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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Sr., Circuit Court Judge

Bethany Aloha Rich,
Appellant,

v.

New Heights Property Management,
Respondent.

APPELLATE CASE NO. 2020-001684

RESPONDENT’S MOTION TO DISMISS APPEAL FOR FAILURE TO PAY
BOND

Scott Riddell, Esquire

SC Bar No. 102809

P.O. Box 1547

Summerville, SC 29484

(843) 735-9702

Attorney for Respondent

INTRODUCTION AND STATEMENT OF FACTS

In this eviction matter, the parties had a residential lease that ran from December of 2018 to December of 2019, at a monthly rent of \$1,500. R. at 15.¹ The parties then executed a lease renewal through the end of January, raising rent to \$1,600. R. at 14. This was the last signed agreement between the parties regarding rent.

On March 11, 2020, the Goose Creek magistrate heard the eviction, found for Respondent, and signed the Writ of Ejectment which Respondent had filed that same day. R. at 31. This Writ was served on Appellant on March 16, 2020. Id. On March 17, 2020, Appellant signed the “Bond To Stay Execution on Appeal,” agreeing to pay \$1,600, via certified funds, by the 1st of each month, or else face dismissal of her appeal if not paid by the 5th of each month. R. at 30. On October 20, 2020 the Court of Common Pleas heard the appeal, and orally ordered that Appellant could remain in the house if she paid the same monthly payments of \$1,600 to Respondent as before. Ex A. at 28:22-29:7 (Tr. of Hr’g of First Appeal). On November 16, 2020, that court’s written order affirming the eviction similarly required \$1,600 for bond for December of 2020 in order to give Appellant time to appeal to this Court. Ex. B at 4. On December 30, 2020 Appellant filed a motion

¹ The record from the Magistrate is submitted in its entirety to avoid confusion or dispute that might stem from 1) the Court not having had reason to consider the full record in any motion yet; 2) the record as created by the Magistrate (in .pdf and circulated to the parties and Circuit Court) lacking page numbers. Respondent has inserted page numbers into that original .pdf file.

with the Circuit Court to set the amount of bond for Appellant's appeal to this Court; that motion has not been heard. Ex. C. Appellant's March payment of \$1,600 was due March 1st and considered late if not paid by March 5th. By the end of March 5th, Appellant had paid only \$1,000, leaving \$600 outstanding. Ex. D (affidavit of Respondent); Ex. E (Respondent's accounting documentation showing receipt of \$1,000 on March 5).

LAW

“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR. Ejectment orders are an exception to the general rule of Rule 241, SCACR governing automatic stays and applications for lifts thereof. Rule 241(a), (b)(10), SCACR.

The South Carolina Residential Landlord Tenant Act, in Section 27-40-800, further governs the dismissal of evictions' appeals. It has separate provisions on a first appeal to the Circuit Court, and on subsequent appeals. Regarding a first appeal, “[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 the magistrate . . . , as it becomes due periodically after the

judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking.” S.C. Code Ann. Sec. 27-40-800(b). Regarding subsequent appeals, “[u]pon appeal to the . . . court of appeals, it is sufficient to stay execution of a judgment for ejection 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.” Id. at (f)(1). “The tenant’s failure to comply with the terms of the undertaking *entitles* the landlord to execution of the judgment for possession in accordance with the provisions of subsection (e) of this section.” Id. at (f)(2) (emphasis added). “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 ejection to be executed pursuant to Section 27-37-40 of the 1976 Code.”² Id. at (e) (emphasis added).

There are no reported cases involving application of Section 27-40-800.

ARGUMENT

² Section 27-37-40 states in full, “[i]f the tenant fails to appear and show cause within the aforesaid ten days then the magistrate shall issue a warrant of ejection and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.” S.C. Code Ann. Sec. 27-37-40.

Here, Appellant's March 5th partial payment of \$1,000 for March 2021 bond violates the terms of the undertaking by not being a full payment made by the 5th of the month. This failure entitles Respondent to execution of the Magistrate's judgment for possession. It invokes the Court's power to dismiss the appeal and order the Magistrate to execute the warrant of ejectment. The dismissal is mandatory under the language of the Residential Landlord Tenant Act.

CONCLUSION

Appellant's stay of execution on appeal should be dissolved, her appeal dismissed, and this Court should order the trial Magistrate in Goose Creek to execute the March 11, 2020 warrant of ejectment pursuant to Section 27-37-40. Respondent's costs and fees should be awarded to Appellant (Respondent intends, should dismissal occur, to file a Rule 222(d) motion upon this Court's remittitur).

