Motion and Motion to Dismiss that was filed today in reference to the above matter.

With warmest regards, I am

Sincerely yours,

Traci Wolfe

Traci Wolfe
Paralegal

tbw/

Enclosures (Notice of Motion and Motion to Dismiss)

cc: James F. Smith, Jr. (via email and US Mail)

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

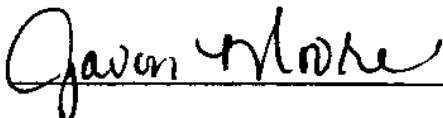
STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
RUFUS AND MERLE RIVERS	]	CASE. NO. 2018-CP-38-01016
PLAINTIFFS	]	
VS,	]	AFFIDAVIT AND REQUEST TO ENTER DEFAULT
JAMES SMITH, JR.	]	JUDGMENT
DEFENDANT	]	

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

We, Rufus Rivers and Merle Rivers, pro se, being duly sworn say:

1. We are plaintiffs in the above action.
2. A copy of the summons and complaint was served on defendant James Smith, Jr. by certified mail. Proof of service is in this file.
3. Defendant, James Smith, Jr. has not answered or otherwise appeared in this action, and the time within which to defendant may answer or appear has expired.

Subscribed and Sworn to before me on September 14, 2018.

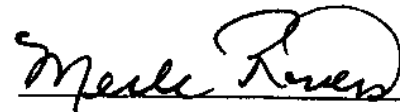


NOTARY PUBLIC

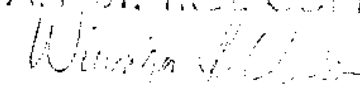
JAVON MOORE
Notary Public, State of South Carolina
My Commission Expires 5/7/2022



RUFUS RIVERS



MERLE RIVERS

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC



STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
RUFUS RIVERS AND MERLE RIVERS	]	CASE NO. 2018-CP-38-01016
PLAINTIFFS	]	AFFIDAVIT IN SUPPORT OF DEFAULT JUDGMENT
VS.	]	
JAMES SMITH, JR.	]	
DEFENDANT	]	

We, Merle Rivers and Rufus Rivers, pro se, being duly sworn say:

1. We are plaintiffs in the above action, and are acquainted with the facts of this case, and have personal knowledge of the matter set forth in this affidavit.
2. We make this affidavit in support of the request for default judgment.
3. At no time has, defendant, James Smith, Jr., made any attempt verbally or in writing to answer the summons and complaint.

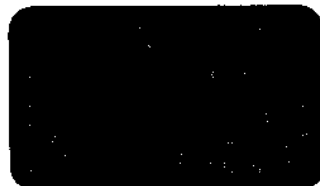
FILED FOR RECORD
WINNIE B. CLARK
2018 NOV 21 PM 3:14
CLERK OF COURT
ORANGEBURG, SC

Subscribed and Sworn to before me on September 17, 2018

Javon Moore
NOTARY PUBLIC

JAVON MOORE
Notary Public, State of South Carolina
My Commission Expires 5/7/2022

Rufus Rivers
RUFUS RIVERS
Merle Rivers
MERLE RIVERS



ATTORNEY: TRULY CO-OP
William J. Clark
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
RUFUS RIVERS AND MERLE RIVERS	]	
PLAINTIFFS	]	CASE NO. 2018-CP-38-01016
VS.	]	REQUEST TO BE APPOINTED
JAMES SMITH, JR.	]	PERSONAL REPRESENTATIVES
DEFENDANT	]	

We, Rufus Rivers and Merle Rivers, pro se, hereby request of this court to be appointed personal Representatives in the above-referenced matter as judgment resulting from failing to answer the summons and complaint.

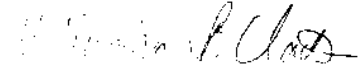
Dated: 9/17/18


Rufus Rivers


Merle Rivers

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

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG, SC

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

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

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

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

Dated : September 19, 2018

NEXT PAGE SIGNATURE PAGE

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

Burnette Shutt McDaniel
Attorney Kathleen McDaniel
Post Office Box 1929
Columbia, SC 29202

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC**

on **October 1, 2018** at **10:30 AM** to serve as a party in a *Motion Hearing* in the case of:

RE: James Smith Jr

Vs

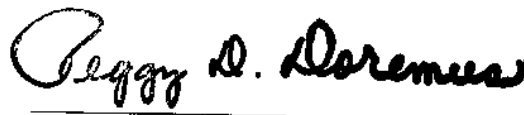
**Rufus Rivers
Merle Rivers**

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2018CV3810702780, Rule to Vacate \$40.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**



JUDGE

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011**

September 19, 2018

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

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

MAGISTRATE SUMMONS

Be advised that a Motion has been filed in the below listed case. Therefore, you are hereby summoned to be and appear personally in the

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116**

on **October 9, 2018 at 2:00 PM** to serve as a plaintiff/defendant/attorney/witness in a Motion Hearing in the case of:

James Smith Jr

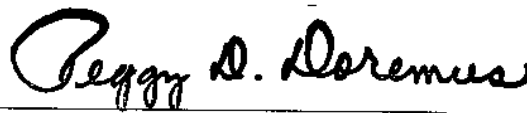
**Vs Rufus Rivers
Merle Rivers**

PLAINTIFF(S)

DEFENDANT(S)

CIVIL CASE #: 2018CV3810702780.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASE
MADE AND PROVIDED.**



Judge

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011**

September 27, 2018

**BURNETTE SHUTT MCDANIEL**

Moving law forward.

Kathleen McDaniel - Partner
803-907-7913
kmcDaniel@burnetteshutt.law

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202
O: 803.850.0912 F: 803.904.7910
burnetteshutt.law

October 4, 2018

Via Facsimile: (803) 516-4011 and US Postal

Orangeburg County Magistrate Court
Central Region
P.O. Box 9000
Orangeburg, South Carolina 29116

Re: James F. Smith v. Rufus Rivers and Merle Rivers
C/A No.: 2018-cv-38-10702780
BSM File: 6301.002

Dear Clerk:

Please be advised that I represent Mr. James Smith in connection with the above reference matter. Mr. Smith currently has a Motion hearing scheduled for October 9, 2018 at 2:00 pm. Currently, I am scheduled to be in Federal Court that day and respectfully request this matter be moved to another date. Presently, I have availability on the afternoon of October 8, 2018, and October 16, 2018. Should one of these dates not be available, please contact me to discuss.

