

IN THE STATE OF SOUTH CAROLINA

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SC Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
The Honorable Edgar W. Dickson

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

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Rufus Rivers and Merle Rivers  
pro se

Appellants

VS.

James Smith, Jr.

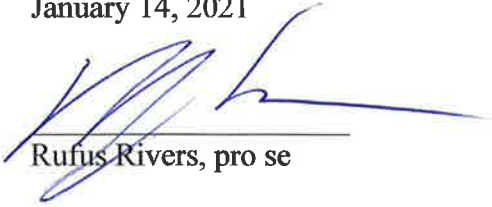
Respondent

**MOTION FOR TERMINATION OF EVICTION ACTION FOR NON-COMPLIANCE**

**Appellants** hereby motion this court pursuant to The Supreme Court Of South Carolina's order dated May 6, 2020, to terminate Respondent's eviction action for failure to submit to the court a signed, original Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act. Since the issuance of this order, Respondent, the alleged owner/landlord of the property at 1429 Legrand Smoak Street, Cordova, SC, 29039, through his counsel has continued to file petitions/motions in the lower courts. See attached filings(1.July 6, 2020 Respondent's Motion to Determine Rent During The Pendency Of Appeal To The Court Of Appeals (2.July 6, 2020 Respondent's Memorandum In Opposition To Appellants' Motion To Dismiss Respondent's Petition For Determination of Rent During The Pendency Of Appeal To The Court Of Appeals (3. Correspondences to First Judicial Circuit Court Judge Maite Murphy) as recently as December 29, 2020. All of these filings and communications are in direct violation of the Supreme Court's order. As a result, the matter should be terminated ASAP. Also, as a result, the lower court has set a hearing after knowing the Court

Of Appeals has exclusive jurisdiction over this matter.

January 14, 2021



Rufus Rivers, pro se

Kathleen McDaniel, Esq.  
P.O. Box 1929  
Columbia, South Carolina 29202



Merle Rivers, pro se

IN THE STATE OF SOUTH CAROLINA

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.	)	<b>MOTION TO DETERMINE RENT</b>
	)	<b>DURING THE PENDANCY OF</b>
James Smith, Jr.,	)	<b>APPEAL TO THE COURT OF APPEALS</b>
	)	
Respondent.	)	
	)	
	)	

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On May 1, 2020, Respondent James Smith, Jr. (hereinafter "Respondent Smith") filed a Petition in the above-referenced matter seeking the following relief:

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

In order to properly bring this matter before the Court, Respondent now submits the instant Motion to Determine Rent During the Pendency of Appeal to the Court of Appeals.

As set forth in Respondent's Petition, Appellants have not made a rental payment into the Magistrate's Court since February 2020; nor have they made arrangements to make those payments directly to Respondent. Respondent requests that this Court evaluate the amount of rent due from Appellants during the pendency of the appeal and direct Appellants to pay the monthly rental payments either to the Clerk of the Magistrate's Court or the Clerk of this Court as deemed appropriate by this Court.

In the interest of judicial economy and recognition of the interconnected nature of this Motion and Appellant's Motion to Dismiss Respondent's Petition, Respondent requests that the two matters be heard at the same time.

Respectfully submitted,

s/Kathleen McDaniel  
Kathleen McDaniel (SC Bar No. 74826)  
BURNETTE SHUTT & MCDANIEL, PA  
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**ATTORNEY FOR JAMES SMITH, JR.**

Columbia, South Carolina

July 6, 2020

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,	)	
	)	<b>RESPONDENT'S MEMORANDUM IN</b>
	)	<b>OPPOSITION TO APPELLANTS' MOTION</b>
v.	)	<b>TO DISMISS RESPONDENT'S PETITION</b>
	)	<b>FOR DETERMINATION OF RENT DUE</b>
	)	<b>RESPONDENT DURING THE PENDENCY</b>
James Smith, Jr.,	)	<b>OF APPEAL TO THE COURT OF</b>
	)	<b>APPEALS</b>
Respondent.	)	
	)	

