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Sep 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2020-000405

Case No. 2019-CP-38-00655

Jacquita Funchess
..... Appellant,

v.

Glenfield Apartments
..... Respondent,

**RESPONDENT’S AMENDED REPLY TO APPELLANT’S RETURN TO THE SECOND
MOTION TO DISMISS APPEAL**

The Respondent, Glenfield Apartments, hereby Replies to Appellant’s Return to Respondent’s Second Motion to Dismiss pursuant to 240 SCACR.

1. The above matter is an appeal from the Circuit Court. By Order dated February 7, 2020, The Honorable Maite Murphy dismissed Appellant’s appeal of the Magistrate Court’s eviction for failure to obtain a Return as required by SC Code of Laws 18-7-60.
2. Respondent filed its Second Motion to Dismiss Appellant’s appeal on June 22, 2021, on the following grounds:
 - a. The Record on Appeal filed by Respondent on June 3, 2021 (which was never served on , nor received by Appellant) contains improper pagination despite a deficiency letter dated May 21, 2021, to wit:

i. The Index states that the Order of March 3, 2020 is found at page 1. Page 1, however, is the Record on Appeal. The Order of March 3, 2020 is actually on page 3 of the Record on Appeal.

ii. the Index states that the Motion to Dismiss is found in page 3. Page 3, however, is the Form 4 order filed February 7, 2020. The Motion to Dismiss is actually found on page 22 of the Record on Appeal.

iii. the Index states that the Notice of Appeal is found at page 4. Page 4 however is the certificate of service. The Notice of Appeal is actually found on page 1 of the Record on Appeal.

iv. the Index does not reflect the transcript of record which is included in the Record on Appeal at pages 6 through 15 and an incomplete version again at pages 29 through 36

v. The Index does not reflect the documents found in pages 18, 19

vi. Record on Appeal contains the Notice of Civil of Appeal of the judgment of the Magistrate's Court at pages 20-21; which is irrelevant to the issues under appeal

vii. the Record on Appeal contains the Amended Motion to Dismiss at pages 1-2, which is not listed in the Index

viii. Record on Appeal contains the Motion to Compel the Magistrate to file an Adequate Return on pages 25-27 which is not listed in the Index

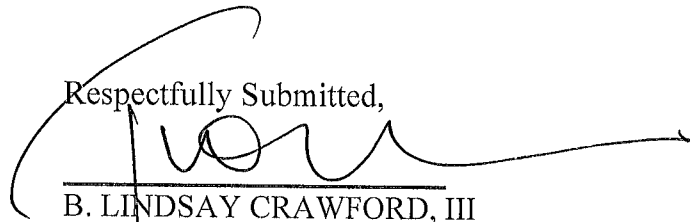
ix. the Record on Appeal lists Respondent Records Request at page 17, however, page 17 is the certificate of service of the Notice of Appeal. Appellant is unable to determine what documents are referred to as "Respondent's Records Request."

- b. The Record on Appeal filed by Respondent on June 3, 2021 was never served on , nor received by, Appellant.
- c. Appellant included numerous documents in the Record on Appeal which are in what appears to be a random order and do not reflect the items specified by Appellant.
- d. Appellant failed to properly identify the items in the Index of the Record on Appeal pursuant to Rule 210(e).
- e. The pagination in Appellant's Index in the Record on Appeal does not match the documents bates stamped within the Record on Appeal.
- f. Appellant included portions of the Transcript from the Circuit Court, however the Transcript was not in order, and did not include the Transcript in its entirety.