With warmest regards, I am

Sincerely yours,

Kathleen M. McDaniel

KMM/tbw

cc: James F. Smith (via electronic mail)
Rufus and Merle Rivers (via US Postal)

*continuance granted for
Oct. 16, 2018, 2:00 p.m.*

*Smgrawt
10-5-18*

Fax

FACSIMILE

Date: 10/4/2018
To: 8035164011
From: Traci B. Wolfe
Subject: Continuance Request

Please see the attached request in the below matter.

James F. Smith vs Rufus Rivers and Merle Rivers
CA No. 2018-cv-38-10702780

Thank you,
Traci

[<https://burnetteshutt.law/images/email-logo.png>] <<https://burnetteshutt.law/>>

Traci B. Wolfe
Paralegal
Member of NALS(r), LSPSC and, LSPM

Functional Director of Education for LSPM

Burnette Shutt & McDaniel, PA
912 Lady Street-2nd Floor (29201)
PO Box 1929
Columbia, SC 29202

D 803.904.7921
F 803.904.7910
E twolfe@burnetteshutt.law

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

STATE OF SOUTH CAROLINA

}

IN THE MAGISTRATES COURT

COUNTY OF ORANGEBURG

}

CASE NO. 2018CV18107022780

}

RUFUS RIVERS AND MERLE RIVERS

}

DEFENDANTS' EX-PARTE MOTION TO VACATE

PLAINTIFFS

}

WRIT OF EJECTMENT

VS.

}

(Ex-Parte)

JAMES SMITH, JR.

}

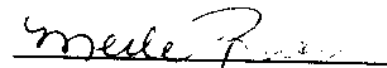
PLEASE TAKE NOTICE, defendants, Rufus Rivers and Merle Rivers, pro se, hereby moves this court to vacate the above- referenced matter because this court is "**barred**" by South Carolina Code Of Laws, unannotated, Title 22 Section 22-3-20, and Section 22-03-1110, defense of questionable title in defense's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

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

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

October 1, 2018


RUFUS RIVERS, pro se


MERLE RIVERS, pro se

FILED
OCT 1 2018
Orangeburg County
Clerk of Court

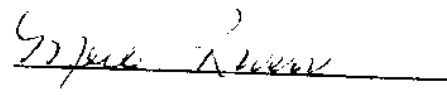
STATE OF SOUTH CAROLINA	}	IN THE MAGISTRATES COURT
COUNTY OF ORANGEBURG	}	
RUFUS AND MERLE RIVERS	}	CASE NO. 2018CV3810702780
DEFENDANTS	}	
VS.	}	CERTIFICATE OF SERVICE
JAMES SMITH, JR.	}	
PLAINTIFF	}	

We certify on 10/01/2018, We served a copy of the attached letter and Motion to Vacate Writ of Ejectment in this action dated 9/29/2018 and 10/01/2018, respectively, by U.S. mail in an envelope with sufficient postage affixed to the Plaintiff's attorney addressed as follows:

Joann McDaniel, Attorney for Plaintiff
 912 Lady Street
 P.O. Box 1929
 Columbia, SC 29202

October 01, 2018


 Rufus Rivers


 Merle Rivers

RECEIVED
 OCT 1 2018
 Orangeburg County
 Central Region

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

Attorney Kathleen McDaniel
PO Box 1929
Columbia, SC 29202

MAGISTRATE SUMMONS

RE: James Smith Jr

Vs

**Rufus Rivers
Merle Rivers**

PLAINTIFF(S)

DEFENDANT(S)

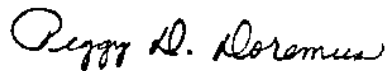
Civil Case Number: **2018CV3810702780.**

Please be advised that the above referenced civil case has been continued and is now scheduled to be heard on **October 16, 2018 at 2:00 PM.** You are hereby summoned to be and appear personally in the:

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116**

on October 16, 2018 at 2:00 PM to serve as a party in the Bench trial of this case.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH
CASE MADE AND PROVIDED.**



Judge

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011**

October 5, 2018



Orangeburg Common Pleas

Case Caption: Rufus & Merle Rivers VS James Smith Jr.
Case Number: 2018CP3801016
Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

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

Electronically signed on 2018-10-15 10:57:15 page 3 of 3

Defendants Exhibit A
ROA--104

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NO. 2018CP3801016

Rufus & Merle Rivers
PLAINTIFF(S)

James Smith, Jr.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is referred to the Master in Equity.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/15/2018.

Rufus & Merle Rivers for Rufus & Merle Rivers
Rufus & Merle Rivers for Rufus & Merle Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
JAMES SMITH, Jr.	]	THE FIRST JUDICIAL CIRCUIT
	]	2018-CP-38-01339
PLAINTIFF	]	CASE NO. ~~2018-CP-38-01339~~ (2R)
Vs.	]	NOTICE OF APPEAL
RUFUS RIVERS AND MERLE RIVERS	]	
DEFENDANTS	]	

The Defendants, Rufus Rivers and Merle Rivers hereby give notice of intent to appeal from the judgment of the magistrates court in the above action to the Circuit Court of Common Pleas, in the County of Orangeburg, South Carolina. This notice of appeal is given subsequent to personal notice of the judgment that was given on this 16th day of October, 2018 and a copy of decision is attached.

Sworn before me, October 17, 2018

Paul J. Daniels
09/19/2024

Rufus Rivers
Rufus Rivers, pro se

Merle Rivers
Merle Rivers, pro se

CLERK OF COURT
ORANGEBURG, SC

2018 OCT 17 AM 9:22

FILED FOR RECORD
WINNIFA B. CLARK

RECEIVED

OCT 17 2018
Orangeburg County
Clerk of Court

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

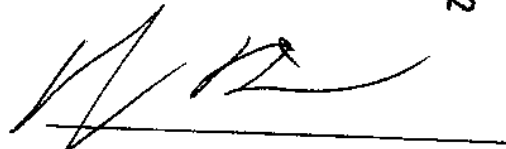
STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
JAMES SMITH, Jr.	]	CASE NO. ~~2018-CP-38-01016~~ (18)
PLAINTIFF	]	2018-CP-38-01339
Vs.	]	CERTIFICATE OF SERVICE
RUFUS RIVERS AND MERLE RIVERS	]	
DEFENDANTS	]	

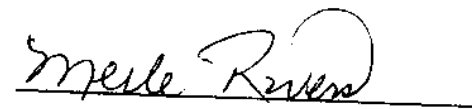
We certify, that on October 17, 2018, we served a copy of Notice Of Intent to Appeal on plaintiff on September 18, 2018, by depositing it in the U.S. mail and mailing to his last known address, in an Envelope with sufficient postage affixed addressed as follows:

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

FILED FOR RECORD
 WINNIE B. CLARK
 2018 OCT 17 AM 9:22
 CLERK OF COURT
 ORANGEBURG, SC

September 18, 2018


 Rufus Rivers, pro se


 Rufus Rivers, pro se

FILED
 OCT 18 2018
 (Orangeburg County)
 (Clerk of Court)

TRUE COPY

STATE OF SOUTH CAROLINA	]	COMMON PLEAS NO. 2018-CP-38-01539
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.

