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SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

The Honorable Perry H. Gravelly Circuit Court Judge

**Case No. 2020-CP-23-00631
Appellate Case No. 2020-000904**

MARY EARLE

Respondent,

vs.

BOULDER LP

Appellant.

RECORD ON APPEAL

M. Kevin McCarrell (S.C. Bar #76255)
Emily I. Bridges (S.C. Bar #102199)
Fox Rothschild LLP
2 West Washington Street, Suite 1100
(29601)
Post Office Box 87
Greenville, SC 29602
(864) 751-7600 / (864) 751-7800 (fax)
kmccarrell@foxrothschild.com
ebridges@foxrothschild.com

Attorneys for Appellant

Vanessa Cason, Esq.
P.O. Box 2842
Greenville, SC 29602
(864) 277-9093
(864) 277-3627 (fax)
vanessa@vcasonlaw.com

Attorneys for Respondent

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2300631

Mary Earle
PLAINTIFF(S)

Boulder Lp
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:

See Page 2

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 05/15/2020 .

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), SCRCF.

This matter came before the Court upon Appeal from a Magistrate's Court eviction and was heard on May 15, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via telephone with a Court Reporter. Participating in the hearing were Vanessa Cason for Appellant and David Kershaw for Respondent.

Upon issuance of a Rule To Show Cause by Respondent, the Appellant requested a jury trial. At a hearing on January 21, 2020, the Magistrate set bond "at \$1000 payable to the court no later than January 28, 2020 at 5pm (approximately 50% of the disputed rent arrearage) along with the requirement that Appellant keep her rent of \$282/month current pending the outcome of the jury trial." The Appellant filed an appeal on this determination. Even though the ultimate factual determination will be made by a jury, the magistrate is required to make a preliminary determination of the amount owed based on S.C. Code §27-40-790. Although the magistrate made a preliminary determination, it does not appear, based on the return filed by the magistrate, that the preliminary determination adhered to the requirements of this code section. Therefore, this Court remands this matter back to the Magistrate to make a preliminary determination as set forth in §27-40-790 and pursuant to any applicable public housing guidelines. Based on this ruling, it would not be necessary to address the other Motions filed by the Appellant as said motions would be moot.



Greenville Common Pleas

Case Caption: Mary Earle VS Boulder Lp

Case Number: 2020CP2300631

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-05-15 13:55:10 page 3 of 3

ELECTRONICALLY FILED - 2020 May 15 3:28 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2300631

ROA 000004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	Case No.: 2020-CP-23-00631
	)	Magistrate's Case No.: 2019CV2310305338
Mary Earle,)	
Appellant,)	
	)	MEMORANDUM IN SUPPORT
v.	)	OF APPELLANT'S MOTION
)	
Boulder LP,)	
Respondent.)	
_____)	

In an appeal from the magistrate's court, the [Circuit Court] shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. S.C. Code Ann. §18-7-170.

This case involves Respondent (Landlord), a domestic limited partnership which dissolved in March, 2019 and which receives federal subsidies for offering housing to low-income persons in Greenville, South Carolina. Appellant (Tenant), a 60 year-old unemployed resident of Boulder Creek Apartments, is one such person that entered into a lease agreement (Lease) with Landlord on or about December 7, 2018.

Appellant has complied with the terms of the Lease and sought assistance from Respondent when the terms of the Lease were in question. Tenant has paid rent, including partial rent, and Respondent has accepted the same throughout Appellant's tenancy.

On July 1, 2019, Appellant became unemployed and relayed this information to Respondent who refused to complete an Interim Certification of Appellant as required by the Lease and HUD policies and regulations (HUD Handbook-4350.3). The purpose of the interim re-certification is to notify Respondent of changes in Appellants income or the composition of Appellant's household and to have the rent recalculated based upon those changes. According to the Lease and HUD policies and regulations, Respondent was

required to reduce Appellant's rent to \$0 beginning July 1, 2019. Appellant has been unemployed since July 1, 2019, and Respondent has documentation.

On August 21, 2019, Appellant completed her Annual Recertification, signing all required documents and providing necessary employment and unemployment information to Respondent. On or about September 30, 2019, Appellant received a Notice to Vacate due to Failure to Recertify. Appellant's counsel spoke with Respondent October 2, 2019 regarding any additional information needed for Appellant to complete recertification. Appellant's counsel provided such information to Respondent, but never received any response from Appellant. Respondent filed an application for ejectment of Appellant on December 31, 2019 for non-payment of rent without the required 30-day notice per HUD policies and regulations.

Procedural due process protections are required in cases where a person's property interests such as termination of government subsidized housing is at issue. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). The court held that certain elements are needed to ensure the Appellant is afforded procedural due process protections and include (1) timely notice stating the basis for the proposed termination of the benefit; (2) an opportunity by the beneficiary to confront and cross-examine each witness relied upon for the termination; (3) the right of the beneficiary to be represented by counsel; (4) a decision based solely on evidence adduced at the hearing, in which the reasons for the decision are set forth; and (5) an impartial decision-maker. Further, HUD policies and regulations require due process protections that were not afforded Appellant. Respondent is required to give Appellant thirty days' notice of the intent to terminate the Lease, and this notice must be both hand delivered and mailed to Appellant. Respondent failed to give Appellant such notice. Appellant was not given an opportunity to present any evidence on a *preliminary basis* regarding the amount of rent allegedly owed to Respondent nor was Appellant given an opportunity to address Respondent regarding rent. See Magistrate's Return.

Appellant raised the defense and counterclaim that she did not owe rent

complained of by Respondent and could not pay rent, thus the amount of rent owed was in controversy, and the magistrate was required to hold a hearing to preliminarily determine the matter. See S.C. Code Ann. §27-40-790. However, in this case, the magistrate refused to allow Appellant to present *any* evidence regarding the amount of rent to be paid, if any, and instead accepted Respondent's testimony as to the amount of rent owed. Respondent never made a showing that Respondent is entitled to the rent alleged in the Demand for Rent. The magistrate's court, without a preliminary hearing to address the amount of rent alleged by Respondent and disputed by Appellant, ordered an unreasonable bond of \$1,000 that an unemployed Appellant could not pay. And as such, the magistrate denied Appellant housing without due process.

In this case, Respondent seeks to evict Appellant for non-payment of rent that Appellant did not owe. Appellant is in a class of people who do not have an abundance of choices for affordable housing. Thus, if she is wrongfully evicted, this 60 year-old will 'suffer great loss especially if it is later determined that this eviction was improper because the wrong cannot be speedily made right because of the demand for low-cost public housing and the likelihood that the space from which she was evicted will be occupied by others.' *Caulder v. Durham Housing Authority, 433 F.2d 998 (1970).*

CONCLUSION

Based upon Appellant's Memorandum, the court should find in favor of Appellant, reverse the decision of the magistrate court, and set aside the writ of ejectment.