COMES NOW Respondent James Smith, Jr. (hereinafter "Respondent"), and submits his Memorandum in Opposition to Appellants Rufus Rivers and Merle Rivers' ("Appellants") Motion to Dismiss Respondent's Petition for Determination of Rent Due Respondent During the Pendency of Appeal to the Court of Appeals. Respondent requests that this Honorable Court deny Appellants' Motion to Dismiss Respondent's Petition for Determination of Rent Due Respondent During the Pendency of Appeal to the Court of Appeals<sup>1</sup> for the reasons set forth below.

**RELEVANT PROCEDURAL HISTORY**

Respondent owns the property located at 1429 Legrand Smoak Street Cordova, South Carolina (the "Property"). Appellants reside on the Property. On September 18,

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<sup>11</sup> Respondent understands that Appellants' instant Motion may be tentatively scheduled to come to a hearing on July 20, 2020. Respondent does not believe that a hearing is necessary on this issue in light of the facts as set forth in this Memorandum and the Court of Appeals' May 27, 2020 ruling on the appeal to that court. However, if this Court finds this hearing necessary to aid in its decision-making, and to avoid wasting this Court's time and resources, Respondent would request that his Motion to Determine Rent During Pendency of Appeal, filed July 6, 2020, be heard at the same hearing.

2018, the Orangeburg Central Magistrate Court (the “Magistrate”) ruled that Appellants are unlawfully occupying the Property. (Magistrate’s Return of Civil Appeal, attached as Exhibit A.) On October 16, 2018, the Magistrate authorized a Writ of Ejectment. (*Id.*) On October 18, 2018, Appellants appealed the Magistrate’s ruling to this Court. (Notice of Intent to Appeal, attached as Exhibit B.) Appellants were ordered by the Magistrate to pay \$700.00 per month into the Magistrate’s registry to secure a stay of execution of the Writ of Ejectment pending Appellants’ appeal to this Court. (Ex. A.) On April 18, 2019, the Magistrate’s Order on the amount of rental payments to be paid during the pendency of Appellants’ appeal to this Court was affirmed by this Court. (Order, attached as Exhibit C.) On January 6, 2020, this Court affirmed the Magistrate’s ruling that Appellants are unlawfully occupying the Property. (Order, attached as Exhibit D.)

On March 9, 2020, the Magistrate issued a Writ of Ejectment. (Writ of Ejectment, attached as Exhibit E.) Upon information and belief, on March 11, 2020, the Sheriff of Orangeburg County attempted to eject Appellants pursuant to the Writ of Ejectment but allowed them to remain in the home until “another date”. (Affidavit of Rufus and Merle Rivers, attached to Appellants’ Motion to Dismiss Respondent’s Petition.) On March 17, 2020, Chief Justice Beatty entered an Order suspending evictions in South Carolina until not earlier than May 1, 2020 due to the current Covid-19 pandemic. (Order, attached to Appellants’ Motion to Dismiss Respondent’s Petition.) On March 18, 2020, Appellants requested “that our appeal bond payments be extended” pursuant to Chief Justice Beatty’s Order. (Email, attached to Appellants’ Motion to Dismiss Respondent’s Petition.) On the same day, the clerk for the Magistrate responded, denying Appellants’ request for

an extension and stating that "Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by the 2<sup>nd</sup> of each month." (*Id.*)

On March 12, 2020, Appellants appealed the Magistrate's ruling to the South Carolina Court of Appeals. (Notice of Appeal, attached as Exhibit G.) On April 2, 2020, Chief Justice Beatty issued a statement, clarifying his earlier Order on evictions and reminding the public that "My order did not relieve people of their personal responsibilities or financial obligations." (Statement, attached as Exhibit H.)

On April 16, 2020, Appellants filed an Emergency Motion for Stay or Injunction Pending Appeal in the South Carolina Court of Appeals, attached as Exhibit I.