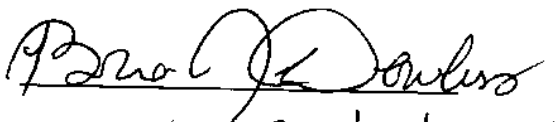
The appellants exceptions to the judgment of the magistrate are set forth as follows:

Pursuant Title 22 Chapter 3 section 20, Jurisdiction and Procedure in Magistrates' Court, and 22-3-220, 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

Rufi

Mer

10-26-18 @ 10:00 am

Above date is good
 per Atty. Kathleen McDaniel

JE.

State of South Carolina

]

IN THE COURT OF COMMON PLEAS

County Of Orangeburg

]

THE FIRST JUDICIAL CIRCUIT

Rufus Rivers and Merle Rivers

]

2018-CP-38-01539

]

Appellants, pro se

]

MEMORANDUM REQUESTING REPLACEMENT

Vs.

]

OF ORIGINAL NOTICE OF APPEAL OF 10/17/2018

James Smith, Jr.

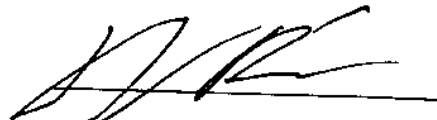
]

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

October 18, 2018

Please find attached Appellants' corrected Notice of Appeal filed on October 17, 2018. Appellants, through bad advice, did file an improperly prepared notice of appeal and is now asking the clerk to replace the improperly filed documents with this document.

Dated: October 18, 2018



Rufus Rivers, pro se


NOTARY PUBLIC 09/19/2024

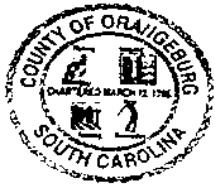


Merle Rivers, pro se

RECEIVED

13-

Orangeburg County
Clerk of Court



ORANGEBURG COUNTY
CENTRAL REGION
MAGISTRATE COURT



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

October 18, 2018

VIA CERTIFIED MAIL 7006 0100 0005 3013 1252

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

Dear Attorney McDaniel:

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

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

I Am,

Stephanie McKune-Grant
Magistrate
County of Orangeburg

CC: VIA CERTIFIED MAIL 7006 0100 0005 3013 1276

Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039

9327 57NF 50NN 00T0 9002

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CERTIFIED MAILTM RECEIPT
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here
10/19/18

Sent To
Rufus and Merle Rivers
Street, Apt. No.,
or PO Box No. 1429 Legrand Smoak St.
City, State, ZIP+4 Cordova, SC 29039

PS Form 3800, June 2002 See Reverse for Instructions

2527 57NF 50NN 00T0 9002

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here
10/19/18

Sent To
Katherine M. McDaniel
Street, Apt. No.,
or PO Box No. P.O. Box 1929
City, State, ZIP+4 Columbia, SC 29202

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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



9590 9403 0764 5196 5141 00

2. Article Number (Transfer from service label)

7006 0100 0005 3013 1252

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Grace E Carroll

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Grace E Carroll

C. Date of Delivery

10-29-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rufus and Merte Rivers
1429 Regrand Smoak St.
Cordova, SC 29039



9590 9403 0764 5196 5141 17

2. Article Number (Transfer from service label)

7006 0100 0005 3013 1276

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Rufus Rivers

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery

☐ Registered Mail™

☒ Certified Mail®

☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Signature Confirmation™

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

Attorney Kathleen McDaniel
PO Box 1929
Columbia, SC 29202

MAGISTRATE SUMMONS

Be advised that a Motion has been filed in the below listed case. Therefore, you are hereby summoned to be and appear personally in the

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116**

on **October 26, 2018 at 10:00 AM** to serve as a plaintiff/defendant/attorney/witness in a Motion Hearing of Bond to Stay Execution on Appeal in the case of:

James Smith Jr

**Vs Rufus Rivers
Merle Rivers**

PLAINTIFF(S)

DEFENDANT(S)

CIVIL CASE #: 2018CV3810702780.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASE
MADE AND PROVIDED.**

Judge S. McKune Grant (SE)

Judge

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011**

October 19, 2018

10/28/2018

To: the Court

I hereby request a continuance of the hearing scheduled for 10/26/2018 at 10:30 a.m. because Mark Rivers has a scheduled injection scheduled for 11:00 a.m. in Charleston on 10/26/2018. Her injections are scheduled once monthly and if Mark misses the appointment she would have to wait another month without her medication. Contact Pain Specialist at Charleston 843-868-1181.

Sincerely,

Port Rivers

Lisa Proveaux

From: Rufus Rivers <rrivers788@gmail.com>
Sent: Thursday, October 25, 2018 1:23 PM
To: Lisa Proveaux
Subject: Fwd: 2018 cv3810702780

----- Forwarded message -----

From: **Diane Hurta** <DHurta@painchas.com>
Date: Thursday, October 25, 2018
Subject:
To: "rrivers788@gmail.com" <rrivers788@gmail.com>

Hello Mrs. Rivers,

This is an email confirmation to confirm your procedure scheduled with us tomorrow October 26th at 11:00am. Please remember you will need someone to drive you, as we will be sedating you for the procedure. Also, no eating or drinking four hours before the procedure, and no aspirin 24 hours prior if you are currently taking any. Please give the office 24 hour notice if you need to cancel.

Have a wonderful day, we look forward to seeing you tomorrow.

Thank you,

Diane Hurta

Diane Hurta

Pain Specialist of Charleston

Neurology Specialist of Charleston

2695 Elms Plantation Blvd

North Charleston, SC 29406

Phone : 843-818-1181 EXT: 222 or 843-410-0924

Fax : 843-818-1145

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Attorney Kathleen McDaniel
PO Box 1929
Columbia, SC 29202

MAGISTRATE SUMMONS

RE: James Smith Jr

Vs

**Rufus Rivers
Merle Rivers**

PLAINTIFF(S)

DEFENDANT(S)

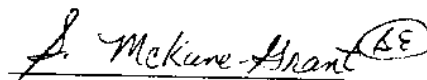
Civil Case Number: **2018CV3810702780**.