Respectfully Submitted,

s/Vanessa Cason
Vanessa Cason, SC Bar#69896
Attorney for Appellant
Post Office Box 2842
Greenville, SC 29602
Telephone: (864) 277-9093

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

CASE LAW

GOLDBERG v. KELLY
397 U.S. 254 (1970)

DIVETRO v. THE HOUSING AUTHORITY OF MYRTLE BEACH
Civil Action No. 4:13-cv-01878-RBH

JACKSON v. CITY OF AIKEN HOUSING AUTHORITY
Civil Action No. 1:16-cv-02831-JMC

KIRIAKADES v. UNITED ARTISTS
440 S.E.2d 364 (1994)

CAULDER v. DURHAM HOUSING AUTHORITY
433 F.2d 998 (1970)

EXHIBIT E

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
Mary Earl,	)	C/A No.: 2020-CP-23-00631
Appellant,	)	Magistrate C/A No.: 2019-CV-23-10305338
)	
v.)	
	)	RESPONDENT/PLAINTIFF
Boulder LP,	)	BOULDER LP'S AMENDED RESPONSE
Respondent.	)	TO NOTICE OF APPEAL
)	

COMES NOW, Respondent/Plaintiff Boulder LP ("Boulder") and files this amended memorandum in response to the Notice of Appeal filed by Appellant/Defendant Mary Earl ("Earl").

STATEMENT OF THE CASE

This matter arises from an eviction proceeding initiated on December 30, 2019, in the East Greenville Summary Court, and the subsequent order requiring payment of rent at market value during the pendency of the eviction action. This appeal should be dismissed or, in the alternative, the magistrate court's order requiring payment of market rent during the pending eviction action should be affirmed because (I) Earl failed to make payment pursuant to S.C. Code Ann. § 27-40-800; and (II) there was no error of law in the magistrate requiring payment of market rent pursuant to S.C. Code § 27-40-790(a).

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Boulder is an apartment complex located at 300 Furman Hall Road where Earl resides as a tenant. On December 30, 2019, Boulder filed an action for ejectment in the Summary Court in East Greenville, South Carolina. Boulder alleged Earl failed to pay rent when due, pursuant to the terms of her leasing agreement, and sought possession of the rented premises.

Thereafter, on January 21, 2020, the Magistrate's Court held a hearing pursuant to S.C. Code § 27-40-790(a) to determine the amount of rent to be paid during the pending jury trial. At the hearing, Boulder proffered that Earl owed \$2,118.00 for rental payment arrears, and that Earl's ongoing rental payments, less HUD subsidy, totaled \$282.00 per month. After hearing the arguments of respective counsel for Boulder and Earl, the Magistrate entered an oral order requiring payment to secure the amount alleged to be due and owing by Earl. The Magistrate required Earl to pay \$1,000.00 to the Magistrate's Court as payment towards the amount of rental arrears in controversy. Payment of \$1,000.00 was to be made no later than 5:00pm on January 28, 2020. The Magistrate Court further required that Earl make ongoing monthly rental payments in the amount of \$282.00 per month beginning February 1, 2020, pursuant to the terms of Earl's leasing agreement with Boulder. Earl failed to make payment to the Magistrate's Court in the amount of \$1,000.00 on January 28, 2020, as ordered.

On or about January 28, 2020, Earl filed a Notice of Appeal of the Order. In her Notice of Appeal, Earl asserts Boulder, "in bad faith, instituted eviction proceedings against [Earl] without good cause and in violation of the lease agreement and the South Carolina Landlord Tenant Act." Earl further states that she "disputes the amount of rent alleged by [Boulder], but was not given the benefit of a hearing in which the dispute was heard." All these claims are insufficiently described, asserted without support, alleged without merit, and denied by Boulder. At the time the Notice of Appeal was filed, no trial had been held to determine the merits of the complaint and no final order, judgment, or Writ of Ejectment had been entered.

Thereafter, on January 30, 2020, the Magistrate's Court entered a Writ of Ejectment ordering the sheriff/magistrate's constable to proceed with the process to evict Earl. The executing

official attempted to initiate ejectment of Earl on February 4, 2020, and left notice of the requirement to vacate at Earl's residence.

On February 7, 2020, Judge Lyall entered a Magistrate's Return to Appeal ("Magistrate's Return") in which he outlined the matters leading to the filing of Earl's Notice of Appeal and addressed the issues of this appeal. Specifically, the Magistrate noted that Earl, through her attorney, attempted to argue the merits of the evictions action at the hearing on January 21, 2020, instead of holding those arguments for trial. (Magistrate's Return, ¶ 1.)

On February 13, 2020, the Magistrate's Court held a hearing pursuant to S.C. Code § 27-40-800 to determine the bond to be set while the appellate matter is pending. The Magistrate's Court entered a verbal order requiring Earl to make payments during the pending appellate action in the fair market rent amount of \$282.00 per month (after deducting the disputably applicable HUD subsidy) beginning March 1, 2020. Pursuant to the order entered at the January 21, 2020 hearing, Earl made payment in the amount of \$282.00 for the month of February 2020. Earl failed to make any further payments pursuant to the orders of the Magistrate Court, including the payment of rent for March and April, 2020.

I. EARL FAILED TO MAKE PAYMENTS REQUIRED TO PURSUE APPEAL OF THE WRIT OF EJECTMENT.

South Carolina Code Ann. § 27-40-790 establishes how and in what amount funds are to be paid during the pendency of an action for possession of rented residential property. Relevant here, "Section 27-410-790 ... establishes that rent must be paid by the tenant for [her] continued

use and occupancy of the premises during the duration of the action for possession.” The Honorable Scott D. Whittle, 2016 WL 386068 at *3, Op. S.C. Att’y Gen. (2016).

After a writ of ejectment is entered by the magistrate’s court, a party may appeal the order for ejectment. S.C. Code Ann. 27-40-800 governs the procedures of the appellate court. Specifically, Section 800(a) requires a tenant to execute an undertaking that she will continue to make payment of rent as it becomes due during the pending appeal. S.C. Code Ann. § 27-40-800(a). Section 27-40-800(e) provides that

if the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejectment...

S.C. Code Ann. § 27-40-800(e).

Mary Earl appeared before the Magistrate’s Court on February 13, 2020, where she was ordered to make ongoing rent payments in the amount of \$282.00 per month during the pendency of the appellate matter. No formal undertaking was executed and no formal order staying ejectment was entered. However, Earl, with the assistance of counsel, agreed to make payments to Boulder in the amount of \$282.00 as they became due and owing.

Pursuant to the terms of the leasing agreement between Boulder and Earl, rent is due on the first day of each month. Earl failed to make payment for rent due on March 1, 2020, and April 1, 2020. Therefore, pursuant to S.C. Code Ann. § 27-40-800(e), a final writ of ejectment should be entered against Earl, and this appellate matter should be dismissed.

II. THERE IS NO ERROR OF LAW WARRANTING APPEAL.

South Carolina Code Ann. § 18-7-170 states the standard of review to be applied by the Circuit Court in the appeal of a magistrate's judgment as follows:

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

In order to reverse a magistrate's ruling, the appellant must show error at trial, prejudicial to [her] rights, or influencing adverse judgment. *Stukes v. Life Ins. Co. of Virginia*, 163 S.C. 216, 161 S.E. 478 (1931). Moreover, if there is sufficient undisputed evidence to support the judgment of the magistrate, then any error in admitting other evidence will be considered harmless. *Charles v. Atlantic Coast Line R. Co.*, 78 S.C. 36, 58 S.E. 927 (1907).

