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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Michael J. Polk, Esq., Special Referee

Appellate Case No. 2022-000099

Blondell Brooks.....Appellant,

v.

Carolyn Humphries Frye and DK of SC Corporation.....Respondents.

**RETURN AND MEMORANDUM IN OPPOSITION TO
APPELLANT’S *PRO SE* MOTION TO STAY HER EVICTION**

Respondents submit this Return and Memorandum in Opposition to Appellant’s *Pro Se* Motion to Stay her eviction filed on March 11, 2022, pursuant to Rule 240(e), SCACR and pursuant to this Court’s Order dated March 11, 2022. For the reasons stated herein, Appellant’s Motion is improper and does not comply with the procedural or substantive law of this Court or the State of South Carolina and should be denied.

FACTUAL & PROCEDURAL HISTORY

This is a landlord/tenant matter involving real property (2438 Bush River Road, hereinafter “the property”) situated in Lexington County, South Carolina. **Since October 2019**, Respondents have been attempting to get Appellant to vacate the premises voluntarily.

By way of factual background, in 2017, Respondent Carolyn Humphries Fry, f/k/a Carolyn Humphries (hereinafter “Fry”) is the titled owner of the property. At all times material hereto,

Respondent DK of SC, Corporation (hereinafter “DK of SC”) was a legal tenant of the property via an executed residential lease. Don Kelley (hereinafter “Kelley”) is the only shareholder of DK of SC and executed the residential lease on its behalf.

On October 9, 2017, Kelley on behalf of DK of SC, entered into a rental agreement for the property with Appellant effectively subleasing the property to her for \$775 per month rent with no security deposit being paid by Appellant. Pursuant to the express and clear terms of this rental agreement, the duration of the sublease would be eighteen (18) months terminating on March 4, 2019 and attorneys fees shall be awarded for any action for the enforcement of the rental agreement.

In February 2020, Kelly on behalf of DK of SC, filed an application for ejectment of in magistrate court to have Appellant evicted. At the hearing of that matter, Appellant raised an issue of ownership interest in the property pursuant to a purchase option for the property she had executed with DK of SC, which had since expired. Nevertheless, the magistrate court dismissed the matter for lack of subject matter jurisdiction, in favor of the Court of Common Pleas.

Subsequently, on March 18, 2021, *nearly 1.5 years after notice to vacate was first given,* this underlying action was filed in the Lexington County Court of Common Pleas and ultimately referred the action to Mike Polk, Esquire to serve as Special Referee by the consent of both parties through counsel (**Exhibit 1**, Consent Order Referring Matter to Special Referee).

After receiving evidence into the record from both parties, on January 10, 2022, the Special Referee entered a detailed Order, including findings of fact and conclusions of law, ordering Appellant to vacate the property, along with all of her personal property on or before January 28, 2022 or he would issue a Writ of Ejectment. Appellant did not comply and on February 1, 2022,

the Special Referee entered the Writ of Ejectment directing the Sheriff to remove Appellant and her personal property from the property. (**Exhibit 2**, Writ of Ejectment).

This Appeal was filed on January 31, 2022. However, no motion to stay the ejectment was filed until this Motion, *four days* before the Sheriff was scheduled to conduct the eviction. This Court temporarily granted a stay, allowing the Respondents an opportunity to file a response.

For the reasons stated herein, Appellant’s motion is improper and accordingly should be denied and the eviction should be allowed to proceed.

ARGUMENT

I. APPELLANT’S MOTION, AND APPEAL IN GENERAL, FAILS TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES; ACCORDINGLY, THE MOTION SHOULD BE DENIED AND THE APPEAL SHOULD BE DISMISSED.

Appellant has failed to file her initial brief within the requisite thirty (30) days after filing her Notice of Appeal as required by Rule 208(a), SCACR. The Notice of Appeal was served on undersigned counsel on January 31, 2022. Pursuant to Rule 208(a)(4), SCACR, upon failure to timely file and serve the initial brief, the clerk shall sign an order dismissing the appeal.¹ Importantly, the time to file her initial brief ran on March 2, 2022, *before* Appellant was admitted to the hospital on March 13, 2022. Accordingly, the Court should deny Appellant’s Motion to Stay and dismiss this appeal as she failed to comply with the Appellate Court Rules.

Additionally, Appellant’s Motion to Stay fails to comply with Rule 267, SCACR, titled “Forms of Papers” in that there is no case caption, and it is not typewritten. Further, the motion does not comply with Rule 240, SCACR, titled “Motions and Petitions Generally” in that there is

¹ This matter was ruled on by the Special Referee without a hearing. Therefore, there was no transcript needed to be requested pursuant to Rule 207, SCACR and the time to file and serve the initial brief is thirty (30) days after serving the notice of appeal pursuant to Rule 208(a)(1), SCACR.

no memorandum or citation of any authority in support of her motion, and there are no “affidavits and other documents” in support of her Motion, other than an email that was filed by a social worker, purporting to inform the Court that Respondent is now in the hospital and is requesting at least four months of an extension. This not only does not comply with the rules, but also should not be considered by the Court, as it is not an affidavit and accordingly is not sworn testimony.