Respectfully submitted,

s/Scott Riddell

Scott Riddell, Esquire

SC Bar No. 102809

P.O. Box 1547

Summerville, SC 29484

(843) 735-9702

Attorney for Respondent

RESPONDENT'S EXHIBIT A

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) CASE NO. 2018-CP-08-00718

3 BETHANY RICH,)
4 Plaintiff,) Transcript of Record
5 vs.)
6 NEW HEIGHTS PROPERTY) Date: October 20, 2020
7 MANAGEMENT,)
8 Defendant.)

9 * * * * *

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11 B E F O R E:

12 The Honorable Roger Young

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22 Denise J. Lauder, RPR

23 Ninth Judicial Circuit

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:
ROBERT ATKINSON DARBY, III, ESQUIRE
3775 Spruill Ave, Suite B
North Charleston, SC 29405

REPRESENTING THE DEFENDANT:
SCOTT PARKER RIDDELL, ESQUIRE
Provence Messervy, LLC
504 W 5th North St
Summerville, SC, 29483-6105

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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 via Webex videoconference platform, 10/20/2020,
3 Berkeley County Common Pleas, Judge Young, 4:02
4 p.m.)

5 THE COURT: This is Bethany Rich v. New
6 Heights Property Management, 2020-CP-08-00718.
7 It's an appeal for the magistrate's court. So
8 Ms. Rich is the appellant.

9 Mr. Darby, that's your client. You get
10 to go first.

11 MR. DARBY: Thank you, Your Honor, and
12 may it please the Court.

13 The magistrate made two errors in this
14 case, as we detailed in our brief and as were laid
15 out in the notice of the appeal. Those two errors
16 are, first, by concluding that the respondent New
17 Heights Property Management had provided sufficient
18 notice prior to filing the eviction and, second, by
19 refusing to enforce the settlement agreement.

20 If this Court agrees that either of
21 those errors were made, then it should reverse the
22 magistrate, because it had to reach both of those
23 conclusions to grant the writ of ejectment.

24 I'm going to address each of those
25 issues in turn and provide a little bit of the

1 factual background that relate to each issue prior
2 to that.

3 So the first issue is whether or not
4 respondent provided the requisite notice prior to
5 filing the eviction. And so, again, the factual
6 background here starts in December of 2018. That's
7 when Ms. Rich signed her lease agreement. That
8 lease was for one year and with an end date of
9 December 2019.

10 Paragraph 14 of that lease agreement
11 states, either party may terminate this rental
12 agreement at the end of the initial term with
13 thirty days written notice. The clear implication
14 to that paragraph 14 is that if no notice was
15 provided, then the lease would not be terminated.
16 It would continue on month to month.

17 In, approximately, August of 2019, so
18 about nine months into the tenancy, the owners of
19 the property indicated that they wanted to sell the
20 property, and so they were not going to be renewing
21 the lease for an additional year, but Ms. Rich
22 discussed with their agent, Ms. Daniels, that she
23 was interested in purchasing the property and,
24 also, discussed living there while it was listed
25 for sale and while she was negotiating that

1 purchase on a month-to-month basis.

2 So in December of 2019, when the
3 original lease term ended, or was set to end, she
4 went to New Heights Property Management and she
5 paid her rent just like she had done the previous
6 12 months. They accepted the rent, but then there
7 was some confusion about what the rental rate
8 should be. There was language in the lease about
9 paying, essentially, double the daily rate after
10 the initial lease term ended.

11 And so Ms. Rich was presented with an
12 addendum. And that addendum clearly stated it was
13 considered part of the lease. It clarified what
14 the rental rate would be going forward that, that
15 rental rate would be \$100 more. And she signed it
16 and, therefore, provided an end date of January 31,
17 2020.

18 But, again, her understanding was she
19 could live there while she was negotiating the
20 purchase of the property and while they were
21 potentially showing it to other people.

22 So then at the end of January 2020, she
23 was still in negotiation to purchase this property,
24 and so went to pay her February rent based on this
25 month-to-month lease that she understood she was

1 living subject to, and they refused to accept the
2 February rent. And that was a surprise to her.

3 And then they filed an eviction,
4 February 3rd, without the 30 days written notice
5 that was required by paragraph 14 of that lease.

6 When presented with those facts, which
7 are all supported by the record, the magistrate
8 concluded that the addendum itself was sufficient
9 30 days notice pursuant to the lease, hence the
10 law, and issued the writ of ejectment, but that is
11 inconsistent with the law for a couple of reasons.

12 A lease is a contract, and it's well
13 settled that contracts should be interpreted to
14 give effect to all of their provisions. There's a
15 debate about that tenant contract law. And, again,
16 paragraph 14 is clear and is a part of that
17 contract. And it says, to terminate the rental
18 agreement 30 days notice is required. To hold
19 otherwise would render 14 -- paragraph 14
20 completely meaningless.