The South Carolina Residential Landlord and Tenant Act (the "Landlord-Tenant Act"), S.C. Code Ann. § 27-40-10, et. seq., establishes the substantive and procedural law by which a magistrate's judge is to administer hearings and trials related to the eviction of residential tenants. Therein, S.C. Code Ann. § 27-40-790(a) addresses the payment of funds to the Court during pending contested eviction matters, and specifically requires the Court to "... hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter." Section 790 further provides as follows:

In the event that the basis for the disagreement of the amount of rent due is the landlord's alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

S.C. Code Ann. § 27-40-790(a) (1986, as amended).

Subsection (b) of the Section 790 of the Act also provides, in relevant part, that,

[i]n the event the amount of rent is in controversy, the court shall determine the amount of rent to be paid to the landlord in the same manner as in subsection (a) or (b) of [Section 790].

S.C. Code Ann. § 27-40-790(b) (1986, as amended).

In the matter before the Court, Earl filed a Notice of Appeal which asserts that Boulder, “in bad faith, instituted eviction proceedings against [Earl] without good cause and in violation of the lease agreement and the South Carolina Landlord Tenant Act.” Earl further asserts that she “disputes the amount of rent alleged by [Boulder], but was not given the benefit of a hearing in which the dispute was heard.” Earl has failed to allege that any error was made which prejudiced her rights with regards to the payment requirements ordered pursuant to the Landlord-Tenant Act.

Pursuant to the requirements of the Landlord-Tenant Act, the Magistrate’s Court held a prompt hearing on January 21, 2020. Earl appeared at the hearing with counsel and was afforded the opportunity to speak regarding the issue of the fair market value for rent, amongst other issues. As noted in the Magistrate’s Return, counsel for Earl attempted to argue the merits of the case, to which the Magistrate appropriately took note.

The property manager for Boulder also appeared at the hearing with counsel. Boulder and its counsel proffered evidence of the fair market value of the property, including the current rental rate of the subject property under the terms of the lease agreement. In adherence to the relevant provisions of the Landlord-Tenant Act, the Magistrate issued an order based upon information relevant to the market value of rent for the subject property, including application of HUD subsidies which were in dispute.

As security for the amount due and owing to Boulder, the Magistrate required Earl to pay \$1,000.00 to the Magistrate’s Court by January 28, 2020, and to continue paying monthly rent at

the established fair market rate of 282.00 per month (after application of the HUD subsidy in question). Earl failed to make the payment in the amount of \$1,000.00 to the Magistrate's Court by the established deadline, and the Magistrate promptly entered a Writ of Ejectment. The Magistrate adhered to the requirements of the Landlord-Tenant Act while establishing the amounts to be paid and entering the Writ of Ejectment after Earl's failure to comply. The Magistrate made no error of law by requiring Earl to pay the sum of \$1,000.00 as security for the \$2,118.00 then due in rental arrears or by entering a Writ of Ejectment for failure to comply. The orders establishing payment amounts and Writ of Ejectment should, therefore, be affirmed.

CONCLUSION

Earl requests an appeal of the Magistrate's Writ of Ejectment for failure to make payment as ordered. However, Earl failed to comply with the orders of the Magistrate's Court and the Landlord Tenant Act by failing to make rental payments as they became due during the pendency of this appeal. Therefore, pursuant to S.C. Code Ann. § 27-40-800(e), a final writ of ejectment should be entered against Earl and this matter should be dismissed.

Further, the Magistrate's Court appropriately determined the fair market value of the property based on the relevant information presented at the hearing held on January 21, 2020, as required by S.C. Code Ann. § 27-40-790. Based upon his findings at the hearing, the Magistrate entered an appropriate order requiring payment to secure the interests of Boulder. Thereafter, in response to Earl's failure to make payment as ordered, the Magistrate entered a Writ of Ejectment. The Magistrate made no error of law by requiring the payment of \$1,000.00 and the payment of \$282.00 per month for ongoing rent due during the pendency of the eviction action. The Magistrate also made no error of law by executing a Writ of Ejectment following Earl's noncompliance with

the orders to make payment. Therefore, the Magistrate's orders establishing sums to be paid and Writ of Ejectment should be affirmed.

Dated: April 13, 2020

/s/ David S. Kershaw
M. Kevin McCarrell, S.C. Bar #76255
David S. Kershaw, S.C. Bar #102290
FOX ROTHSCHILD LLP
2 West Washington Street, Suite 1100
Greenville, South Carolina 29601
(864) 751-7600; (864) 751-7800 (fax)
kmccarrell@foxrothschild.com
dkershaw@foxrothschild.com

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Mary Earle,)
)
Appellant,)
)
vs.)
)
Boulder LP,)
)
Respondent.)
)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No.: _____
Magistrate Case No: C2019CV2310305338

NOTICE OF APPEAL

Defendant Mary Earle hereby gives Notice of Appeal from the judgment of the Magistrate's Court in the above action, to the Circuit Court of Common Pleas, Greenville County.

This Notice of Appeal is made subsequent to personal notice of the judgment which was received via on-line information on the evening of January 29, 2020.

Appellant takes exception to the judgment of the magistrate as a writ of ejectment should not have been issued for Appellant. Respondent, in bad faith, instituted eviction proceedings against Appellant without good cause and in violation of the lease agreement and the South Carolina Landlord and Tenant Act. Appellant disputes the amount of rent alleged by Respondent, but was not given the benefit of a hearing in which the dispute was heard.

s/Vanessa Cason
South Carolina Bar #69896
ATTORNEY FOR APPELLANT
Post Office Box 2842
Greenville, South Carolina 29602
Telephone: (864) 277-9093
vanessa@vcasonlaw.com

Greenville, South Carolina
January 30, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 MARY EARLE,)
 APPELLANT)
)
 -VS-)
)
 BOULDER, LP,)
 RESPONDENT)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2020-CP-23-00631

MAGISTRATE RETURN TO APPEAL

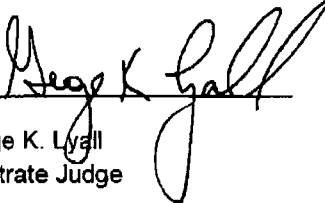
20 FEB 7 AM 11:35
 Paul Henderson Clerk of the SC

On December 31, 2019 Respondent filed an eviction action against Appellant based on Appellant's failure to pay rent. At the time of filing the past due rent totaled \$1,836. A Rule to Vacate or Show Cause (RTSC) was served on Appellant on January 7, 2020. On January 13, 2020 Appellant's attorney Vanessa Cason faxed a Jury Trial request to the court. On January 21, 2020 a Bond Hearing took place at which Ms. Cason appeared for the Appellant and attorney David Kershaw appeared for the Respondent. At the Hearing the Respondent presented evidence that the Appellant was currently \$2,118 in arrears in her rent. Appellant denied that the arrearage amount was accurate and requested a full hearing on the issue of whether the Appellant was behind in her rent. The court explained to Appellant's attorney that whether or not the Appellant was in arrears on her rent was the precise issue for which a jury trial had been requested because the eviction was based on Appellant's failure to pay rent and, if that issue was going to be fully litigated at the Bond Hearing, it would obviate the need for a jury trial. Stated differently, the court ruled that Appellant was not entitled to "two bites" on the issue of the status of the rent. Appellant's attorney did not withdraw the jury trial request; therefore, no detailed evidentiary hearing took place on the issue of Appellant's rent arrearage. Bond was set at \$1,000 payable to the court no later than January 28, 2020 at 5 pm (approximately 50% of the disputed rent arrearage) along with the requirement that Appellant keep her rent of \$282/ month current pending the outcome of the jury trial. This appeal followed.