On May 1, 2020, Respondent filed its Petition for Determination of Rent Due Respondent During the Pendency of Appeal the Court of Appeals in this Court (the "Petition").

On May 18, 2020, the Magistrate issued a letter to Appellants stating that since Appellants had not made their March or April payments by the specified due dates, "past due payments and future payment arrangements may be coordinated directly with [Respondent's] attorney if accepted." (Letter, attached to Appellants' Motion to Dismiss Respondent's Petition.)

On May 22, 2020, Appellants filed a Motion to Dismiss Respondent's Petition for Determination of Rent Due Respondent During the Pendency of Appeal to the Court of Appeals (the "Petition"). On May 27, 2020, the South Carolina Court of Appeals denied Appellants' Emergency Motion, determining that "the motion is more appropriate for the circuit court's consideration at this time." (Order, attached as Exhibit J.)

## ARGUMENT

For the reasons set forth below, Respondent respectfully requests this Court deny Appellants' Motion to Dismiss Respondent's Petition and grant Respondent's Petition.

**A. The previous Order on rental payments does not secure supersedeas for Appellants' appeal to the Court of Appeals.**

Appellants were ordered to pay \$700.00 into the Orangeburg Central Magistrate Court registry pending Appellants' appeal to this Court. (Ex. C.) Appellants' appeal to this Court concluded on January 6, 2020, when this Court entered its Order dismissing Appellants' appeal and ordered the monies in the Orangeburg Central Magistrate Court's registry released to Respondent. (Ex. D.) Therefore, the previous order securing a stay of execution of the eviction is no longer in operation. Should Appellants wish to obtain a stay of execution of the writ of ejection pending their appeal to the Court of Appeals, an order granting such stay must be entered.

Even if the previous "bond to stay" was intended to secure supersedeas for an appeal at any level, such a bond can be modified. The Orangeburg Central Magistrate Court ordered Appellants to pay rents into its registry in lieu of requiring Appellants to sign an undertaking promising to pay rents directly to Respondent. (Ex. A.) An undertaking can be modified as set forth by statute:

If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the circuit court. Upon the motion and upon notice to all interested parties, the court shall hold a hearing as soon as is feasible after the filing of the motion and determine what modifications, if any, are appropriate."

S.C. Code Ann. § 27-40-800(d).

**B. The Petition is necessary to establish the amount of rent to be paid to secure supersedeas pending appeal to the Court of Appeals.**

On January 3, 2020, Appellants' appeal to this Court concluded and the previously ordered stay of ejectment was lifted. (Ex. D.) Appellants now appeal their eviction to the Court of Appeals. (Ex. G.) Appellants, who are *pro se*, filed an Emergency Motion for Stay or Injunction Pending Appeal in the South Carolina Court of Appeals on April 16, 2020. (Ex. I.) Respondent interprets this Emergency Motion to indicate that Appellants desire a stay of execution of the Writ of Ejectment so that they may stay on the Property during the pendency of their Appeal to the Court of Appeals. When a tenant appeals an eviction to the Court of Appeals:

[I]t is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

S.C. Code Ann. § 27-40-800(f)(1).

Since Appellants are *pro se* and appear to be unaware of the above procedure for securing supersedeas, Respondent requested an order from this Court on the amount of rent Appellants should pay pending appeal to the Court of Appeals. In addition, as set forth in the Petition, it has been some time since the market rental rate of the Property was established by order of the Orangeburg County Central Magistrate. Therefore, to the extent Appellants wish to obtain a stay of execution of the eviction pending their appeal to the Court of Appeals, the Petition is necessary to establish the amount of rent to be paid to Respondent.