21 And, again, the addendum provides an
22 end date. It provides an end date of January 31,
23 2020, just like the original lease provided an end
24 date. And it -- and the original lease also
25 required 30 days notice. So the fact that the

1 addendum has an end date is not itself sufficient
2 to provide notice termination of the lease.

3 And at best, you might say, okay, well,
4 it's unclear as to what happened at the end term if
5 30 days notice is not provided, and it's ambiguous.
6 And, again, it's a well-established principle of
7 contract interpretation that to the extent there's
8 any ambiguity, it is resolved against the
9 non-drafting party. In this case, the non-drafting
10 party is my client, Ms. Rich, the appellant.

11 She is not the one that drafted these
12 agreements. She was presented them by New Heights,
13 by the respondent. They are a sophisticated
14 business providing these contracts of adhesion.
15 She didn't have the ability to negotiate them so,
16 you know, she took them and understood them for
17 what they said, which is that she would be given
18 30 days notice.

19 And so again, at best, it's ambiguous
20 and that ambiguity should be resolved in favor of
21 the appellant. So that's another reason that the
22 magistrate's decision is inconsistent with the law.

23 I do want to address respondent's
24 arguments from his brief really quickly. The
25 respondent kind of focused on a distinction between

1 fixed-term leases and month-to-month leases. The
2 respondent admitted that if this was a
3 month-to-month lease, that 30 days notice would be
4 required by the law, but argues that this is a
5 fixed-term lease.

6 But, again, paragraph 14 of the lease
7 clearly says that 30 days written notice is
8 required prior to terminating the lease. And to
9 argue this is a fixed-term lease would completely
10 make paragraph 14 meaningless. Because if it was a
11 fixed-term lease, as Mr. Riddell argued in his
12 brief, and no notice would be required, then why is
13 that -- why is paragraph 14 there?

14 So, again, it's contrary to law to
15 argue this is a fixed term as opposed to a
16 month-to-month lease. She understood that she
17 could live there month to month while she was
18 negotiating a purchase and while it was for sale as
19 she had agreed with the owners of the property.

20 And so, again, 30 days notice should be
21 required, and that's the reason that respondent's
22 argument about fixed term versus month-to-month
23 leases should fail.

24 Now, the other reason that the
25 magistrate's decision to issue the ejectment was

1 erroneous was that it refused to enforce the
2 settlement agreement of the parties. And, again,
3 the facts here are really clear and
4 straight-forward.

5 The eviction was filed February 3th,
6 again, as a surprise to Ms. Rich who understood
7 that she would be given 30 days notice before
8 termination. And she was negotiating the purchase
9 of the property and was trying to figure out how
10 they could continue to do that and not have to
11 worry about the eviction hanging over her head.

12 So she went to Ms. Daniels, the
13 representative of the owners, and said, you know,
14 what -- what is the deal? What can we do about the
15 eviction? And Ms. Daniels wrote, quote, seller
16 said as soon as we have paperwork she will stop it,
17 meaning the eviction.

18 Ms. Rich asked, what paperwork are they
19 looking for? Last we spoke it was a pre-approval
20 letter.

21 Ms. Daniels responded, yes, that's what
22 I need. And Ms. Rich responded, okay. And then
23 almost immediately, Ms. Rich provided that
24 pre-approval letter, but the eviction wasn't
25 dismissed.

1 Again, really basic contract principles
2 here. As an offer of settlement she performed
3 under the contract, which is an acceptance, and
4 that contract should be enforced. And it should be
5 enforced both in the interest of justice and
6 because that's the law.

7 Now, I want to address a few of
8 respondent's arguments on this issue. Really, the
9 only one raised in the lower court was that the
10 pre-approval letter either wasn't sufficient or
11 that the paperwork required -- required more than
12 what was provided. But in terms of the paperwork
13 requiring more than the pre-approval letter or the
14 paperwork that was referred to requiring a ratified
15 contract, that's clearly not what the text messages
16 say.

17 Again, Ms. Rich asked specifically,
18 what paperwork are they looking for? Last we
19 spoke, it was a pre-approval letter. And
20 Ms. Daniels responded, yes, that's what I need.
21 And Ms. Rich said, okay. And provided the
22 pre-approval letter.

23 Now, with regard to the sufficiency of
24 the pre-approval letter, again, the pre-approval
25 letter says right on the face of this that it's for

1 that property, and they had already agreed to a
2 price. So there was no need to have a pre-approval
3 letter with a certain amount which, again,
4 respondent's argument of this pre-approval letter
5 wasn't sufficient because they didn't have an
6 amount.