Respectfully Submitted,

Greenville, SC

February 6, 2020



George K. Lyall
Magistrate Judge

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
Mary Earle,	)	Case No.: 2020-CP-23-00631
Appellant,)	
)	
v.	)	MOTION FOR MODIFICATION
	)	OF UNDERTAKING
)	
Boulder LP,)	
Respondent.)	
)	

COMES NOW Mary Earle, Appellant, by and through her counsel, pursuant to Section 27-7-800(d) of the South Carolina Code of Laws, and moves before the Presiding Judge of the Circuit Court of the Thirteenth Judicial Circuit, 305 East North Street, Greenville, South Carolina, for an Order:

1. Modifying the terms of the Undertaking issued by the Magistrate on February 13, 2020; and
2. Granting such other and further relief as the Court deems just, and appropriate.

Respectfully submitted by:

s/Vanessa Cason
 SC Bar #69896
 ATTORNEY APPELLANT
 Post Office Box 2842
 Greenville, SC 29602
 (864) 277-9093
 vanessa@vcasonlaw.com

Greenville, South Carolina
 April 20, 2020

EARLE HEARING

1/21/2020

LEGAL EAGLE

Post Office Box 5682

Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

ROA 000026

1 THE COURT:

2 I am the only judge in this Court which is one of
3 the reasons we kept you waiting. All right, so is
4 Ms. Floyd here? Okay --

5 MS. CASON:

6 Yes, she's --

7 THE COURT:

8 -- thank you, Ms. Floyd. Ms. Landrum? Thank you,
9 Ms. Landrum. Ms. Earle? All right. I'm just
10 getting organized here so y'all if you will be
11 patient. All right, now I also have an indication
12 here that Ms. Keesha Moore has requested a jury
13 trial. Is Ms. Moore here? Thank you, ma'am. And
14 Ms. Williams, Kametta Williams, has requested a jury
15 trial. All right.

16 MS. WILLIAMS:

17 Kametra, actually.

18 THE COURT:

19 Ma'am?

20 MS. WILLIAMS:

21 It's actually Kametra.

22 THE COURT:

23 Kametra, I apologize.

24 MS. WILLIAMS:

25 (Inaudible).

1 THE COURT:

2 It's just somebody's bad hand writing and it's not
3 yours. All right. Now, Ms. Cason, do you
4 anticipate that your clients will be testifying or
5 are you going to essentially be appearing here and,
6 you know, handling it for them? Just it's a matter
7 of do I swear -- do I swear everybody in or just --

8 MS. CASON:

9 I think --

10 THE COURT:

11 -- 'cause --

12 MS. CASON:

13 -- yeah, can swear everybody in that'll be fine.

14 THE COURT:

15 Okay. All right. Ms. Williams, Ms. Moore, Ms.
16 Landrum, Ms. Floyd, Ms. Earle, would all of y'all
17 please stand up? And actually Ms. Ashley, in case
18 you are testifying if you will please stand up.
19 will each of you please raise your right hand? Do
20 you solemnly swear or affirm to tell the truth, the
21 whole truth, and nothing but the truth, so help you
22 God?

23 EVERYONE:

24 Yes.

25 THE COURT:

1 Okay, please have a seat. All right. Mr. Kershaw,
2 I will hear from you, sir.

3 MR. KERSHAW:

4 Yes, Your Honor. May it please the Court. Is there
5 any order that you wanted me to go in?

6 THE COURT:

7 All right, no, sir. Just give me a name and give me
8 one second where I can get my hands on it.

9 MR. KERSHAW:

10 Okay, well the first one that I have is Mary Earle.

11 THE COURT:

12 All right, sir. I've got it in front of me.

13 MR. KERSHAW:

14 Yes, Your Honor. We -- Boulder issued a request for
15 eviction based on a demand for payment that was
16 issued December 4th. Ms. Earle is currently behind
17 in her rent payments since May of 2019. As of
18 December 4th our ledger shows a total amount due of
19 \$1,836 due in owing. If you would like to hear from
20 Ms. Ashley, I can put her to -- on the stand or I
21 can just proffer this information.

22 THE COURT:

23 All righty. Well, why don't we just -- we won't put
24 Ms. Ashley on the stand right now. And you're
25 requesting a bond be paid to the Court in the amount

1 of \$1,836?

2 MR. KERSHAW:

3 Yes, Your Honor.

4 THE COURT:

5 And then presumably there will be rent due in
6 February?

7 MR. KERSHAW:

8 Yes, Your Honor.

9 THE COURT:

10 And am I correct that you would want the conditions
11 of the bond be that Ms. Earle keep her rent current
12 during the pendency of the jury trial?

13 MR. KERSHAW:

14 Yes, Your Honor.

15 THE COURT:

16 Okay.

17 MR. KERSHAW:

18 Excuse me, Your Honor, I'm sorry, our ledger is
19 actually only through December 4th so that amount
20 would increase by the rent amount in January as well
21 for -- for an additional \$282.

22 THE COURT:

23 Okay. The 282 is that for January's rent or
24 February's rent or --

25 MR. KERSHAW:

1 That's for January's rent, I'm sorry, Your Honor.
2 what was given to me was a ledger and it only ran
3 through December 4th.

4 THE COURT:

5 So \$282 for January?

6 MR. KERSHAW:

7 Yes, Your Honor.

8 THE COURT:

9 Now does that get added to the 1836?

10 MS. ASHLEY:

11 Yes.

12 MR. KERSHAW:

13 It's -- it's in addition to. The 1836 only ran
14 through December.

15 THE COURT:

16 Okay. So that's 811 -- so actually the bond you're
17 requesting is in the amount of \$2,118 --

18 MR. KERSHAW:

19 Yes, Your Honor.

20 THE COURT:

21 -- with a requirement that the -- that when
22 February's rent comes due it would be \$282 and the
23 rent should be kept current; is that correct?

24 MR. KERSHAW:

25 Yes, Your Honor.

1 THE COURT:

2 All righty. Thank you very much. Ms. Cason?

3 MS. CASON:

4 Thank you, Your Honor. May it please the Court.
5 Your Honor, I've been representing Ms. Earle since
6 on or about September 27th of 2019. I contacted Ms.
7 Patricia by email and by letter, by fax, on at least
8 three occasions since I've had this case. She's
9 been notified and she's been on notice that my
10 client is not working. She was notified when my
11 client ceased working. I tried to get documents to
12 her. She's never responded other than a phone call
13 to tell me that we could -- we could work this out.
14 In addition to that, Your Honor, my client
15 recertified earlier in the summer and was not given
16 her paperwork, she was not given any information of
17 how much she would -- her rent would increase, so
18 how -- how she got to \$282 per month I'm not sure.
19 My client was paying \$97 per month. She's tried to
20 pay this amount and it was never accepted by Ms.
21 Patricia so to have her now, when she's not working,
22 pay a bond of \$2,100 doesn't make sense. Her rent
23 was \$97 prior to this time when she was working. It
24 did at some point increase to more than \$200, again
25 she attempted to pay this amount, nothing. I've

1 requested records. I've requested what I could do.
2 what -- what -- what is it that she needs my client
3 to do? what documentation does she need my client
4 to provide to her? And she has not responded even
5 to me.

