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SC Court of Appeals

RESPONDENT'S EXHIBIT A

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STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF BERKELEY	)	CASE NO.: 2020-CP-08-00718
	)	
Bethany Aloha Rich,	)	**MOTION TO DISSOLVE STAY OF EXECUTION (FAILURE TO PAY APPEAL BOND)**
	)	
Appellant-Defendant,	)	
	)	
vs.	)	
	)	
New Heights Property Management,	)	On appeal from 2020-CV-08-10600651 (Goose Creek Magistrate)
	)	
Appellee-Plaintiff.	)	APPELLATE CASE NO. 2020-001684 (Court of Appeals)
	)	

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This Court heard this appeal of an order of eviction virtually via WebEx on October 20, 2020, and affirmed the order on November 16, 2020. Appellant timely filed her appeal to the Court of Appeals on December 16, 2020.

Upon hearing Respondent's previous motion to dismiss for failure to pay bond on July 20, 2021, this Court entered an order on July 29, 2021 that Appellant was to pay monthly bond of $1,600 due on the 1st of each month, as well as 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

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has not submitted either to the Court or to Respondent proof of having paid May: she is still delinquent on May rent / appeal bond.

LAW

"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." 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.

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. The

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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, the 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.

Upon hearing Respondent's previous motion to dismiss for failure to pay bond on July 20, 2021, this Court entered an order on July 29, 2021 that Appellant was to pay monthly bond of $1,600 due on the 1st of each month, as well as 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.

Appellant's May payment of $1,600 was due May 1st and considered late if not paid by May 5th. By the end of May 5th, Appellant had not paid May's bond in full. To date, Appellant has not paid the full amount and has not provided proof of payment.

ARGUMENT

Here, Appellant's failure to pay bond for May 2021 violates the terms of the undertaking and the Court's order dated July 29, 2021 by not being a full payment and not providing any proof of that payment. This failure entitles Respondent to execution of the Magistrate's judgment for possession. It invokes the Court's power, via its clerk, to dissolve the stay of execution of the judgment for possession. These judicial acts are 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,

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should dismissal occur, to file a Rule 222(d) motion upon remittitur by the Court of Appeals).

Respectfully submitted,

s/Scott Riddell

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