The Appellate Court Rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Further, “[a] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988). Based on the Appellate Court Rules, Appellant’s motion should be denied and the appeal should be dismissed.

II. APPELLANT’S FAILURE TO COMPLY WITH RULE 241(B)(10), SCACR REQUIRES THE DENIAL OF HER MOTION TO STAY

If the Court does not dismiss the appeal for the reasons set forth in **Section I**, it should still deny the Motion to Stay and allow the eviction to move forward. Rule 241(a), SCACR, provides that as a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order and to automatically stay the relief ordered in the appealed order. However, Rule 241(b)(10), SCACR, provides an exception to the general rule, citing “Ejectment Orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.”

S.C. Code Ann. § 27-40-800(f) provides:

(f)(1) 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.

(2) 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.

Appellant has not complied with § 27-40-800(f) as she has (1) not filed a motion in the lower court for a determination of the amount of rent to be paid during the pendency of the appeal; and (2) not signed the appropriate undertaking.

Further, Appellant is not presently current on her rent. Attached hereto as **Exhibit 3** is the Affidavit of Don Kelly, which states in pertinent part, “[a]s of the date of this affidavit, she is **NOT** current in rent, having not paid rent for March 2022.”

As Appellant has failed to comply with the law and is not currently paying rent, this Court should deny her Motion to Stay and allow the eviction to proceed.

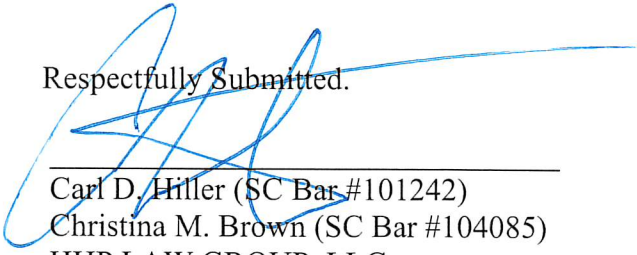
CONCLUSION

Because Appellant failed to comply with Appellate Court Rules 208, 240, 241 and 267 and S.C. Code Ann. § § 27-40-800 as set forth herein, Respondents respectfully request the Court deny the Motion to Stay and dismiss this appeal.

<Signature Page to Follow>

March 18, 2022
Columbia, South Carolina

Respectfully Submitted.



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Attorney of Record for Appellant

(Pending this Court's ruling on Respondent's request to relieve him as counsel)

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Carolyn Humphries Frye and DK of SC
Corporation,

Plaintiffs,

vs.

Blondell Brooks,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2021-CP-32-00940

**CONSENT ORDER REFERRING
MATTER TO SPECIAL REFEREE**

IT APPEARING that the above entitled action is a proper matter to refer to Michael J. Polk, Esq. as Special Referee due to the Master in Equity for Lexington County having a conflict in this matter and previously recusing himself; therefore, upon motion of Plaintiffs, with consent of the Defendant, it is

HEREBY ORDERED that, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above entitled action be, and the same hereby is, referred to Michael J. Polk, Esq. as Special Referee who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues including motions; issuing any and all orders, supplemental orders, and writs of assistance; and hearing any issues involving possession and/or removal of property with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

Lexington County Clerk of Court

WE SO MOVE:

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s/ Carl D. Hiller
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WE SO CONSENT:

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Attorneys for Defendant



Lexington Common Pleas

Case Caption: Carolyn Humphries Fry , plaintiff, et al VS Blondell Brooks
Case Number: 2021CP3200940
Type: Order/Referred to Master or Special Referee

So Ordered

s/ Mona Huggins Deputy Clerk Common Pleas for
Lisa M Comer Lexington County Clerk of Court

EXHIBIT 2

STATE OF SOUTH CAROLINA)
LEXINGTON COUNTY)

2021-CP-32-00940
CIVIL CASE NUMBER
IN THE COURT OF COMMON
PLEAS FOR THE ELEVENTH
CIRCUIT

Carolyn Humphries Frye and DK of SC)
Corporation)

PLAINTIFF(S))

VS.)

WRIT OF EJECTMENT
(Eviction)

Blondell Brooks)

DEFENDANT(S))

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon the judgment of this court, rendered on 10th day of January, 2022, and attached hereto as **Exhibit 1**; you are hereby ordered to proceed to the premises located at 2438 Bush River Road, Columbia, SC 29210.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them that they have **twenty-four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty-eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty-eight (48) hours.