7 So, again, that's an argument that
8 should fail because the pre-approval letter was
9 sufficient.

10 Now, respondent also made a couple of
11 technical arguments in their appeal brief that were
12 not part of the lower court because they had more
13 to do with the appeal. The first is that the
14 pre-approval letter was not admitted into evidence
15 in the lower court.

16 And so a couple of points here. One,
17 the statute regarding appeals from magistrate court
18 specifically says that the circuit court should
19 review the case without regard to technical errors
20 and defects which do not affect the merits. Again,
21 this would be a technical defect that would not
22 affect the merits.

23 And Rule 13 says that the trial in
24 magistrate's court should be conducted in an
25 informal manner and, quote, rules of evidence shall

1 be relaxed in the interest of justice.

2 And even if it's not in evidence, it
3 doesn't matter because both Ms. Rich and
4 Ms. Daniels testified about the pre-approval
5 letter. Ms. Rich testified to it during
6 cross-examination from Ms. Wolf, and Ms. Daniels
7 testified in her testimony that she received the
8 pre-approval letter.

9 And then the final argument that I want
10 to address that respondent made in their brief is
11 that Ms. Daniels did not have the authority to bind
12 the owners and respondent to this settlement
13 agreement. And, again, this wasn't an argument
14 made in the lower court so it should be ignored in
15 any event, but the brief doesn't even say that
16 Ms. Daniels did not have authority.

17 I think it's pretty clear that she had
18 actual authority, but even if she didn't have
19 actual authority, even if they had made that
20 argument, even if they had said that in their
21 brief, which they haven't, she certainly had
22 apparent authority.

23 And I pulled a case, and I didn't cite
24 it in my brief because I didn't anticipate this
25 argument. And I will just read it complete for the

1 Court. This is Town of Kingstree v Chapman, and
2 the cite is -- this is a South Carolina Court of
3 Appeals case. The cite is 405 S.C. 282. This is
4 from 713, and I'm reading from page 315.

5 And it basically says, apparent
6 authority of an agent results from conduct or other
7 manifestations of the principal whereby third
8 persons are justified in believing the agent is
9 acting within its authority. Such authority is
10 implied where physically -- where the principal
11 passively permits the agent to appear to a third
12 person to have authority to act on his behalf.

13 I think it's very clear that
14 Ms. Daniels was acting on the apparent authority
15 here, if not actual authority, to bind the owners
16 with regard to the eviction and the purchase of
17 this property.

18 THE COURT: What is your client hoping
19 to get out of this?

20 MR. DARBY: And, Your Honor, that --

21 THE COURT: Does she want to rent it or
22 does she want to buy it?

23 MR. DARBY: Well, she wanted to buy it
24 before everything fell through. And then she was
25 perfectly happy moving out. All she wanted was the

1 30 days notice that she was promised in the lease.
2 And they just didn't give it to her. And then she
3 was just trying to resolve this issue so that she
4 could move on and move out and move on with her
5 life, but --

6 THE COURT: Well, is she still living
7 there?

8 MR. DARBY: Pardon me?

9 THE COURT: Is she still living in
10 there?

11 MR. DARBY: She is. And part of the
12 reason -- part of the main reason is that every
13 landlord she's gone to that would keep her in her
14 school district so her kids didn't have to move
15 school has refused to rent to her because she has
16 this stain on her record because this writ of
17 ejectment has been issued against her.

18 So if Your Honor dismisses this case
19 and it shows up in a public record as a dismissed
20 eviction, and she's able to go rent, she's
21 perfectly happy to move, but they can just issue
22 their 30 days notice and she will move.

23 Like, she has no problem moving. She
24 can't do it right now because every landlord she
25 approaches says, you know, you have this writ of

1 ejection on your record and we can't rent to
2 people that have that.

3 THE COURT: Mr. Riddell, is your client
4 willing to -- are they owed any money at this
5 point? She is current on her rent, correct?

6 You're muted.

7 Is your client out any money? Are they
8 owed anything? Rent?

9 MR. RIDDELL: I haven't verified as of
10 today. I'm pretty sure she was current through
11 September -- the month of September, but I'm not --

12 THE COURT: Seems to me that if -- if
13 you both want the same thing, she wants out and you
14 want her out, you can help her get out by agreeing
15 to dismiss this appeal if she moves out. Why
16 wouldn't that be a good solution for everyone?

17 MR. RIDDELL: The parties have
18 attempted to negotiate, Your Honor, but
19 negotiations have fallen apart for various reasons
20 and, you know, that kind of discussion wouldn't be
21 admissible under the record anyways. But suffice
22 it to say that it hasn't been this simple. There
23 have been a few other things in play.

