

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

RECEIVED
Aug 26 2021
SC Court of Appeals

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
MAY BOND

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INTRODUCTION and FACTS

In this eviction matter, the parties had a residential lease that ran from December of 2018 to December of 2019. The parties then executed a lease renewal through the end of January, and, at the same time, the owners were listing their home for sale, and Appellant was one such prospective buyer. The deal between the owners and Appellant fizzled in January of 2020. The owners refused further rent payment from Appellant and filed the eviction in early February. On March 11, 2020, the Goose Creek magistrate upheld the eviction after a hearing. On November 16, 2020 the Court of Common Pleas affirmed the decision on appeal. During this litigation, one of the owners (a couple) has become terminally ill; the owners have accordingly changed their intentions with the home and await this litigation's completion to return to the home as a final residence together.

During all events described in this paragraph, Appellant has had counsel. Upon hearing on July 20, 2021 Respondent's motion (dated July 9, 2021) to dissolve the stay of execution for failure to pay bond, the Circuit Court entered an order on July 29, 2021 that Appellant, inter alia, was to submit proof of having paid May rent at \$1,600, and that, if she didn't, the Court would issue an order thereafter. That order's deadline was extended from August 10 to August 24, by subsequent order dated August 13, 2021. To date, Appellant has not submitted

either to the Court or to Respondent proof of having paid May: she is still delinquent on May rent / appeal bond.

Respondent on August 26, 2021 filed with the circuit court a motion to dissolve the stay of execution for this failure to pay May bond and provide proof. Ex. A. The same day, the circuit court entered an order granting the motion, dissolving the stay, dismissing the appeal, and directing the Goose Creek magistrate to execute the order of ejection. Ex. B. In an abundance of caution, Respondent hereby files this motion to dismiss the appeal based on the above, recognizing that this Court has jurisdiction of the appeal, despite the lower court's cognizance over the undertaking to pay bond and violations thereof.

LAW

“Upon appeal to the Supreme Court or 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.” S.C. Code Ann. 27-40-800(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.” S.C. Code Ann. 27-40-800(f)(2). Said subsection “(e)” states, “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 to be executed pursuant to Section 27-37-40 of the 1976 Code.” S.C. Code Ann. 27-40-800(e).

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

CONCLUSION

Appellant’s stay of execution on appeal having been dissolved by order of the circuit court, her appeal should be dismissed, and this Court should reiterate the circuit court’s order that the trial Magistrate in Goose Creek 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).

Respectfully submitted,

s/Scott Riddell

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