Please be advised that the above referenced civil case has been continued and is now scheduled to be heard on **November 2, 2018 at 2:00 PM**. You are hereby summoned to be and appear personally in the:

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116**

on November 2, 2018 at 2:00 PM to serve as a party in the Bench trial of this case.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH
CASE MADE AND PROVIDED.**

 (JE)

Judge

**Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011**

October 25, 2018

Sylvia Edwards

From: Traci B. Wolfe <TWolfe@BurnetteShutt.Law>
Sent: Friday, November 02, 2018 10:14 AM
To: Sylvia Edwards
Cc: Kathleen M. McDaniel
Subject: James Smith vs. Rufus Rivers and Merle Rivers 2018cv3810702780
Attachments: MX-B455W_20181102_080452.pdf

Sylvia,

Thank you for speaking with me this morning, and confirming the above hearing is still going forward at 2:00 today. As we discussed, please see attached the affidavit that we have received in reference to the amount of rent that should be charged. Ms. McDaniel, will bring the original with her to court. Please do not hesitate to contact me should you need anything additional, or have any questions. Thank you again for all your help! I do appreciate you.

Traci



BURNETTE SHUTT MCDANIEL

Moving law forward.

Traci B. Wolfe

Partner

Attorney at Law, SC and USPM

Law Office of Traci B. Wolfe, LLC

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2018 NOV 21 PM 3:18
CLERK OF COURT
ORANGEBURG, SC

Plaintiffs Exhibit A

11-2-18

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

James F. Smith, Jr.,

Plaintiff,

Rufus Rivers and Merle Rivers,

Defendants.

) IN THE MAGISTRATE'S COURT

) C/A no. 2018CV3810702780

AFFIDAVIT OF
CONNIE GASTON

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.

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2018 NOV 21 PM 3:18
CLERK OF COURT
ORANGEBURG, SC

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.

STATE OF SOUTH CAROLINA

]

IN THE CIRCUIT COURT

COUNTY OF ORANGEBURG

]

CASE NO. 2018-CP-38-01539

RUFUS RIVERS AND MERLE RIVERS

]

APPELLANTS

]

MOVANTS' MOTION TO REVIEW

VS.

]

APPEAL BOND REQUIRING

JAMES SMITH, JR.

]

RENTAL PAYMENTS

RESPONDENT

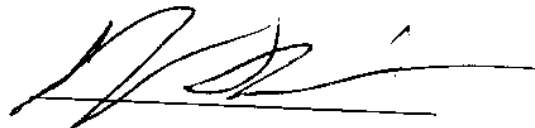
]

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

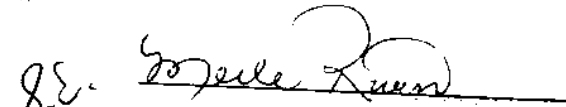
1. Movants resided at 1429 Legrand Smoak Street for 9 years as a gift from aunt without having to pay rent.
2. Movants maintained the property inside and out for the entire time and never were required to pay rent, this included installing a new roof and repairs after hurricanes.
3. Movants filed a summons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

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

November 5, 2018



Rufus Rivers, pro se



Merle Rivers, pro se

ORANGEBURG COUNTY

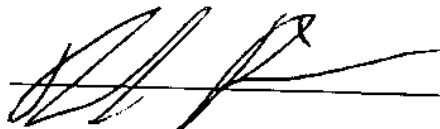
STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
RUFUS AND MERLE RIVERS	]	CASE NO. 2018-cp-38-01539
DEFENDANTS	]	
VS.	]	CERTIFICATE OF SERVICE
JAMES SMITH, JR.	]	
PLAINTIFF	]	

We certify on 11-06-2018 2018 We served a copy of appellants' motion for review of appeal bond requiring rental payments dated November 2, 2018 , by depositing same in the U.S. mail in an envelope with sufficient postage affixed to the

Plaintiff's attorney addressed as follows:

Kathleen McDaniel, Attorney for Plaintiff
 912 Lady Street
 P.O. Box 1929
 Columbia, SC 29202

November 4, 2018


 Rufus Rivers


 Merle Rivers

RECEIVED

AE.

Orangeburg County
 November 6, 2018

02/11/2018



ORANGEBURG COUNTY
CENTRAL REGION
MAGISTRATE COURT



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

November 6, 2018

Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039

RE: James F. Smith, Jr., Plaintiff
Kathleen McDaniel, Attorney for Plaintiff vs.
Rufus and Merle Rivers, Defendants
Case No. 2018CV3810702780

Dear Mr. and Mrs. Rivers:

I am in receipt of your **Movant's Motion to Review Appeal Bond Requiring Rental Payments** as received by my office on Monday, November 5, 2018.

A Motion Hearing was scheduled on Friday, November 2, 2018 in which you and Mrs. Rivers attended, and were allowed to respond to the motion presented regarding rental payments. A final ruling was made at the conclusion of that hearing.

Your current **Movant's Motion to Review Appeal Bond Requiring Rental Payments** is respectfully denied.

I Am,

Stephanie McKune-Grant
Magistrate
Orangeburg County

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

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



Central Region Magistrate

Judge : Robert Neal Clariday

1540 Ellis Avenue

Orangeburg, SC 29116

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

DUPLICATE

Received From: Rivers, Rufus
1429 Legrand Smoak Street
Cordova, SC 29039

Date: 11/ 9/2018

Receipt #: 364857

Clerk: c38bfranks

Paying for: Self
Transaction Type: Escrow Paymen

Payment Type: Cash \$700.00

Reference #:

Comment:

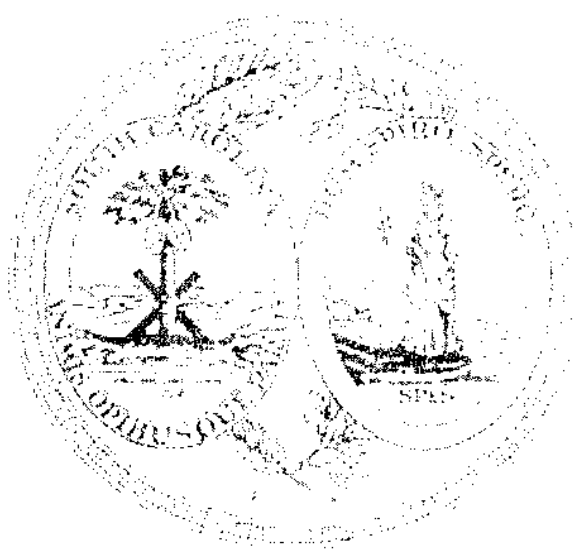
Total Paid: \$700.00

Non-Refundable

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	\$700.00	\$700.00	\$0.00



Total Cases: 1

\$700.00

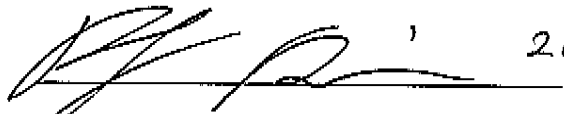
\$700.00

\$0.00

STATE OF SOUTH CAROLINA	]	IN THE MAGISTRATES COURT
COUNTY OF ORANGEBURG	]	
	]	CASE NO. 2018CV1810702780
JAMES SMITH, JR.	]	
PLAINTIFF	]	
VS.	]	REQUEST FOR HEARING
RUFUS AND MERLE RIVERS	]	
DEFENDANTS	]	