6 THE COURT:

7 okay.

8 MS. CASON:

9 So I don't -- I don't even understand how she now
10 comes to court and says my client should be paying a
11 bond of 21 -- more than \$2,100.

12 THE COURT:

13 And Ms. Cason I -- in order to address what you --
14 the issue you've just raised, essentially, we would
15 be now having a hearing on the merits and -- and
16 that's a dilemma because let's pretend just for the
17 heck of it this was an eviction action well then we
18 would be taking up the issue of recertification and
19 who did what and what notice was given and then at
20 some point I'd have to make a ruling on that, but
21 we're not. What we've done is through jury trial
22 what we've postponed down the road a determination
23 of those legal issues. And so if I were to sit here
24 today and listen to you in full and make a ruling on
25 a bond hearing essentially, I've -- I've resolved

1 the case because there'd be nothing more for a judge
2 and a jury to do down the road. So I appreciate
3 your argument and I suspect this argument is going
4 to apply to every one of your clients they are
5 opposing the eviction for probably very legitimate
6 reasons. I don't know. But, the bond hearing is
7 based on what does the landlord show is due in owing
8 and -- but that's what I have to go on.

9 MS. CASON:

10 But, Your Honor, the landlord can't in good faith
11 show what's due in owing because the process was not
12 followed from the beginning. My client did
13 recertify. My client followed all the rules
14 whenever she was not working she provided
15 information to Ms. Patricia. I even tried to
16 provide information to Ms. Patricia. There's no way
17 that my client can pay \$2,100 -- more than \$2,100 as
18 a bond. Now she may be able to pay rent per month.
19 She may be able to pay \$100 bond but she can't pay
20 more than \$2,100. And there's no way that she can
21 show in good faith that she's owed more than \$2,100.

22 THE COURT:

23 well, again, you understand this case and my dilemma
24 which is what you are asking me to do is now have a
25 hearing on the merits in every one of these cases

1 when each of the people, there are five or six folks
2 have requested -- who are present here today, have
3 requested a jury trial. And so I have to issue a
4 bond based on the information available to me and go
5 from there. But, here's what I'm willing to do. I
6 understand that we're dealing with people who are
7 low income and -- or we'll say moderate income and
8 that they are well behind and a bond of \$2,100 is
9 basically it's equal to putting them on the street
10 without ever having a hearing. In other words,
11 because they're waiting for their jury trial if they
12 can't come up with \$2,100 then bam, they're on the
13 street and they've lost because they didn't have a
14 hearing in front of a judge and bam, they didn't
15 have a hearing in front of a jury. So I'm -- I'm
16 going to hear from Mr. Kershaw but I am inclined to
17 reduce her bond to \$1,000 but I'm not -- I can't do
18 any better than that and I haven't even ruled. I
19 want to hear from Mr. Kershaw who is patiently
20 sitting there while you and I are talking. So, let
21 me hear from him, okay. Sir?

22 MR. KERSHAW:

23 Thank you, Your Honor. In response Boulder doesn't
24 have a record of a recertification. Based on the
25 records that I've been given it looks that the lease

1 was entered into in December of 2018 so the
2 recertification would've been last month in December
3 of 2019. I'm not privy to any communications or
4 attempts unfortunately by opposing counsel to reach
5 because I was just recently retained. However, the
6 records that we have currently don't show any
7 attempt at a recertification or any attempts to
8 properly convey an interim saying anything about a
9 change of income.

10 THE COURT:

11 Okay. Well Mr. Kershaw, and again I don't want to
12 appear rude to either you or Ms. Cason, but now if
13 you're going to start talking about that a
14 recertification did happen or didn't happen then
15 again y'all are asking me to have a hearing on the
16 merits of the original eviction and that's not why
17 we're here. So I want to hear from you becov -- on
18 one issue, now that issue is that bond in the amount
19 of \$2,100 is just guaranteed for somebody with
20 little or no income, that is the same thing as me
21 saying get on the streets. By the same token the
22 law does require me to set a bond. And I can't -- I
23 can't just ignore that. So, I'd like to hear from
24 you on my proposal that that bond get cut by more
25 than 50 percent and that the bond posted would be

1 \$1,000 plus the requirement that in February that
2 that rent be kept current.

3 MR. KERSHAW:

4 I apologize, Your Honor. We are fine with that
5 \$1,000 bond and -- and the -- the requirement that
6 she remain current for February and beyond.

7 THE COURT:

8 Okay. All right. You want to -- any more
9 objections, Ms. Cason, you want to put on the
10 record?

11 MS. CASON:

12 Yes, Your Honor. If you're -- if you're going to
13 impose a \$1,000 bond my client isn't even working
14 and she's going to be on the street if she is not
15 able to pay this bond, which she is not able to pay.

16 THE COURT:

17 Yes, ma'am, and I understand that and -- and judge's
18 who set bonds whether it's for people who are in
19 jail who want to get out or in a situation like
20 this, people who are in -- behind in their rent or
21 allegedly behind in their rent, I didn't create the
22 law and it's my job to enforce it but try to be
23 reasonable, and I think in cutting the bond by more
24 than half is number one protecting the landlord but
25 also at least giving your client some chance to

1 preserve her ability to stay. All right, in the
2 matter of Boulder LP versus Mary Earle I am
3 establishing bond in the amount of \$1,000 which is
4 due, let's see today is the 21st, I'm going to say
5 by January 27th that allows one, two, three, four,
6 five -- no, I'm going to make it the January the
7 28th at 5:00 p.m. And that amount by the way gets
8 paid to the Court. It does not get paid to the --
9 it does not get paid to the landlord. The Court
10 holds that money in an escrow fund pending the
11 outcome on the merits of this case. So we will put
12 it in a special account and we'll hold it and at
13 some point when all of this has been sorted through
14 the money will either get applied towards the rent
15 that's due or if it's found that the eviction action
16 should've never been initiated in the first place
17 it'll be refunded to Ms. Earle. All right, any
18 questions -- any further questions on that case?
19 All righty. Let's go, the next one I have is if
20 it's all right with everybody else, let's do Ms.
21 Karen Floyd. And Mr. Kershaw, once again I'm going
22 to ask you what is the current arrearage for Ms.
23 Floyd and what is the -- what is the monthly rent
24 going forward?