**C. This Court has jurisdiction to determine the rents to be paid to secure a stay of execution of the Writ of Ejectment pending Appellants' appeal to the Court of Appeals.**

Appellants argue that the Petition should be dismissed because they argue this Court does not have jurisdiction over the rents to be paid because of the pending appeal in the Court of Appeals. As set forth by statute, the amount of rent to be paid during the pendency of appeal is to be determined by the circuit court. S.C. Code Ann. § 27-40-800(f)(1). Thus, Appellants' argument that this Court lacks jurisdiction over Respondent's Petition is incorrect.

Appellants also argue that Respondent's Petition should be dismissed because "There is a pending motion requesting stay or an injunction in the Court of Appeals." Even if that was enough to result in the dismissal of Respondent's Petition, the Court of Appeals has now ruled on Appellants' Emergency Motion, finding that "the motion is more appropriate for the circuit court's consideration at this time" per Rule 241(d)(1). (Ex. J.) Therefore, this issue is ripe for consideration by this Court.

**D. Appellants' recent difficulties in making rental payments are not relevant to this issue.**

Appellants assert that they "have made or attempted to make all payments on time, except during the coronavirus, and the Supreme Court's ordered stay on evictions." However, Appellants do not explain how their trouble making these payments to the Magistrate Court has any bearing on the validity of Respondent's Petition. Chief Justice Beatty's Order temporarily halting evictions in South Carolina did not relieve Appellants of their duty to pay rents to Respondent or into the Magistrate Court registry. Additionally, although Appellants acknowledge that the Magistrate Court has now ordered Appellants to make past-due payments and future payment arrangements directly with Respondent's

counsel, Appellants have not done so. Indeed, Respondent's Petition seeking an order from this Court ordering rents to be paid by Appellants to Respondent and establishing the amount of such rent is even more necessary considering Appellants' confusion regarding how and when to make these payments to secure supersedeas.

**E. Appellants must sign an undertaking to secure supersedeas during the pendency of their appeal as required by statute.**

As set forth in the Petition and as described by Appellants in their Motion to Dismiss, Appellants have not made the required rental payments to stay ejectment pending appeal into the Magistrate's Court's registry since February 2020. Indeed, the Orangeburg County Central Region Magistrate has now ordered Appellants to make "past-due payments and future payment arrangements" by coordinating directly with Respondent's counsel. (Letter, attached to Appellants' Motion to Dismiss Respondent's Petition.)

As described above, the statutorily prescribed method for securing a stay of execution of a writ of ejectment during the pendency of appeal to the Court of Appeals is for the tenant to "sign an undertaking that he will pay to the landlord the amount of rent . . . as it becomes due periodically after judgment was entered." S.C. Code Ann. § 27-40-800(f)(1). Therefore, if Appellants wish to stay execution of the writ of ejectment, they must sign an undertaking that they will pay monthly rents to Respondent. If Appellants wish to make payments directly to Respondent during the pendency of the appeal, Respondent stands ready to make arrangements to receive those monthly payments. Of course, should Appellants not make their monthly payments, Respondent could immediately seek their eviction from Property as Appellants should not be permitted to reside rent-free on the Property during the pendency of the appeal.

**CONCLUSION**

For the reasons set forth above and in Respondent's Petition to for Determination of Rent Due Respondent during the Pendency of Appeal to the Court of Appeals, Respondent respectfully requests that this Court deny Appellants' Motion to Dismiss Respondent's Petition to Determine Rent Due Respondent During the Pendency of Appeal to the Court of Appeals, and grant Respondent's Petition for the Determination of Rent Due Respondent During the Pendency of Appeal to the Court of Appeals.