Rufus Rivers and Merle Rivers, defendants in the above referenced action hereby request a Hearing to show why they should not be evicted from property at 1429 Legrand Smoak Street, Cordova, SC, 29039

Dated: August 31, 2018

 218-9573
Rufus Rivers


Merle Rivers

RECEIVED

AUG 31 2018

Orangeburg County
Central Region

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Rufus & Merle Rivers
pro se

THE FIRST JUDICIAL CIRCUIT

PLAINTIFF

CASE NO. ~~2018CV3810702780~~ (02)

Vs.

NOTICE OF APPEAL

James Smith, Jr.

DEFENDANTS

The Defendants, Rufus Rivers and Merle Rivers hereby give notice of intent to appeal from the judgment of the magistrates court in the above action to the Circuit Court of Common Pleas, in the County of Orangeburg, South Carolina. This notice of appeal is given subsequent to personal notice of the judgment that was given on this 16th day of October, 2018 and a copy of decision is attached.

Sworn before me, October 17, 2018

Barbara J. Dauling
09/19/2024

[Signature]
Rufus Rivers, pro se

[Signature]
Merle Rivers, pro se

FILED FOR RECORD
WINNIE B. CLARK
2018 OCT 17 AM 9:19
CLERK OF COURT
ORANGEBURG, SC

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.

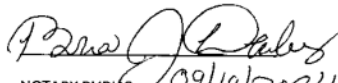
The appellants exceptions to the judgment of the magistrate are set forth as follows:

Pursuant Title 22 Chapter 3 section 20, Jurisdiction and Procedure in Magistrates' Court, and 22-3-120, 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
WINNIE B. CLARK
20 OCT 18 PM 2:04
CLERK OF COURT
ORANGEBURG SC

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3. when title to real property would come it to question.	
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STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF ORANGEBURG	]	THE FIRST JUDICIAL CIRCUIT
	]	
RUFUS RIVERS AND MERLE RIVERS	]	CASE NO. 2018-CP-38-01339
APPELLANTS	]	
	]	MEMORANDUM IN SUPPORT OF
VS.	]	APPELLANT'S MOTION TO DISMISS
	]	
JAMES SMITH, JR.	]	
APPELLEE	]	

INTRODUCTION

There are numerous Supreme Court decisions regarding magistrates court's lack of subject matter jurisdiction. *Hargrove v. Cox*, 104 S.E. 757(N. C. 1920). "...we are of the opinion it is open to the defendant to raise the issue as to the validity of plaintiff's claim and under testimony referred to there is a controversy involving the title to real property presented which withdraws from a justice's jurisdiction and deprives the Superior Court the right to proceed in this matter". The case was reversed. Appellants ask this court to concur and dismiss this matter. Furthermore, the magistrate's court failed to obtain appellant's written consent or provide appellants with an executed bond undertaking, because appellants were never provided a copy to sign on appeal pursuant Section 27-40-800(b) of Property and Conveyances. "It is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking...." This renders the order of rental payments invalid in addition to the adjudication of the matter. Pursuant South Carolina Code of Laws 22-2-20, "No magistrate shall have cognizance of any civil action, except as provided in Article 11 of this chapter". Defendants provided the magistrate and opposing counsel written a written answer/reply showing that title to real property will come in to question and is evidenced in the audio recording of the magistrate court's hearing.

It is also a fact that no landlord-tenant relationship ever existed, therefore, with the estate in intestate and defendants are "collateral heirs" alleging that the property was gifted to them and plaintiff fraudulently executed a power-of-attorney and used that power of attorney to self-deal by transferring the real property to himself as evidenced by Common Pleas case No. 2018-CP-38-01016 filed August 6, 2018, prior to plaintiff's eviction filed on August 20, 2018. Plaintiff was well aware of the legal action pending as early as August 6, 2018, as evidenced by text messages sent to defendant on August 6, 2018 providing the case number and certified mail receipt tracking number that defendant signed for on August 14, 2018.

The magistrate did not find that a landlord-tenant relationship existed, other than, plaintiff's attorney contending that defendants were "tenants-at-will", "any persons other than owner occupying... without an oral or written agreement. Defendants had an oral agreement with the previous owner, where the previous owner gifted the property to defendants in September 2009, where they have resided since. See *Hargrove v. Cox*, 180 N.C. 360, 104, S. E. 757, 759 (1920), *Hayes v. Turner* 98, N. App. 451454, 391 S. E. 2D, 513, 515(1990), " If the magistrate finds there is no sufficient evidence such a relationship exist, must then dismiss". The magistrate court lacked subject matter jurisdiction and failed to establish a landlord-tenant relationship exist. Therefore this court must dismiss the matter and is barred from proceeding. This is an "on point" and precedential case.

STATUTORY BACKGROUND

The Supreme Court has recently set precedent regarding the settling of property disputes. It has become a norm where one family member would use the landlord-tenant process to settle a real property dispute in magistrate's court. The law is clear that magistrate's(justice's) courts are limited to summary ejectment. See South Carolina Code Of Laws, Magistrate's Jurisdiction and Procedures, 22-3-20, "Civil actions in which magistrates have no jurisdiction. No magistrate shall have cognizance
"No magistrate shall have cognizance of a civil action: when the title to real property shall come in to question, except as provided in Article 11 of this chapter". Section 22-3-1110, "Defense of questionable title in defendant's answer". "When the title to real property shall come in question in an action brought in the court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title shall come in to question."
Defendants' answer was provided to the magistrate and opposing counsel and is evidenced in the audio recording of the magistrate's hearings.