- g. Appellant failed to properly paginate the Record on Appeal. Appellant's Record on Appeal is in no discernable order and cannot be used as a reference for the requisite Final Briefs pursuant to Rule 211(b)(1).
 - h. As a result of the improper format of the Record on Appeal, Respondent cannot properly prepare a Final Brief.
3. Appellant filed her response to the Second Request for Dismissal on July 2, 2021. In her response, Appellant does not address the serious, repeated failures to properly prepare a Record on Appeal which prevents Respondent from properly preparing its brief.
 4. Appellant's response is a request to the trial judge as to the facts of the underlying eviction and does not address the issues under appeal or the failure to comply with the Appellate rules.
 5. Appellant has repeatedly failed to comply with the appellant rules or even to address the proper issue before the Court. The Court must therefore "grope in the dark in order to identify errors which in actuality may not exist. Such a predicament has often been deplored by our State's highest Court and used by that tribunal as a basis for the dismissal of an appeal." *Smith v. S.C. Dep't of Social Services* 284 S.C. 469, 327 S.E.2d 348 (1985).

WHEREFORE, Respondent prays for an order dismissing the appeal based on Appellant's failure to prosecute and the substantive failures by Appellant as set forth above.

Respectfully Submitted,



B. LINDSAY CRAWFORD, III
THEODORE VON KELLER, SC BAR NO. 5718
B. LINDSAY CRAWFORD, IV
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

September 20, 2021

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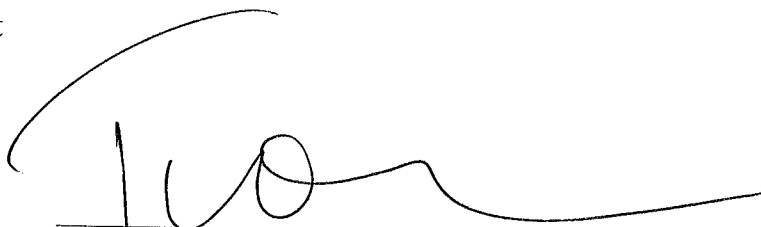
Glenfield Apartments

..... Respondent.

PROOF OF SERVICE

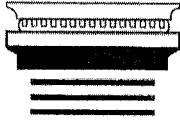
I certify that I served Respondent's Amended Reply to Appellant's Return to the Second Motion to Dismiss Appeal in this case by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Jacquita Funchess
1303 Glenfield Circle Apartment
Apartment J2
Orangeburg, SC 29118



THEODORE VON KELLER, SC BAR NO. 5718
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ATTORNEYS FOR RESPONDENT

September 20, 2021



CRAWFORD & VON KELLER, LLC

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SOUTH CAROLINA
B. Lindsay Crawford, III *
Theodore von Keller
B. Lindsay Crawford, IV

NORTH CAROLINA
Benjamin A. Barco**

Lawrence W. Johnson, Jr.* - Special Counsel

* Certified Specialist in Bankruptcy
and Debtor-Creditor Law in SC

**Admitted in North Carolina, Tennessee, and
Texas

September 20, 2021

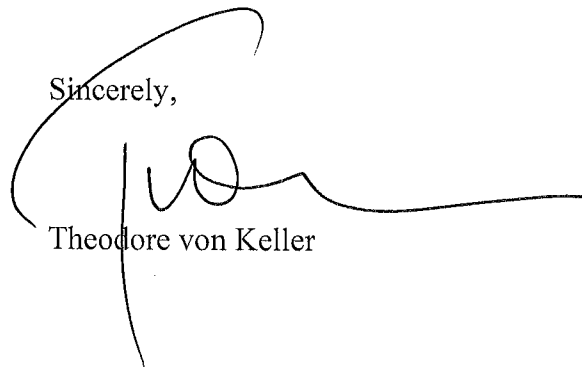
Jacquita Funchess
1303 Glenfield Circle, Apt. J2
Orangeburg, SC 29118

RE: Jacquita Funchess vs. Glenfield Apartments
Appellant Case No. 2020-000405
Our File No.: 3544.0012

Dear Ms. Funchess:

Enclosed please find the Respondent's Amended Reply to Appellant's Return to the Second Motion to Dismiss Appeal with Proof of Service in above referenced matter.

Sincerely,



Theodore von Keller

Enclosure(s)

TVK/tdd