Date: 1/31/22



Michael J. Polk, Esquire

Special Referee pursuant to the Order attached hereto as **Exhibit 2**

_____, being duly sworn state that:

- I personally served a copy of this Writ on _____, an occupant of the rental unit.
- On _____, 20_____, at _____, the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premises. On _____, 20_____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejection.
- Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- Informed by Plaintiff that case is settled.

Date: _____, 20_____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Carolyn Humphries Frye and DK of SC Corporation,

Plaintiffs,

vs.

Blondell Brooks,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2021-CP-32-00940

ORDER

This matter came before me, Michael J. Polk, Esquire, serving as special referee pursuant to Rule 53, SCRCP, for a final determination of all issues herein.

This is a landlord/tenant matter involving real property (2438 Bush River Road, hereinafter "the property") situated in Lexington County, South Carolina. A Summons and Complaint was filed on March 18, 2021. An Answer and Counterclaim was served on May 10, 2021. A Reply was filed on May 11, 2021. A Consent Order referring this matter to the Hon. James O. Spence was entered on May 27, 2021. However, Judge Spence ultimately recused himself via a Form 4 Order of Recusal filed on July 27, 2021. Subsequently, this matter was referred to me to serve as special referee pursuant to a Consent Order Referring Matter to Special Referee dated August 26, 2021.

Plaintiffs are represented by Carl D. Hiller, Esquire. Defendant is represented by Johnny E. Watson, Esquire. This matter was twice scheduled for an in-person final hearing, but both times Defendant, through her counsel, requested a continuance. Upon the second request, in an attempt to avoid further delay, the parties agreed that due to the nature of the case it could be decided on the record, including but not limited to those attached hereto as exhibits and incorporated herein by reference.

FINDINGS OF FACT

1. Plaintiff Carolyn Humphries Fry, f/k/a Carolyn Humphries (hereinafter "Fry") is the titled owner of the property located at 2438 Bush River Road, Columbia, South Carolina (hereafter "the property"). (Exhibit 1). The property is located in Lexington County, South Carolina.
2. At all times material hereto, Plaintiff DK of SC, Corporation (hereinafter "DK of SC") was a legal tenant of the property pursuant to a Residential Lease Agreement (Exhibit 2) between Fry and DK of SC. Don Kelley (hereinafter "Kelley") is the only shareholder of DK

of SC, and he executed the residential lease agreement. References to Kelley will be to him in his capacity as the only shareholder of DK of SC and in all matters relevant to this action he was acting as an agent of or otherwise on behalf of DK of SC and not in an individual capacity.

3. On March 1, 2016, Kelley, on behalf of DK of SC, and Fry entered into a Real Estate Option Agreement (Exhibit 3).
4. Pursuant to the Real Estate Option Agreement, in exchange for consideration, DK of SC had the option to purchase the property from Fry for \$85,000 and that this option would extend until April 30, 2021.
5. The Real Estate Option Agreement provided that DK of SC had the right to assign all of its rights under the Real Estate Option Agreement.
6. On October 9, 2017, Kelley on behalf of DK of SC, and Defendant Blondell Brooks (hereinafter "Brooks") entered into a Rental Agreement for the property effectively subleasing the property to Brooks for \$775 per month rent with no security deposit being paid by Brooks. (Exhibit 4). The lease was for 18 months terminating on March 4, 2019.
7. The Rental Agreement provided that attorney's fees shall be awarded for any action for the enforcement of the Rental Agreement.
8. October 5, 2017, Kelley on behalf of DK of SC and Brooks entered into an Option to Purchase the property. (Exhibit 5).
9. The Option to Purchase provided:
 - a. In exchange for \$10,000 paid by Brooks to DK of SC, Brooks had the exclusive option to purchase the property from DK of SC.
 - b. Additionally:
 - 15) Optionee understands that Optionor does not hold title (own) this property, but is transferring their interest in the property. If Optionor can't transfer title due to something out of their control (ie. owner refuses to close or can't transfer clear title). Optionor will reimburse Optionee the entire option consideration plus an additional \$500 for their inconvenience, as full and complete liquidated damages for Optionor not being able to close on this property.
 - c. The option to purchase would expire at midnight on March 4, 2019. If exercised, the consideration paid for the option would be applied to the agreed upon purchase price. If not exercised, DK of SC would be released of all obligations under the Option to Purchase; the \$10,000 consideration paid for the option shall be retained by DK of SC;
 - d. Additionally,