The magistrate's court failed to follow the court's own rules. Section 22-3-1120, "Written undertaking by defendant in cases where title to real property shall come in to question. At the time of answering the defendant shall deliver to the magistrate an undertaking,...

ARGUMENT

1. Court lacks subject matter jurisdiction

A. The court must establish a landlord-tenant relationship exist. See Hargrove v. Cox, 180 N. C. 360, 104, S. E. 757, 759(1920), Hayes v. Turner, 98 N. C. App. 451, 454, 391 S. E.2D 513,515(1920). The court and plaintiff failed to satisfy their burdens.

B. Plaintiff's ownership to real property is questionable. Pursuant 22-3-20 of South Carolina Code Of Laws, "the magistrate must not have cognizance of any civil action except as provided in Article 11.

C. Defendants had legal action pending in circuit court challenging plaintiff's ownership to real property.

D. Magistrate's Jurisdiction and Procedures bars it from adjudicating cases where title to real property shall come in to question. See Chapter 22-2-20 and 22-3-1110. See Cheese Co. v. Pipkin, 155 N. C. 194, "The superior court has no jurisdiction on appeal from a justice's court on an action erroneously in the latter court in which the justice's court had no jurisdiction".

D.

CONCLUSION

For the above stated reasons, the court should dismiss plaintiff's/appellee's case pursuant South Carolina Code Of Laws 22-3-20 through 22-3-1180.

Dated May 17, 2019

A handwritten signature in black ink, appearing to read 'Rufus Rivers', written over a horizontal line.

RUFUS RIVERS, PRO SE

A handwritten signature in black ink, appearing to read 'Merle Rivers', written over a horizontal line.

MERLE RIVERS, PRO SE

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RUFUS RIVERS AND MERLE RIVERS
APPELLANTS

VS.

JAMES SMITH, JR
APPELLEE

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

CASE NUMBER 2018-CP-38-01339

APPELLANTS MOTION FOR
RECONSIDERATION AND
APPELLANTS' OPPOSITION TO
JUDGE'S ORDER

FILED FOR RECORD
JAN 19 2020
AM 9:34
CLERK OF COURT
JUDICIAL CIRCUIT
ORANGEBURG, SC

Appellants, pro se, hereby opposes Judge Dickson's order and moves this court for a reconsideration hearing pursuant SCRPC 59(e), as soon as reasonably possible. The judge's order lacks facts as they relate to Appellant's appeal and fails to explicitly address issues of the appeal. The order misrepresents the facts in this matter and are outlined explicitly for the purpose of being eligible for review upon appeal as follows:

I. This initial improper eviction hearing was held on 10/18/2018 in magistrate's court and now before the Circuit Court on Appeal. This matter was barred from adjudication by the magistrate's court pursuant to SCRPC 22-3-20, "no magistrate shall have cognizance of any civil action where question to real property shall come in to question except as provided in Article 11 of this same chapter." The magistrate's court lacked subject matter jurisdiction in this matter and violated this rule blatantly after being reminded on numerous occasions. See Brown v. Brown 2012-UP-300, "We hold the magistrate's court did not lack subject matter jurisdiction. See S.C Code Ann 22-3-20(2)(2007) (No magistrate shall have cognizance of a civil action...[w]hen the title to real property shall come in queation..."). "The magirate's order did not include a finding of who holds title to any real property. Accordingly, the magistrate's court did not violate section 22-3-20(2)". The magistrate court in this matter did make a finding of who owns real property. Aside from being barred by SCRPC, the Judicial Branch, (B)(1) Jurisdiction Magistrate's law in civil actions regarding 22-3-20 is clear that this can not be consented to by the parties or waived by a higher court, and yet it has been waived. It was the magistrate's obligation

and duty to refuse to hear the matter as laid out by 22-3-1110, but the court refused to follow its own rules by staying with summary ejectment and not over reaching into circuit court matters by determining who owns real property. It was clear that legal action was pending alleging Mr. Smith's fraudulent transfer of real property to himself and evidenced by documents filed August 6, 2018 and certified receipts on August 14, 2018. The case number and package tracking number were also texted to Mr. Smith immediately after filing. Once the issue was raised, it was the court's duty to follow procedure as outlined in the SCRCP 22-3-1110 through 22-3-1180 which was totally ignored. This violated Appellants' rights to due process. Appellee filed their eviction papers with the magistrate on August 20, 2018, after Mr. Smith had been served the initial summons and complaint by certified mail which opposing counsel contends was never served, one of a number of inconsistencies in opposing counsel's filings that needs to be examined more closely due to their exculpatory value to the entire proceedings.

II. The reply to the to Rule to Show Cause was Appellants' remedy provided by law and the magistrate disregarded it as insignificant. The magistrate kept on file every other document the Appellants provided except the document that mattered. The magistrate placed her finger on the scales and created this unlawful situation deliberately. Overall, opposing counsel presented issues in her proposed order that were not explicitly addressed at the hearing, while they were outlined in the appeal. Appellants, ask this court to dismiss this matter and allow appellee to pursue whatever remedies provided him by law, and release Appellants' funds being absconded and guised as an alleged rental payment bond. On April 8, 2018 this court made a ruling upholding the magistrate's court decision to demand rental payments and Appellants filed a motion for reconsideration promptly on April 11, 2019 with no response from the court which has been a pattern. Appellants made a motion for dismissal on May 17, 2019 with this court which was never ruled upon, which addressed numerous

issues that needed thorough examination. Opposing counsel wants to emphasize all of her prevailings, Appellants can also reflect on August 6, 2018, when Appellants initiated there summons and complaint with Motion for injunctive relief inside, that was never ruled upon or, at the very least, addressed. Opposing counsel stated that she had been advised by the court that no summons and complaint ever existed, and now acknowledges and contend that the case should no longer be addressed since it has now been dismissed.

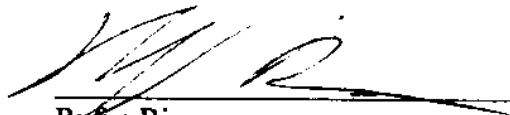
III. The court then added insult to injury by ordering rental payments when there was no established landlord-tenant relationship other than opposing counsel stating that Appellants were tenants-at-will, which is absurd because that is not a landlord-tenant relationship. Tenants-at-will means what it always meant, a tenant whose term has terminated and there is no written or oral agreement. In other words, you can't take a term and make it fit your scenario as a landlord-tenant relationship. Therefore, when the magistrate adjudicated the matter the entire case became tainted. The magistrate failed to make a finding that a landlord-tenant relationship existed. Pursuant to the Judicial Branch's Magistrate Law in Civil Actions, it provides over 14 areas of civil jurisdiction and adjudicating real property cases is not included. The Appellants were blind-sided by the magistrate's court decision to impose a rental bond instead of accepting a bond undertaking as outlined in SCRCF 22-3-1110 through 22-3-1180. Unfortunately, the appellee would be rewarded with rental payments without renting out the property. If this is not an injustice, then, what is?