24 THE COURT: Help me. What am I missing
25 here? I mean, you have two people -- they want her

1 out and she wants to be out and all you've got to
2 do -- if she owes you any money, then she wouldn't
3 be in there if she owed you any money because part
4 of the bond on an eviction is she has to keep
5 paying the money. So it sounded like she was up to
6 date at the time.

7 I'm just missing why this can't easily
8 be resolved. She agrees to be out by a certain
9 date, and then in the meantime you agree to dismiss
10 this on the record so that it doesn't show up as a
11 black eye against her being able to rent somewhere
12 else.

13 It's a win-win for everybody that way.
14 It's so simple, I can't understand why it's not
15 already done.

16 MR. RIDDLE: Your Honor, suffice it to
17 say my client has decided otherwise.

18 THE COURT: What do they want?

19 MR. RIDDLE: To win this appeal.

20 THE COURT: And -- and she's -- that
21 will make her be out. I'm completely missing
22 something obviously. You can't go back to them and
23 say, the judge says why don't you just -- what's
24 the date that she can be out?

25 MR. DARBY: I don't want to speak for

1 my client. She's already paid rent for October.
2 She would prefer -- she wants 30 days notice, as
3 she was promised and as she needs. So I think
4 she's happy to pay November rent and be out by the
5 end of November.

6 You know, Bethany, if that's not
7 accurate, feel free to jump in and unmute yourself.

8 MS. RICH: That's something that we
9 definitely could work out.

10 THE COURT: Mr. Riddell, you can't go
11 back to the client and say, look, she agrees she'll
12 be out by the end of November, and you would
13 dismiss this appeal, and it would be over and she
14 would be out?

15 I mean, no matter what I rule, it can
16 be appealed. This gets her out, which is
17 apparently what they want, and -- and it ends it.
18 And she gets to move somewhere else without having
19 this on her record.

20 MR. RIDDLE: I certainly understand why
21 Your Honor would look for an easy resolution here.
22 The way negotiations have worked out, it hasn't
23 been that simple. So, no, I don't think that will
24 work. I'm happy to revisit with my client, but,
25 you know, we are prepared to win this appeal and

1 we're prepared to resolve this appeal and deal with
2 whatever happens after that.

3 I don't want to continue this hearing
4 right now or side step the decision on this appeal,
5 because that's just the way all of these
6 negotiations and attempts in trying to resolve it
7 have led to.

8 THE COURT: Okay. Well, what do you
9 want to say about the appeal?

10 Mr. Riddle, it's your -- ball's in your
11 court.

12 MR. RIDDLE: Okay. So I'm not going to
13 repeat the substance of my brief; I think I can
14 write better than I speak any day of the week. So
15 I will address some things that have come up in
16 appellant's brief and his oral argument.

17 In his brief, he attempted to bring in
18 new stuff into the record. The standard of review,
19 while broad, isn't that broad. You can't bring in
20 new exhibits for the first time, for example, where
21 the record has already been supplied certified by
22 the lower court.

23 Yes. The appellate court in this
24 posture can consider factual issues with hearing
25 from people on facts that don't go to the merits of

1 the action, but there's nothing in case law or the
2 statute that controls appeals of magistrate's
3 decisions that allows an appellate court to
4 consider things that appellant filed for the first
5 time into the record for this brief.

6 So that would include any other pages
7 on the original lease besides the one page that is
8 in the lower court record, and it would include the
9 pre-approval letter. So the Court should not
10 regard any of appellant's argument that relies on
11 taking either of those things as gospel.

12 Another point is, a failure to admit
13 evidence into the record in the lower court hearing
14 isn't some mere technical defect. Appellant
15 offered the magistrate court, you can hear it on
16 the audio hearing, to show and attempt to admit the
17 pre-approval letter. It didn't happen. That's not
18 a technical defect.

19 That's one of the basic rights; each
20 side has the opportunity to present their case.
21 Just as it wouldn't be a technical defect if a
22 party failed to bring up some argument in the lower
23 court. So this Court should refuse that
24 characterization of any holes in the record as
25 being a mere technical defects such that they

1 should allow it now and consider these things now.

2 Just the fact that the original lease
3 -- and, again, I'm arguing this assuming that the
4 Court is going to allow this full lease into
5 evidence, even though it hasn't been admitted into
6 the record yet. Assuming that the original lease
7 has this early termination or 30-day notice
8 requirement in it, if the Court is going to allow
9 new evidence, then I would want my client to
10 testify right now that they gave all kinds of
11 notice to Ms. Rich in the months leading up -- in
12 the fall of 2019, leading up to the renewal for the
13 month of January of her move-out date.

14 So if the Court wants to hear that now,
15 I would turn it over to my client to testify on
16 that, and then I would like to resume the rest of
17 my argument.

