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Mar 18 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2020-CP-08-00718

Bethany Aloha Rich, Appellant,

v.

New Heights Property Management, Respondent.

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

INTRODUCTION

Appellant Bethany Aloha Rich (“Appellant”) filed this appeal of the Court of Common Pleas’ decision upholding the Goose Creek Magistrate’s Court writ of ejectment issued against Appellant and in favor of Respondent New Heights Property Management (“Respondent”). Respondent’s motion to dismiss alleges that Appellant failed to pay a bond. Respondent’s motion acknowledges, however, that there is no operative bond set in this matter at this time and that a Motion to set such a bond has been file by Appellant and not heard. Accordingly, Respondent’s Motion should be denied.

STATEMENT OF FACTS

On February 3, 2020, Respondent filed an Application for Ejectment with the Goose Creek Magistrate Court, who then issued a Rule to Vacate or Show Cause. On March 11, 2020, the parties

appeared before the Magistrate because Appellant requested a hearing to show cause why a writ of ejectment should not be issued. At the conclusion of the hearing, the Magistrate issued a writ of ejectment. Appellant filed an appeal to the Court of Common Pleas on March 13, 2020. ON March 17, 2020, Appellant signed a “Bond to Stay Execution on Appeal” in the Magistrate Court case. R. at 30. A hearing on Appellant’s initial appeal was held in the Court of Common Pleas on October 20, 2020, and orally ordered that Appellant to continue making monthly payments in an amount equal to the “Bond to Stay Execution on Appeal” pending the decision by the Court of Common Pleas. On November 16, 2020, the Court of Common Pleas entered a written order that affirmed the eviction and required a \$1,600 bond for December 2020 in order to give Appellant time to appeal to this Court. On December 30, 2020, Appellant filed a motion with the Circuit Court to set the amount of bond for Appellant’s appeal to this Court on December 30, 2020; that motion has not been heard.

ARGUMENT

Respondent’s Motion to Dismiss should be denied because Appellant cannot fail to pay a bond when no bond has been set by a court of competent jurisdiction. S.C. Code Ann. § 27-40-800(f)(1) provides: “Upon appeal to the Supreme Court or to the court of appeals, it 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.” As acknowledged in Respondent’s Motion, the Court of Common Pleas’ Order on Appeal specifically provides: “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), should she choose to do so.” Respondent’s Exhibit B at 4 [Footnotes omitted]. Appellant did, in fact, file a timely appeal of the order to this Court. As also acknowledged in Respondent’s Motion, Appellant filed a motion with the Court of Common Pleas to set the amount of bond for Appellant’s appeal to this Court; that motion has not been heard. Respondent’s Motion to Dismiss at 2-3, Respondent’s Exhibit C. No current bond has been set in this matter.

Here, Appellant has filed a Motion seeking to have a bond set in order that she could sign the undertaking as provided by statute. That Motion has not been heard, no bond has been set, no enforceable obligation has been undertaken. Appellant cannot fail to pay that which does not exist. Accordingly, Respondent’s Motion to Dismiss should be denied.

CONCLUSION

This Court should deny Respondent’s Motion to Dismiss because no bond has been set by a Court having jurisdiction over this matter and therefore Appellant did not and could not fail to pay such a bond.

Respectfully submitted,

/s/ Jeffrey W. Kuykendall _____
Jeffrey W. Kuykendall – Attorney at Law
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Jwkuykendall@jwklegal.com
Attorney for Appellant

At Charleston, South Carolina
This the 18th day of March, 2021.

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PROOF OF SERVICE

The undersigned hereby certifies that he served counsel for the Respondents, New Heights Property Management, through its attorney, Scott Parker Riddell, with a copy of the *Appellant's Return to Respondent's Motion to Dismiss Appeal For Failure to Pay Bond* by mailing a copy of the same by United States Mail with first class postage to the following address on March 12, 2021:

Scott Parker Riddell
Scott Riddell Law, LLC
P.O. Box 1547
Summerville, SC 29484

Jeffrey W. Kuykendall

At Charleston, SC

This the 18th day of March, 2021.

Jeffrey W. Kuykendall
Attorney at Law
127 King St., Ste. 208
Charleston, SC 29401
Phone: 843.790.5182
Facsimile: 866.733.1909
Jwkuykendall@jwklegal.com

March 18, 2021

Via U.S. Mail and Facsimile
Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(803) 734-1839

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SC Court of Appeals

Re: *Bethany Aloha Rich v. New Heights Property Management*
Berkeley County Case No. 2020-CP-08-00718

Dear Ms. Kitchings:

Enclosed please find Appellant's Return to Respondent's Motion to Dismiss Appeal for Failure to Pay Bond for filing the above-referenced matter.

Please file the enclosed documents and return copies to my office in the enclosed self-addressed envelope. Thank you for your assistance in this matter.

Sincerely,

/s/ Jeffrey W. Kuykendall

Jeffrey W. Kuykendall – Attorney at Law

Enclosures (as stated)

cc: Scott Riddell (w/enclosures)
Client (via email only) (w/enclosures)

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FAX COVER PAGE

To: Clerk of Court
South Carolina Court of Appeals

From: Jeffrey W. Kuykendall – Attorney at Law

Date: March 18, 2021

RE: *Bethany Aloha Rich v. New Heights Property Management*
Berkeley County Case No. 2020-CP-08-00718

Fax Number: 803.734.1839

Pages: _6_ including cover page

Sender: If there is a problem with this transmission, please contact Jeffrey W. Kuykendall at (843) 790-5182.