Appellants argued that the magistrate court case should not have proceeded until civil case number 2018-CP-38-01016 had been decided, and not allow the eviction hearing to proceed improperly. This only allowed the magistrate's decision to stand until the summons and complaint was dismissed. The eviction matter should not have ever begun until the circuit court case was decided. In this case the eviction case was heard and determined before the circuit court case was heard, and then

the appeal was placed on hold until the circuit court was decided or dismissed, thus, leaving the appeal case to be determined without due process and the appellee not filing his own summons and complaint as he should.

In Summary, opposing counsel got it wrong. The only issue the magistrate court judge could properly address was what the SCRCF allowed, and this matter was not allowed. The magistrate's court Judge did not have jurisdiction over this real property matter, therefore, any testimony, decisions and documents provided by Appellee is fruit from the "poisonous tree" and this case should be dismissed and appellants' money returned.

January 12, 2020


Rufus Rivers, pro se


Merle Rivers, pro se

92409

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

RECEIVED
MAR 12 2020
SC Court of Appeals

Case No. 2018-CP-38-01339

Rufus Rivers and Merle Rivers
pro se

Appellants

V.

James Smith, Jr.

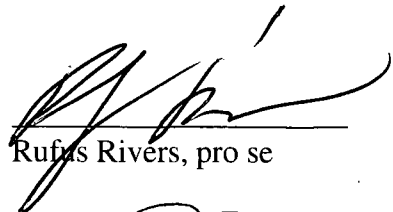
Respondent

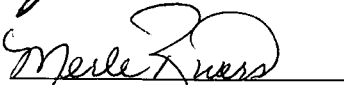
NOTICE OF APPEAL

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.

3-2-2020

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

RECEIVED
MAR 12 2020
SC Court of Appeals

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.

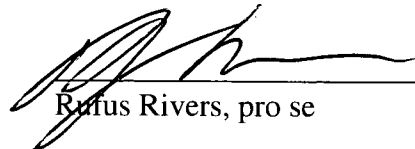
James Smith, Jr.

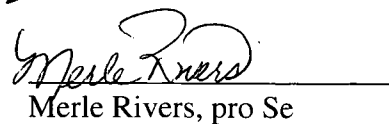
Appellee

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 Unitrd 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 Maech 2, 2020.

March 2, 2020


Rufus Rivers, pro se


Merle Rivers, pro Se

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3801339

Rufus Rivers et al
PLAINTIFF(S)

James Smith, Jr.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration of this appeal, the Court DENIES the Appellant's motion for reconsideration and opposition to Judge's order. Based on the Court's previous ruling and order, this case is DISMISSED and REMANDED to the Magistrate's court for compliance with the Magistrate's order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/21/2020.

Rufus Rivers for Rufus Rivers
James Smith for James Smith, Jr.
James Smith, Jr. for James Smith
Rufus Rivers for Rufus Rivers
Merle Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Orangeburg Common Pleas

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

Case Number: 2018CP3801339

Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-02-21 10:14:29 page 3 of 3

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

Case No. 2020-000451

RECEIVED

Affidavit To The Court Of Appeals

JUL 15 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

The undersigned, RUFUS AND MERLE RIVERS, being duly sworn, hereby depose and say:

1. We are over the age of 18 and are residents of the State of South Carolina. We have personal knowledge of the facts herein, and, if called as a witness, could testify completely therein.
2. We suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. We currently have an appeal pending in the Court of Appeals with an appeal bond of \$700.00 per month being paid in to escrow.
4. The appeal alleges the Magistrate lacked subject matter jurisdiction because there was legal action pending in circuit court when the plaintiff filed eviction papers and had already been served on August 14, 2018.(see attached)
5. Magistrate Grant also ordered us to pay rental payments of \$700.00 per month when there was no landlord-tenant agreement and the plaintiff did not ask for rental payments. (see attached).
6. Magistrate Grant's staff refused our payment when we visited the office to provide a notice of appeal on March 2, 2020 without any valid explanation other than the notice did not state a reason for the appeal.
7. It is our belief that we are being treated unfairly and that the magistrate and her staff has taken this matter personally because of the appeal.
8. On March 11, 2020 the sheriff came to evict us and allowed us to remain to another date.
9. We personally visited the Court of appeals on March 12, 2020 and paid the filing fee and obtained a filed copy and provided it to the magistrate's office and was told they would get back with us. We received a call from the magistrate's office, allowing us until March 18, 2020 to make the rental payment.
10. On March 17, 2020, after obtaining a copy of Judge Beatty's order, we emailed the magistrate's court a correspondence requesting an extension. (see attached)
11. We received a reply from Sylvia Edwards stating that our request was denied. (See attached) We also received a reply from Lisa Proveaux explaining when the payments were due. (See attached)
12. On May 1, 2020, we visited the magistrate's office to bring the payments current in the amount

of \$1400.00 and again the staff told us that they were instructed not to accept the payment by Judge Grant and to return on May 4, 2020 without any reason for returning. (see attached)

13. On May 4, 2020, we visited the magistrate's office as instructed. After being told to have a seat, Rufus Rivers waited for almost 30 minutes. He then approached the receptionist to ask how much longer and was told they could not accept the payment and to contact his lawyer knowing we are pro se litigants.

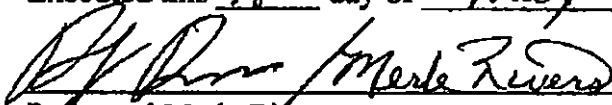
14. We have come to believe that we are being treated differently than anyone else. This is nothing more than retaliation for appealing a matter that should not have been decided by the magistrate in the first place. We certainly have the right to pay what was past due while the evictions were halted.

15. Because of the magistrate's actions, Rufus Rivers had to take temporary work to make certain we could take on the added expense of the rental payments. The temporary work ended March 11, 2020.

16. We believe the magistrate's office is acting in bad faith as agents for the Plaintiff and his counsel against us senior citizens with chronic medical issues.

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

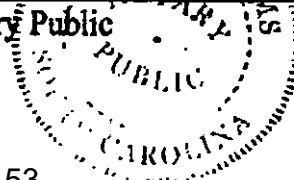
Executed this 18th day of May, 2020.