25 MR. KERSHAW:

EARLE HEARING

2/13/2020

LEGAL EAGLE

Post Office Box 5682

Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

ROA 000039

1 THE COURT:

2 It is the 13th of February at 10:02 in the morning.
3 We're here in two matters that are virtually
4 identical, the facts are slightly different but
5 we're here for the same reason. The -- we're here
6 on bond hearings. The first is Mary Earle,
7 Appellant, versus Boulder LP, civil action number
8 2020CP2300631. The second is Stephanie Landrum
9 versus Boulder LP, civil action number
10 2020CP2300637. The bond hearing is being held
11 pursuant to Section 27-40-800 of the South Carolina
12 Code, which provides if there's going to be a stay
13 of an eviction proceeding during an appeal that the
14 Court -- Magistrate Court is to hold a hearing and
15 establish a bond -- an appropriate bond so that the
16 eviction proceeding will be stayed. The procedural
17 history of these cases is that evictions were filed
18 in both cases, I think on December 31st of 2019.
19 Jury trial requests were -- jury trials were
20 requested by Ms. Vanessa Cason on January the 13th.
21 A bond hearing on the jury trial request was heard
22 on January 21st, bond was established and then
23 appeals followed in both cases, notices of appeal,
24 which, I believe, were filed on January 30th.
25 Present is Ms. Vanessa Cason on behalf of both

1 tenants, both appellants, and Mr. David Kershaw is
2 here on behalf of the landlord respondent Boulder
3 LP. This is a -- this is no longer procedural
4 history this is -- this is my comments to the --
5 specifically to the attorneys. These cases are
6 unusual in that what we're doing is we're generating
7 a lot of court time and a lot of work; we're not
8 getting anywhere. And by that we're not getting
9 anywhere on the merits. We have a landlord who has
10 two units that are presently occupied and nobody's
11 paying rent. That's not good for the landlord. We
12 have two tenants who are living rent free in units
13 which isn't fair to anybody. Their rent, how much
14 they should be paying is subject to determination,
15 but for sure the number isn't zero, there is some
16 number that they ought to be paying in rent. And
17 both tenants were evicted because they failed to get
18 recertified under HUD. It doesn't matter, from my
19 perspective as I sit here right now, these comments
20 landlord says it's the tenant's fault they didn't
21 get recertified, tenants gonna say for sure it's the
22 landlord's fault that they didn't get recertified.
23 But the bottom line is the landlord has expectations
24 of rent being paid, tenant says the rent you want is
25 unfair and it's too much and the clock keeps ticking

1 and ticking, ticking. Now let's go all the way down
2 the road. Let's say there are jury trials. Let's
3 say both tenants win the jury trials, and this is
4 just what if. At that point where are we going to
5 be? Both tenants are going to have to complete a
6 certification process so that the proper amount of
7 rent can be established. It's not like they just
8 get to pick a number as to what rent they're going
9 to pay. It's not like they're going to go back to
10 the rent that it was in say August when they last
11 were certified. It's going to be necessary to do a
12 recertification, that's assuming that the tenants
13 win outright on both -- on both jury trials. So
14 we're going to have this bond hearing, but I am just
15 suggesting out loud, and I'm speaking to the
16 attorneys, I am not presuming to tell individuals
17 how to run their business. This just strikes me as
18 a case where people ought to be able to sit down.
19 People ought to maybe say okay what's it gonna take
20 to get these two ladies certified, recertified and
21 let's see if we can't get things moving. I don't
22 mind -- I don't resent being here. I don't -- I get
23 paid to come here to work every day and I actually
24 enjoy hearings a lot more than sitting in my office.
25 So, I'm happy, but I have to believe that tenants

1 who are living there not knowing whether they're
2 going to be living there in three or four days,
3 that's not a good way to be, and a landlord who's
4 got units that are being occupied but they're not
5 getting paid a penny, not from HUD, not from the
6 tenant, they can't be happy. So, that's the end of
7 my speech. Take it for whatever it's worth because
8 I'm certainly not telling anybody what to do. I
9 don't have the right to tell anybody what to do.
10 why I'm here today to establish a bond because both
11 of these cases are under appeal. Now we'll start --
12 ma'am what is your name please?

13 MS. EARLE:

14 Mary Earle.

15 THE COURT:

16 Okay, Ms. Earle, we'll do you first 'cause you're
17 sitting at the table. All right, the last time we
18 were all together we were establishing a bond at
19 that time which I set at \$1,000 and for you to keep
20 your rent current of \$282 a month. You did not
21 establish the bond, you have not kept the rent
22 current because you appealed, and I understand that,
23 and you have every right to appeal. But now we've
24 got to come up with a bond that is going to go in
25 place pending the appeal. And the way the law reads

1 is that once I set the bond if the bond is not paid
2 within five business days then the appeal gets
3 dismissed. So, rather than -- and Ms. Cason, I'm
4 certainly going to hear from you, Mr. Kershaw I'm
5 going to hear from you, but in the case of Ms. Earle
6 I'm going back to the numbers I had before, \$1,000
7 which represents back rent and keeping rent current
8 at \$282 a month. Ms. Cason, I will hear from you
9 first.

10 MS. CASON:

11 Thank you, Your Honor. May it please the Court. As
12 I previously stated my client does not have \$1,000
13 to pay a bond or anything else. She has not worked
14 since July of 2019 and it is clear that in public
15 housing if you're not working then you don't pay
16 rent. She's previously paid rent. She did
17 recertify and as a matter of fact her paperwork does
18 not even indicate that she's here because she failed
19 to recertify but rather she failed to pay rent.
20 When she was afforded an opportunity to have a rent,
21 she paid rent. When she was not, she did not pay
22 rent, which is where she is today. So she cannot
23 pay. Now, what she can do, and I've talked with
24 her, is possibly pay \$100 or \$282 a month, between
25 \$100, \$282 a month going forward each month, I

1 believe she would be able to do that, but a bond of
2 \$1,000 a lump sum of money she's not going to be
3 able to do that.

4 THE COURT:

5 Okay. Ms. Cason, I'll keep your suggestion in mind.
6 Mr. Kershaw, I'll be happy to hear from you.

7 MR. KERSHAW:

8 Your Honor, I'm sorry (inaudible). Just based on
9 the -- the previous hearing and your comments my
10 client would request that a lump sum bond be issued
11 in this matter and that she also be required to
12 continue ongoing payments. Her -- the -- the
13 discussions with my clients it has just been that
14 rent has not been paid, the subsidy amount has been
15 terminated and there's been no interim
16 recertification to allow them to make any
17 adjustments to the rent therefore what was due and
18 owing was still due and owing.

19 THE COURT:

20 Okay. I -- you know, this fact situation and I'm
21 not here to talk about the merits of the
22 recertification, that's going to be for a jury one
23 day to somehow sort through HUD requirements and
24 what has happened and what has happened. But, I
25 mean, what a -- what a perfect example, Ms. Earle,

1 what I'm talking about earlier of lawyers getting
2 together and kind of wading through all the issues,
3 Ms. Cason believes through Ms. Earle that if a
4 recertification was done, because she hasn't worked
5 since July, that there would be no rent due. Well,
6 yeah, if that's the case gosh wouldn't you rather
7 figure that out on your own then have a jury tell
8 you that? But, I'm not -- again, I'm not here going
9 to get into certification, recertification, who has
10 done what they're supposed to do. But there's an
11 easy button in this case. I just don't -- I can't
12 push it. I -- I -- from where I sit I can see an
13 easy button. All right, the bond in this case Ms.
14 Cason I'm going to listen to you and I'm going to
15 set the bond at \$282 a month. Now the first
16 payment's got to be for February, nothing's been
17 paid for February. So that \$282 must be paid in
18 five business days. That is -- today is the 13th.
19 So, the 13th, the 14th and then the 17th, 18th and
20 19th. So we're talking about by February the 19th
21 at we'll say noon, which is five business days from
22 right now, \$282 must be paid and it's gotta be paid
23 in March. It's gotta be paid in April. I don't
24 know how long all the -- I mean, first of all we got
25 to get through the appeal, then we gotta come back,