Respectfully submitted,

s/Kathleen McDaniel  
Kathleen McDaniel (SC Bar No. 74826)  
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**ATTORNEY FOR JAMES SMITH, JR.**

Columbia, South Carolina

July 6, 2020



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## Rufus Rivers and Merle Rivers v. James Smith Jr 2018-CP-38-01399 Inbox x

**Sarah J. M. Cox** <SCox@burnetteshutt.law> Tue, Dec 22, 2020, 3:56 PM  
to mmurphyjc@sccourts.org, mmurphyj@sccourts.org, Kathleen, me

Dear Sir:

I represent James Smith in this matter along with my law partner Kathleen McDaniel. This case, originally an eviction action, is currently on appeal to the Court of Appeals. We had filed a Motion to Determine Rent During the Pendency of Appeal on July 6, 2020 that has not yet been heard. I spoke to the Orangeburg County Clerk of Court on October 20, 2020, who said that Judge Murphy had said this petition could not be heard until the appeal concludes. I reached out to your chambers on the same day but have not heard anything back.

By way of history, after filing their Appeal to the Court of Appeals, the Rivers' requested a stay of the below eviction pending appeal. On May 27, 2020, the Court of Appeals issued its Order denying this stay "because the motion is more appropriate for the circuit court's consideration at



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**Murphy, Maite Law Clerk (Brian Lapchak)**

Tue, Dec 29, 2020, 9:25 AM

to Sarah, Maite, Kathleen, me

Mrs. Cox:

My apologies for the tardy response, as I was out of the office for the vacation when you sent me this email. Before I speak to Judge Murphy about your matter, I just want to make sure I'm understanding what you're requesting. As of now, you're requesting that your Motion to Determine Rent During Pendency of Appeal, and opposing counsel's Motion for Stay of Eviction Pending Appeal, be placed on the docket—even though Rivers has not requested a stay of the eviction before the Circuit Court?

Again, my apologies for the delayed response.



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**Rufus Rivers** <rrivers788@gmail.co... Tue, Jan 19, 4:44 PM (8 days ago)  
to mmurphylc, Court, Kathleen, Sierra

Mr. Lapchak, We are in receipt of your emails and notice of hearing to attorney McDaniel . The Rivers have not filed a motion to stay in the Circuit Court, nor do we intend to. We have been denied a stay in the Court of Appeals. Magistrate Stephanie McKune-Grant had already determined rents on November 2, 2018 and ordered us to pay \$700 per month which we have been paying. We currently have a motion pending in the Court of Appeals asking the court to invalidate that order. Not only does the Court of Appeals have exclusive jurisdiction of this matter at this time, any proceedings (filings/hearings) after the Supreme Court's order of May 6, 2020, are in direct violation of that order. Respondents filed a petition on May 1, 2020 asking this court to Determine Rent during the Pendancy of Appeal To The Court Of Appeals. On July 6, 2020 respondent's counsel filed a motion to Determine Rent During the Pendancy of Appeal to the Court of Appeals. The order is unambiguous as it relates to the pursuing of an eviction or foreclosure in a trial court, the pursuing party must submit to the court a signed, original Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act...if filed before this order, the Certification of Compliance must be filed with the court prior to proceeding with the eviction.... If a party required to file a Certificate of Compliance neglects to do so the eviction or foreclosure shall terminate without further action taken (See attached order). On July 22, 2020 that order was

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**SC Court of Appeals**

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APPEAL FROM ORANGEBURG COUNTY  
The Honorable Edgar W. Dickson

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

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**PROOF OF SERVICE**

We certify that we have served Appellants' Motion For Termination Of Eviction Action for Non-Compliance on James Smith, Jr. By filing a copy with the Court Of Appeals and depositing copy of the same in the U.S. Mail in an envelope with proper postage affixed to Respondent's attorney of record, Kathleen McDaniel, Esq. at P.O. Box 1929, Columbia, South Carolina, 29202.

January 14, 2021



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Rufus Rivers, pro se

Kathleen McDaniel, Esq.  
P.O. Box 1929  
Columbia, South Carolina 29202



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Merle Rivers, pro se

1429 Legend Snook Street  
Cordova, SC 29039



Columbia P&DG 299  
THU 28 JAN 2021 PM

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SC Court of Appeals

Court of Appeals  
1220 Senate Street  
Columbia, SC 29201