



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Appellate Case No. 2021-000460

APPEAL FROM CHARLESTON COUNTY
DEBRA R. MCCASLIN, CIRCUIT COURT JUDGE
Case No. 2020-CP-10-04936

Quality Fresca I, LLC Appellant.

v.

Kenneth R. Davenport II, Personal Representative
Representative of the Estate of Kenneth R. Davenport Respondent,

**RESPONSE TO APPELLANT'S
PETITION FOR WRIT OF SUPERSEDEAS**

Appellant's petition for writ of supersedeas should be denied for the same reason that this appeal should be dismissed.

Appellant did not satisfy the jurisdictional, statutory, condition precedent to take this appeal because it did not timely, within 5 days, file for a bond when appealing the Magistrate Court's order of ejectment to the Circuit Court. The legal authorities that require dismissal are as follows: S.C. Code Ann. § 27-37-130; *Wheeler v. Hylar*, 91 S.E. 2d 265, 228 S.C. 584 (1956); and *Horn v. Blackwell*, 212 S.C. 480, 48 S.E. 2d 322 (1948).

The Circuit Court recognized this fatal failure to satisfy the jurisdictional, statutory condition precedent for appeal as an alternative basis to affirm the Magistrate Court's order of ejectment, which the Circuit Court also affirmed on the merits. In its reconsideration motion to the Circuit Court, Appellant did not dispute and effectively conceded that it did not timely file for a bond. Appellant otherwise preserved no arguments in its

reconsideration motion that can defeat the Circuit Court's correct ruling that this was a fatal failure divesting it of appellate jurisdiction.

For a detailed analysis of this dispositive issue, Respondent refers the Court to its motion to dismiss filed herewith and incorporates by reference the legal arguments set forth therein in response to the instant petition.

Dated: May 21, 2021

Respectfully submitted,

/s/ Brian A. Hellman
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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this date, May 21, 2021, I have served the foregoing on Appellant's counsel of record by e-mail.

Jason S. Smith
Jason S. Smith

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