1 then y'all got get on a jury trial docket. You're
2 not even ever gonna get close to a jury until you
3 have mediation and I -- I don't know if Ms. Cason,
4 Mr. Kershaw if you're aware of that, but even in
5 eviction cases if it's a civil case and a jury trial
6 y'all are gonna be going through a mediation. So,
7 when this case might actually find its way to a
8 jury, I have no idea. But anyway, that is my ruling
9 for Ms. Earle. Ma'am, if you don't mind stepping
10 back and if Ms. Stephanie Landrum can come up, we'll
11 -- we will deal with hers. All right, with respect
12 to Ms. Landrum, my last ruling was that because she
13 had been paying some rent, because the rent was
14 accepted by the landlord that I was not going to
15 require a lump sum bond, but I was going to require
16 that she begin the new rent of \$868 starting
17 February the 1st. So already there is no lump sum
18 bond that's been required for Ms. Landrum and I am
19 going to, 'cause I want to be consistent, I am -- or
20 the bond is going to be as it was. We need \$868
21 paid by February the 19th at noon and that it will
22 be kept current every month after that until this
23 case goes forward. I -- sure, by all means, Ms.
24 Cason.

25 MS. CASON:

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

Mary Earle,
Plaintiff,

vs. Transcript of Record
2020-CP-23-00631

Boulder, LP,
Defendant.

May 15, 2020
Greenville, South Carolina

B E F O R E:

The HONORABLE PERRY H. GRAVELY

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

Vanessa Cason, Representing the Plaintiff
David Kershaw, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

1 THE COURT: Let me address that. We'll
2 address that in just a minute. This is the case
3 of Mary Earle vs. Boulder LP, 2020-CP-23-631.

4 Ms. Cason, if you can identify yourself
5 and your client, or who you're representing.

6 MS. CASON: Vanessa Cason, representing
7 Mary Earle.

8 THE COURT: And Mr. Kershaw.

9 MR. KERSHAW: David Kershaw, representing
10 Boulder, the respondent.

11 THE COURT: All right. And we are --
12 both parties have consented to having this hearing
13 conducted by way of telephone conference with a
14 court reporter and waived any additional notice
15 requirement. Is that true, Miss Cason, on behalf
16 of the plaintiff?

17 MS. CASON: Yes.

18 THE COURT: And Mr. Kershaw on behalf of
19 the respondent?

20 MR. KERSHAW: Yes, Your Honor.

21 THE COURT: All right. Miss Cason, this
22 is your -- I guess your appeal, so I'll be glad to
23 hear from you.

24 MS. CASON: Thank you.

25 THE COURT: I read the file, just for you

1 all's information.

2 MS. CASON: Thank you. May it please the
3 Court?

4 Your Honor, my client has been a resident
5 of Boulder Creek since about December of 2018, and
6 she was employed up until the time of July 1st of
7 2019 and paid rent based upon her income.

8 When she was -- became unemployed, she
9 informed the respondent, Boulder Creek. And, at
10 that time, they were to complete an interim
11 recertification so that her rent could be reduced,
12 and that was never done.

13 Then in August of 2019, she completed her
14 recertification. Then in September of 2019, she
15 received notification that -- she was moving some
16 items, so she contacted our office and I spoke
17 with the respondent, which was the manager -- the
18 manager of the apartment complex, and she said
19 that she needed additional information, which I,
20 in turn, forwarded it to her by mail. Didn't hear
21 anything from her based on that.

22 And then in December she files -- sends
23 my client a notice that she owes \$1800 plus in
24 back rent -- or \$1600. And then she filed a writ
25 -- I mean, an application for ejectment

1 December 31st.

2 The magistrate's court at the hearing
3 refused to hear my client's position that she
4 didn't owe the rent, that she -- there was a
5 dispute about the amount of the actual rent. And
6 what he did was, he just took the respondent's
7 application and her acknowledgement that this is
8 what my client owed, more than \$1800.

9 Since the matter was in dispute, he was
10 to -- according to the statute, he was to hear
11 this preliminarily and he didn't do that. He just
12 took the respondent's word that this is what my
13 client owed. He understood that my client hadn't
14 worked since July 1st. That was acknowledged by
15 the defendant -- by the plaintiff, but still
16 nothing.

17 And so he set the bond at \$1,000, which,
18 of course, if my client is unemployed, she can't
19 pay, and I explained that to him. And so I
20 appealed thereafter. This appeal follows.

21 THE COURT: All right.

22 MS. CASON: My client's position is that
23 she doesn't owe this money, that she was not given
24 an opportunity to even confront the witnesses,
25 cross-examine the witnesses, based on that the

1 magistrate didn't hear the matter preliminarily.

2 And because of that, now she's facing an
3 ejectment from an apartment that she would
4 otherwise be eligible for since she's not working.

5 Respondents have never gone back and
6 completed any kind of interim recertification or
7 annual recertification so that my client's rent
8 could be established, the appropriate amount of
9 rent could be established. Now she's facing this
10 eviction.

11 THE COURT: All right. In looking at the
12 statute, I think the controlling here is the
13 27-40-790 where, if there's discrepancy of the
14 amount of rent due, isn't the only thing that the
15 Court is to do then is to preliminarily determine
16 the amount of rent. If they can't figure that
17 out, then they're supposed to determine the fair
18 market value that's to be paid into the Court. I
19 mean, isn't that the only thing that he can
20 really -- I mean, he -- not whether your client
21 has the ability to pay, but, at that point, isn't
22 it that the fair market rental value is, kind of,
23 the fallback position?

24 MS. CASON: Well, no, Your Honor. I
25 don't believe that's the case. This is public

1 housing. The rent is not -- the rent has to be
2 established, and the rent is established at
3 certain point. If it's not at the end
4 certification point, it's at any interim
5 certification or recertification point.

6 And since that didn't happen when she
7 explained that she was no longer working, she
8 didn't have the interim recertification, she
9 didn't have -- she had the annual recertification
10 but the rent was still never adjusted.

11 THE COURT: Well, what was your position
12 at the time of the amount of rent that would have
13 been owed?

14 MS. CASON: The amount of rent that would
15 have been owed would have been zero because, from
16 July 1st, she was not working. And in public
17 housing, once the recertification is done, it
18 is -- the rent is determined based on that, on
19 income and family composition. And since she's
20 not working and it's just her, her rent would have
21 been zero.

22 THE COURT: I got you. Okay. All right.
23 Anything else as far as the appeal?

24 MS. CASON: Well, Your Honor, I think it
25 makes sense that during this time based on the

1 things what's going on right now -- I mean, this
2 is a 60-year-old woman. If she's evicted now, she
3 won't have no where to live.

4 THE COURT: And just for your purposes,
5 our court reporter too, identify yourself when you
6 start speaking. I'm sorry.

7 MS. CASON: Oh, I'm sorry. This is
8 Vanessa Cason.

9 THE COURT: Okay. Anything else? Go
10 ahead. I'm sorry.

11 MS. CASON: This is Vanessa Cason. As
12 far as the eviction, Your Honor, I mean, this is a
13 60-year-old woman, and based on even what we're
14 going through now, if she's loses her housing that
15 she would otherwise be entitled to based on the
16 fact that she has -- she's lived here. She's
17 completed everything that she was required to
18 complete and the respondent didn't do their part
19 in recertifying her, at least on the basis of, you
20 know, all of the documents that she's completed
21 and all of the information that she's presented to
22 them, they are required by HUD regulations and
23 policies to complete this interim recertification,
24 and, if nothing else, the annual recertification
25 and to give her the actual amount of rent.