18 THE COURT: Well, this is not a de novo
19 hearing. So do you have anything else you want to
20 argue?

21 MR. RIDDLE: Yes, Your Honor. So
22 whatever the lease says in it, it didn't say
23 anything -- appellant's argument didn't say any of
24 this, what I'm about to say. It doesn't somehow
25 displace or negate statutory law in this state

1 which is, on a fixed-term lease the tenant has to
2 move out at the end of the lease term.

3 I mean, it's so common sense and
4 obvious. It's nothing that a mere provision in a
5 lease contract undoes somehow the lease having
6 tried to admit doesn't purport to do that, doesn't
7 address that statutory rule and so it's not like
8 the statutory rule no longer has any effect.

9 It's just really, really common sense
10 and reasonable to know that if you sign a contract
11 for a fixed term, the contract expires at the end
12 of that term. And statutory law states that no
13 notice is required for those kinds of leases.

14 Let's see, for the other issue of --

15 THE COURT: Well, how is it that I can
16 look at a lease without looking at the lease? You
17 want me to look at the lease to read the terms of
18 it, but you said, don't look at it because it's not
19 in evidence.

20 MR. RIDDLE: Your Honor, appellant had
21 the chance -- appellant filed a motion to get the
22 lower court to send up a certified record to the
23 higher court. This isn't my appeal. It isn't my
24 client's appeal.

25 The appellant had the chance to review

1 that record as to any deficiencies that may have
2 been in the record. So now I'm put in the awkward
3 position to try to deal with two scenarios; one
4 where the court considers anything that wasn't in
5 the record and then the other scenario where the
6 Court stays with the record.

7 So that's why I'm dealing with this
8 awkwardness in this way. Just covering all the
9 bases and arguing in the alternative. That's all
10 that is.

11 So, you know, on this issue of whether
12 the pre-approval letter counted as some sort of
13 satisfaction of a condition to dismiss the
14 eviction. In the first place, what appellant
15 argued doesn't overcome the fact that there was
16 never any signed agreement. What the appellant
17 cited in the record as testimony from Barbara
18 Daniels, the seller's agent for selling the home,
19 just shows there was never any meeting of the
20 minds.

21 Barbara Daniels testified that getting
22 all of the paperwork meant not just getting the
23 pre-approval letter, which was that next step in
24 the process, but of course getting a ratified
25 contract to buy.

1 As Ms. Daniels pointed out, she's been
2 in the business for 40 years. It's very
3 unreasonable to -- for anyone, Ms. Rich in this
4 scenario, to impute a meaning on paperwork to mean
5 just a pre-approval letter without anything more as
6 somehow giving her the right to stay in there
7 forever while negotiating to purchase the house.

8 Furthermore, when the pre-approval
9 letter doesn't have any amount, there wasn't enough
10 for the owner or Ms. Daniels to say, okay, it looks
11 like this is actually going to happen. So there
12 was never a meeting of the minds. There was never
13 a signed thing.

14 There was just a text, one cell phone
15 page of texts that somehow consummates an agreement
16 on something as complex with all of the moving
17 parts as negotiating a lease and what happens with
18 an eviction. It's just a strange reason to think
19 that that was a consummated agreement that could be
20 enforced against the owner.

21 And so appellant said that it was
22 Ms. Rich's understanding. It was Ms. Rich's
23 understanding that she could stay there forever.
24 She was on a month-to-month agreement. That's
25 fine, but the Court can consider, as the lower

1 court did, whatever Ms. Rich's understanding was,
2 but that doesn't necessary lead to the legal
3 conclusion that there was an agreement to dismiss
4 the eviction in the way Ms. Rich hoped for.

5 So for that reason, I would ask the
6 Court to deem that there was never any consummation
7 of that agreement, and so there wasn't any error by
8 the magistrate.

9 Thank you.

10 THE COURT: All right.

11 Do you want to respond to anything,
12 Mr. Darby?

13 MR. DARBY: Briefly. And I think I
14 kind of addressed some of this in my initial
15 statement. To be clear, I think Mr. Riddell -- is
16 it Riddell or Riddell? I'm sorry.

17 MR. RIDDELL: Riddell.

18 MR. DARBY: Riddell. Mr. Riddell,
19 again, is arguing that this is a fixed-term lease.
20 And, again, my point, which I hope I've made clear,
21 the lease specifically says that you have to give
22 30 days notice when the end date comes up.

23 And every lease that I've said that
24 requires 30 days notice prior to ending it has been
25 interpreted to be a month-to-month lease after the

1 end of that initial term, and so this is no
2 different. And so that's the reason the 30 days
3 notice should be required.

4 And I think I have already addressed
5 all the other arguments. Again, on the practical
6 point that I think Your Honor seemed to focus on
7 earlier, you know, if the Court ruled in
8 appellant's favor, she's not trying to stay there
9 forever.