Rufus and Merle Rivers

NOTARY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA, COUNTY OF ORANGEBURG, ss:

The foregoing Affidavit was acknowledged before me this 18th day of May, 2020, by Rufus and Merle Rivers, who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.


Notary Public




Search mail

8 of 377

to me, twolfe@burnetteshutt.law

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by the 2nd of each month.

From: Rufus Rivers [mailto:rivers788@gmail.com]

Sent: Wednesday, March 18, 2020 10:23 AM

To: Lisa Proveaux

Cc: Kathleen M. McDaniel

Subject: Eviction- Rufus & Merle Rivers

As of today, we are requesting that our appeal bond payments be extended, pursuant to the attached Supreme Court order issued 03/17/2020. Please see attached. We are placing a hard copy in the mail.

Rufus Rivers <rivers788@gmail.com>
to Lisa, twolfe@burnetteshutt.law

Wed, Mar 18, 5:22 PM (22 hours ago)

FILED FOR RECORD
WINNIE B. CLARK
2020 MAY 22 AM 10:57
CLERK OF COURT
ORANGEBURG, SC

2020-03-17-02

The Supreme Court of South Carolina

RE: Statewide Evictions

ORDER

Pursuant to provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that all evictions currently ordered and scheduled statewide from March 17, 2020, through March 31, 2020, shall be rescheduled for a date not earlier than May 1, 2020. However, case-by-case exceptions for evictions may be made for matters that involve essential services and/or harm to person or property.

s/Donald W.

Beatty

J.

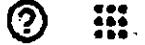
FOR THE COURT

Columbia, South Carolina
March 17, 2020

FILED FOR RECORD
WINNIE B. CARR
2020 MAY 22 4:00 PM
CLERK OF COURT
ORANGEBURG



Search mail



4 of 377

-Rufus Rivers - Eviction Inbox x

Sylvia Edwards <sedwards@orangeburgcounty.org>
to me

12:13 PM (3 hours ago)

Good afternoon,

Your request for extension is denied and payment of \$700.00 was due on March 18, 2020 and thereafter payments of \$700.00 are due by 2nd of each month and are to be made on time as previously ordered.

Will do, thank you.

Paid.

Thank you for informing me.

FILED FOR RECORD
WINNIE B. CLARK
2020 MAY 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC

Reply

Forward

6/20/2020

-RE: Eviction- Rufus & Merle Rivers - rivers788@gmail.com - Gmail



Search mail



83 of 452

-RE: Eviction- Rufus & Merle Rivers Inbox x

Lisa Proveaux

Wed, Mar 18, 3:38 PM

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by

Rufus Rivers <rivers788@gmail.com>

Wed, Mar 18, 5:22 PM

to Lisa, twolfe@burnetteshutt.law

Received, thank you.



Reply

Reply all

Forward

FILED FOR RECORD
WINNIE B. CLARK
2020 MAY 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC



**ORANGEBURG COUNTY
CENTRAL REGION
MAGISTRATE COURT**



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

May 18, 2020

VIA ELECTRONIC DELIVERY: rrivers788@gmail.com

Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039

**RE: Defendant's Appeal on Eviction
James Smith vs Rufus and Merle Rivers
Magistrate Case No.: 2018CV3810702780**

Dear Mr. Rivers:

Our records reflect that your monthly rent payment was not made to our office in March or April by the specified due date as required.

Past due payments and future payment arrangements may be coordinated directly with the plaintiff's attorney if accepted.

A physical copy of this letter will follow via today's U.S. Mail.

County of Orangeburg
Central Region Magistrate Office

CC: VIA ELECTRONIC DELIVERY:

**KMcdaniel@BurnetteShutt.Law
TWolfe@BurnetteShutt.Law
Kathleen M. McDaniel, Esquire
Attorney for James F. Smith, Jr.
Post Office Box 1929
Columbia, South Carolina 29202**

Terry Leverette, Court Administration -- by U.S. Mail and Electronic Delivery

FILED FOR RECORD
WINNIF A. B. CLARK
2020 MAY 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC

FILED FOR RECORD
WINNIFA B. CLARK

Valid Money Order includes: 1. Heat sensitive, red stop sign AND 2. Contains a True Watermark held up to light to view
CALL 1-800-542-3590 TO VERIFY

MoneyGram.

CLERK OF COURT
ORANGEBURG, SC

To Validate: Touch the stop sign,
then watch it fade and reappear

PAY TO THE
ORDER OF/
PAGAR A LA
ORDEN DE:

Magistrate's Court

IMPORTANT - SEE BACK BEFORE CASHING

Payable Through

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

PURCHASE BY SELLING YOU ARE TO THE SERVICE OFFICE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS/ DIRECCION: *1429 Legwood Street, Orangeburg, SC 29034*

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC
BOX 6, NA
ENID, OK

PAY EXACTLY

651-A04 R208401420508

May, 2020

05 582100821 05

Valid Money Order includes: 1. Heat sensitive, red stop sign AND 2. Contains a True Watermark held up to light to view
CALL 1-800-542-3590 TO VERIFY

MoneyGram.

To Validate: Touch the stop sign,
then watch it fade and reappear

PAY TO THE
ORDER OF/
PAGAR A LA
ORDEN DE:

Magistrate's Court

IMPORTANT - SEE BACK BEFORE CASHING

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

PURCHASE BY SELLING YOU ARE TO THE SERVICE OFFICE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS/ DIRECCION: *1429 Legwood Street, Orangeburg, SC 29034*

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC
BOX 6, NA
ENID, OK

PAY EXACTLY

R208401420508

May, 2020

05 582100821 05

PAY TO THE ORDER OF *Magistrate's Court*

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

PURCHASE BY SELLING YOU ARE TO THE SERVICE OFFICE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS/ DIRECCION: *1429 Legwood Street, Orangeburg, SC 29034*

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC
BOX 6, NA
ENID, OK

PAY EXACTLY

19-094193651

19-094193652

APR 11, 2020

PAY TO THE ORDER OF *Magistrate's Court*

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

PURCHASE BY SELLING YOU ARE TO THE SERVICE OFFICE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS/ DIRECCION: *1429 Legwood Street, Orangeburg, SC 29034*

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC
BOX 6, NA
ENID, OK

PAY EXACTLY

19-094193651

19-094193652

APR 11, 2020

Rufus and Marie Riccio
1429 Legrand Smeek Street
Cordova, SC 29039

RECEIVED

JUL 15 2023

SC Court of Appeals

Court of Appeals

POST OFFICE BOX 4629
Columbia, SC 29211