1 If she's evicted now, she wouldn't have
2 anywhere to go.

3 THE COURT: Okay.

4 MS. CASON: And that would be unfair.
5 She's already entitled to this housing.

6 THE COURT: All right. Anything else as
7 far as the appeal then?

8 MS. CASON: No, Your Honor.

9 THE COURT: Okay. Mr. Kershaw, I'll be
10 glad to hear from you.

11 MR. KERSHAW: Thank you, Your Honor.
12 David Kershaw on behalf of the respondent.

13 Just in response to the overall appeal
14 and the points that Miss Cason has made, there is
15 evidence in the information in the file that I
16 have received from my client which does say that
17 around July 2019, there were conversations had
18 with the tenant Miss Mary Earle regarding her
19 unemployment. And my client has worked with her
20 to get all the documentation in.

21 As of July 2019, there needed to be some
22 certifications done to show where her income was
23 coming for expenses, as well as the issue where
24 she couldn't give information regarding her
25 termination from her employer. In that period,

1 she gone through some other issues that are also
2 documented on her affidavit.

3 But the end result was that they required
4 documentation to submit to HUD stating where she
5 was getting the additional income for the items
6 that she listed to be paid for other necessities.
7 And then in conversations with my client -- that
8 was the last that was heard for that interim
9 certification. And the -- which is -- they
10 checked it at that point because of those
11 conversations.

12 And then in November is when the actual
13 annual recertification was due. Those were sent,
14 and still they do not have a full certification
15 application at this time for her recertification,
16 and the anniversary has passed and the subsidy was
17 terminated.

18 My client has informed me that they
19 reached out recently to find out if there was any
20 other means by which to make up these deficit
21 payments. Although her unemployment issues seem
22 to have begun around July 2019, there are records
23 stating that there was a rental deficit prior to
24 that. So they took the unemployment situation
25 pre-July 1st of 2019 as showing that there were

1 partial payments made but there was a deficit
2 going into July 1, 2019, but there is not much
3 that can to be done for her with that deficit.

4 THE COURT: Aren't there some more
5 substantive issues that would be addressed if
6 there were a hearing? I don't know how that
7 really relates to the appeal matter, but aren't
8 those -- I guess what Miss Cason wanted to have
9 litigated, if there could be a hearing in
10 magistrate's court?

11 MR. KERSHAW: I apologize, Your Honor.

12 THE COURT: That's fine.

13 MR. KERSHAW: To get to the motion at
14 hand regarding whether this, I guess, appeal
15 should proceed, whether there should a result of
16 relief, or whether there should be a modification,
17 at the hearing we presented our evidence involving
18 the determined market rent. With all due respect,
19 you cited 27-40-790. The judge took out the
20 necessities and had determined that the ongoing
21 payments throughout the litigation would be the
22 subsidized amount of \$282, and that a \$1,000 bond
23 for lump sum payment will be required to cover the
24 full amount that was owed to my client.

25 I believe that the magistrate followed

1 the statute properly. I don't believe that my
2 client has done anything outside of public
3 relations. They pretty much say that they have
4 submitted a full, complete, accurate accounting
5 off all these finances, and that they have no
6 extraneous obligation to either supplement or
7 submit a complete application, or anything of the
8 like.

9 Under the circumstances, I believe that
10 my client has -- what was the market rent at that
11 time, there was a dispute about a paydown
12 regarding that amount, so we had to use the market
13 value. The market value at the time, we would use
14 the current amount in the leasing agreement. And
15 the judge decided, between the current
16 circumstances and what was considered regarding
17 Miss Earle's circumstances, to reduce the market
18 value amount that we used to the subsidized
19 amount.

20 So that was where I believe the
21 magistrate was correct in his ruling.

22 THE COURT: I think -- I mean, looking at
23 the -- all I have is the magistrate's return. He
24 says there was no evidentiary hearing -- no
25 detailed evidentiary hearing and that bond was set

1 at \$1,000, which was 50 percent of the disputed
2 rent arrearage. That does not, to me, sound like
3 anything about fair market value. He just took
4 what was owed and said it was 50 percent. That's
5 what his return says.

6 MS. CASON: Your Honor, if I may -- this
7 is Vanessa Cason.

8 That is correct. There was nothing about
9 the fair market value. And I might add that my
10 client's subsidy was never terminated. And if it
11 was -- and that's pursuant to even the
12 documentation presented by the respondent. And
13 even if it was terminated, it was not terminated
14 correctly. It was not terminated pursuant to not
15 even the lease or HUD guidelines.

16 So my -- the only argument that was
17 presented at court was the fact that my client was
18 entitled to a hearing to dispute the amount of
19 rent that was owed. And the only thing we were
20 given was -- well, the respondent was just given
21 an opportunity to present her affidavit, and that
22 was it.

23 THE COURT: Well, let me ask you this,
24 too. There's actually three motions here. One
25 was a motion for temporary/injunction, which I

1 guess that was filed in the event that we weren't
2 able to hear the appeal. But I think that
3 however -- whatever my decision on the appeal is
4 would make that one moot.

5 The modification of undertaking, let me
6 make sure that I -- now, is that for the
7 undertaking the bond for the appeal, or is that
8 the modification for the undertaking of the rent
9 that was established on January 31st?

10 MS. CASON: Your Honor, this is Vanessa
11 Cason. This was actually for both, but
12 specifically for the undertaking for the \$1,000
13 bond that was issued.

14 THE COURT: Okay.

15 All right. Mr. Kershaw, anything else
16 from you?

17 MR. KERSHAW: Nothing further, Your
18 Honor.

19 THE COURT: All right. I mean, I feel
20 like in this matter, I mean, it's a little bit
21 unclear exactly how the magistrate came up with
22 that. Based on his return, it's not exactly to
23 the statute. And I don't pretend to know all the
24 ins and outs of public housing and how that rental
25 value is to be determined.

1 But I think it would be appropriate to
2 send this back to the magistrate to make a clear
3 determination pursuant to 27-40-790 and under the
4 housing guidelines which are appropriate.

5 So I think that's going to be my ruling.
6 And that would take care of the temporary
7 injunction motion and the modification of
8 undertaking because that will be addressed by the
9 magistrate.

10 Anything else on the Earle case?

11 MS. CASON: That is Vanessa Cason. No,
12 Your Honor. Thank you.

13 MR. KERSHAW: Nothing further.

14 (The hearing was concluded.)

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CERTIFICATE OF REPORTER

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I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas, Greenville County, South Carolina.

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

July 7, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

CERTIFICATE OF APPELLANTS

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED

Respectfully submitted,

JAN 22 2021

M. Kevin McCarrell (S.C. Bar #76255)
Emily I. Bridges (S.C. Bar #102199)
Fox Rothschild LLP
2 West Washington Street, Suite 1100 (29601)
Post Office Box 87
Greenville, SC 29602
(864) 751-7600 / (864) 751-7800 (fax)
kmccarrell@foxrothschild.com
ebridges@foxrothschild.com

SC Court of Appeals

January 15, 2021

Attorneys for Appellant