10 Mr. Riddell mentioned that there was
11 testimony in the lower court that the realtor --
12 that she was maybe trying to stay there forever.
13 She merely is trying to enforce the agreement.
14 They said they were going to dismiss it if she gave
15 them a pre-approval letter. She gave them the
16 pre-approval letter and they didn't dismiss it.
17 Had they dismissed it, she would have been happy to
18 move. She is happy to move now.

19 If her appeal is upheld, there is
20 nothing stopping the respondent from giving her
21 30 days notice tomorrow to move out, and then none
22 of her current arguments would be able to be raised
23 in a subsequent hearing, because the notice would
24 be provided and there would be -- assuming they
25 didn't enter into another settlement agreement they

1 tried to back out of, there would be no settlement
2 agreement.

3 So I think the practical resolution
4 here is for Your Honor to uphold our appeal and let
5 them give her the 30 days notice she deserves and
6 move out, and we can all be done with this and
7 don't have to worry about further appeals and
8 anything along those lines.

9 MR. RIDDELL: Your Honor, I would just
10 like to respond to one thing he said.

11 THE COURT: Go ahead.

12 MR. RIDDELL: I think he characterized
13 the month of January that was the extension of the
14 lease as a month to month. A month-to-month lease
15 is what happens when a written agreement runs out
16 and then the tenant stays there. That's a
17 month-to-month lease under statutory law.

18 What happened in this case, the parties
19 signed a one month extension to the written lease.
20 It remained a written lease, a fixed-term lease.

21 So there wasn't any sudden importation
22 into the deal in January that the statutory rule
23 requiring 30 days notice applied. That should not
24 be how the Court views this. There always was a
25 written lease up until the time my client filed the

1 eviction.

2 Just because the provision that
3 appellant refers to said that either party may
4 terminate the lease by providing 30 days written
5 notice, again, that doesn't undue the fact that
6 it's a fixed-term lease and it doesn't try to
7 negate the power of statutory law on fixed-term
8 leases.

9 Thank you.

10 THE COURT: All right. Well, about
11 just 15 minutes before we started, the clerk
12 brought me up the file with the -- it says, two
13 CDs. I assume this is the audio of the
14 magistrate's hearing below which I'm going to need
15 to listen to, because I'm confused as to how
16 somebody can make a rule on a lease without having
17 the lease in evidence.

18 So I'm going to have to listen to that.
19 So I will take it under advisement and let you know
20 what I decide. Okay.

21 I encourage you to try to work it out.

22 MR. DARBY: Your Honor, if I could get
23 one clarification or maybe it would be helpful to
24 note how long you anticipate -- I just want to make
25 sure if Ms. Rich pays -- you know, if we --

1 THE COURT: She can continue to stay
2 there as long as she makes the monthly payments on
3 time.

4 MR. DARBY: If she pays November rent,
5 she'll be able to stay until at least the end of
6 November if she's paid that rent, right?

7 THE COURT: Yep.

8 MR. DARBY: Thank you, Your Honor.

9 THE COURT: Okay. All right. I will
10 let you know what I decide.

11 (These proceedings were concluded at
12 4:32 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 12th day of February, 2021, at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

RESPONDENT'S EXHIBIT B

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

FACTS

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

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

a dollar amount. Transcript at 11:53:33-11:57:43.¹ Appellant testified that she understood this paperwork-requirement to mean only providing a pre-approval letter. Transcript at 11:52:40-11:53:02.

ARGUMENTS ON APPEAL

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

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

CONCLUSIONS OF LAW

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

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

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

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

JUDGMENT

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

ELECTRONIC SIGNATURE PAGE TO FOLLOW

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



Berkeley Common Pleas

Case Caption: Bethany Aloha Rich VS New Heights Property Mgmt

Case Number: 2020CP0800718

Type: Order/Other

It is so ordered.

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

RESPONDENT'S EXHIBIT C

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS OF
)	
COUNTY OF BERKELEY)	THE NINTH JUDICIAL CIRCUIT
)	
)	Case No: 2020-CP-08-00718
BETHANY RICH,)	
)	
APPELLANT)	NOTICE OF MOTION AND MOTION
)	FOR ORDER REGARDING RENT FOR
)	UNDERTAKING PENDING APPEAL
VS.)	
)	
NEW HEIGHTS PROPERTY)	
MANAGEMENT,)	
)	
RESPONDENT)	

PLEASE TAKE NOTICE that Appellant Bethany Rich, by and through her undersigned counsel, will move before this Court as soon as counsel may be heard for an order pursuant to Section 27-40-800(f) of the South Carolina Residential Landlord and Tenant Act establishing the proper amount of periodic rent to be paid pending her appeal to the Court of Appeals of this Court’s final judgment in this matter.

\$1600 is a Fair Market Rental Rate

Appellant’s rental rate from December 2018 to December 2019 was \$1,500 per month. Appellant signed an addendum in December 2019 extending the lease term and increasing the rental rate to \$1,600 per month. The Goose Creek Magistrate found that \$1,600 was a fair market rent to be paid by Appellant during the pendency of the Appellant’s appeal of the Magistrate’s judgment. Market rental rates have not increased since the Magistrate’s finding because of the global pandemic and its impact on the overall economy and the ability of many renters to pay rent.

Prayer for Relief

Thus, the Appellant prays for an Order of the Court:

1. Setting a periodic rent of \$1,600 per month to be paid no later than the 5th of each month during the pendency Appellant's appeal of this Court's decision to the Court of Appeals pursuant Section 27-40-800(f) of the South Carolina Residential Landlord and Tenant Act.

Dated: December 30, 2020

Respectfully submitted by:

/s/ Robert Darby

Robert Darby
Charleston Legal Access
3775 Spruill Ave, Suite B
North Charleston, SC 29405
843-640-5980 ext. 709
rob@charlestonlegalaccess.org

Attorney for Appellant

RESPONDENT'S EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

COUNTY OF DORCHESTER

AFFIDAVIT

PERSONALLY appeared before me, Nickie Bennett, who first being duly sworn, deposes and says that Bethany Rich violated the terms of her bond to stay execution on appeal (as ordered by the Magistrate Court of Berkeley County, S. C. on March 17, 2020; then as ordered by the Circuit Court of Berkeley County, S.C. on October 20, 2020) in the following particulars, and based on the following facts:

Bethany Aloha Rich paid \$1,000 for March rent/bond on Friday, March 5, 2021. She did so in the form of CASHiers Check

There is \$600 outstanding as of March 8, 2021.

Sworn to and Subscribed before me

8 day of March, 2021

Verena Dawn Kelley
Notary Public for South Carolina

Nickie Bennett
Signature of Affiant

My Commission expires MY COMMISSION EXPIRES ON
JUNE 28, 2023

RESPONDENT'S EXHIBIT E

New Heights Property Management
237 Old Summerville Road Suite F
Summerville, SC 29486

843-883-6130 (phone and fax)

Payment Receipt

Received From:

Bethany Aloha Rich
169 Decatur Dr
Summerville, SC 29486-5333

Payment Information				
Date	Payment Type	Reference #	Amount	Comments
03/05/2021	Cashiers Check	6837607472	\$1,000.00	

Applied Charges				
Date	Account	Amount Owed	Amount Paid	Applied Date
03/01/2021	4000 - Rent	\$1,600.00	\$1,000.00	03/05/2021

Thank you for your payment.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM BERKELEY COUNTY
Roger M. Young, Sr., Circuit Court Judge

Bethany Aloha Rich,
Appellant,

v.

New Heights Property Management,
Respondent.

APPELLATE CASE NO. 2020-001684

CERTIFICATE OF SERVICE OF RESPONDENT’S MOTION TO DISMISS
APPEAL FOR FAILURE TO PAY BOND

I certify that I served this motion to dismiss Appellant’s appeal for failure to pay bond on Appellant’s counsel via email (attached) on March 8, 2021 to:

jwkuykendall@jwklegal.com

s/Scott Riddell, Esquire
SC Bar No. 102809
P.O. Box 1547
Summerville, SC 29484
(843) 735-9702
Attorney for Respondent

Rich v. New Heights -- service of motion to dismiss

1 message

Scott Riddell <scott.riddell.law@gmail.com>
To: Jeffrey Kuykendall <jwkuykendall@jwklegal.com>

Mon, Mar 8, 2021 at 2:43 PM








Hi Jeffrey,

Hope you're well. Attached please find for service on Ms. Rich Respondent's motion to dismiss which I'll file today.

Yours,

Scott Riddell, Esq.
Scott Riddell Law, LLC
P.O. Box 1547
Summerville, SC 29484
843-735-9702 (cell)
scott.riddell.law@gmail.com

7 attachments

-  **motion to dismiss not pay March bond copy.pdf**
68K
-  **Ex C 2020 12 30 Rich motion set bond 2nd appeal 1600.pdf**
127K
-  **Ex D affidavit SIGNED re Rich not pay March bond.docx copy.pdf**
146K
-  **Record WITH PAGE NUMBERS INSERTED magistrate to circuit court copy.pdf**
1017K
-  **Ex B order on 1st appeal.pdf**
208K
-  **Ex E March pymt receipt 1000.pdf**
138K
-  **Ex A transcript of circuit court hearing bethany rich.pdf**
1087K