- 13) If option money is forfeited by Optionee, for any reason, then the rental agreement will automatically revert to a month to month agreement, so that Optionor may sell or re-lease the property
 - 17) Optionor has advised the optionee to seek the advice of a mortgage lender and attorney prior to signing this document.
10. Also on October 5, 2017, Kelley on behalf of DK of SC and Brooks executed an Agreement to Buy and Sell Real Estate for the property. Exhibit 6. The agreed upon purchase price was \$135,000 (less \$10,000 credit for the consideration paid for the option to purchase) and this Agreement references specifically the Option to Purchase for the expiration date.
 11. By midnight of March 4, 2019, Brooks had not exercised the option to purchase the Property, so pursuant to the terms of the Option to Purchase, her \$10,000 consideration paid for the option was forfeited.
 12. The Rental Agreement provided that "Any holding over after the expiration hereof, unless otherwise agreed, shall be construed as a month-to-month tenancy in accordance with the terms hereof as applicable."
 13. On October 8, 2019, Brooks submitted a signed Housing Discrimination Complaint to the State of South Carolina Human Affairs Commission attached as Exhibit making a number of allegations. Exhibit 7.
 14. The State of South Carolina Human Affairs Commission performed an investigation of the allegations of Brooks' Complaint. On February 12, 2020, a Determination of No Reasonable Cause based on a January 27, 2020 report issued by Commissioner Janie A. Davis, was issued (both attached hereto as Exhibit 8).
 15. In February 2020, Kelley on behalf of DK of SC filed an action in magistrate court to have Brooks evicted from the property. At the hearing of this matter, Brooks raised an issue of an ownership interest in the property pursuant to the Option to Purchase, so the magistrate judge dismissed the matter without prejudice for lack of jurisdiction.
 16. On February 16, 2021, via letter attached as Exhibit 9, Kelley again demanded that Brooks vacate the property if she could not purchase it. Kelley also again extended the same option to purchase even though it had expired. Kelley informed Brooks that if she did not vacate or purchase the property, he would file an action in circuit court.
 17. Brooks did not purchase or vacate the property, so on March 18, 2021, this action was filed seeking that Brooks be ejected from the property and that she be ordered to pay Plaintiffs' attorney's fees and costs.
 18. Brooks served an Answer and Counterclaim denying the claims of the Complaint and

- seeking the return of the \$10,000 she paid to Kelley and for her attorney's fees and costs.
19. Brooks has raised the issue of her competency and duress at the time of the execution of the Rental Agreement and Option to Purchase. See First and Second Set of Requests for Admission and Responses attached hereto as Exhibit 10.
 20. Plaintiffs then requested via discovery all diagnoses, witnesses related to diagnoses, and documentation related to diagnoses, of conditions Brooks claims to be suffering from at the time of the execution of the documents that affected her competence. Brooks responded that she believes her diagnoses are bipolar and depression, but did not provide the name of any diagnosing physicians or other medical professionals and did not provide any documentation to support these claimed diagnoses. See First Set of Interrogatories and Requests for Production and Response attached hereto as Exhibit 11.
 21. Plaintiffs' counsel has presented an Affidavit in support of Plaintiffs' claims for attorney's fees seeking that Defendant be ordered to pay \$3,736.85 in attorney's fees. Attached as Exhibit 12.

CONCLUSIONS OF LAW

22. "Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Miles v. Miles*, 393 S.C. 111, 117, 711 S.E.2d 880, 883 (2011) (quotation omitted). Where the contract language is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014).
23. When a writing, upon its face, imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, and parol evidence is not admissible to add another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed. *Gladden v. Keistler*, 141 S.C. 524, 542, 140 S.E. 161, 167 (1927), *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577–78, 762 S.E.2d 696, 701 (2014)
24. DK of SC and Brooks entered into a valid and binding Rental Agreement and Option to Purchase the property.

25. Brooks did not exercise the option to purchase the property within the original March 4, 2019 deadline and therefore it expired and she forfeited the \$10,000 consideration paid for it.
26. The option was re-offered again on multiple occasions, but Brooks never elected to exercise it and has not purchased the property.
27. A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); *Sanders v. Allis Chalmers Mfg. Co.*, 237 S.C. 133, 139–40, 115 S.E.2d 793, 796 (1960); *Stanley Smith & Sons v. D.M.R. Inc.*, 307 S.C. 413, 417, 415 S.E.2d 428, 430 (Ct.App.1992). One who signs a written instrument has the duty to exercise reasonable care to protect himself. *Maw v. McAlister*, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969); *Evans*, 269 S.C. at 587, 239 S.E.2d at 77; *DeHart v. Dodge City of Spartanburg*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct.App.1993). *Regions Bank v. Schmauch*, 354 S.C. 648, 663–64, 582 S.E.2d 432, 440 (Ct. App. 2003). Lastly, [O]ne who has signed a contract is presumed to have read, understood, and assented to its terms. See *Wachovia Bank Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 333, 755 S.E.2d 437, 443 (2014); *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 39–40, 340 S.E.2d 786, 789–90 (1986). And unambiguous terms of a written contract may not be altered by parol evidence. *McGill v. Moore*, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009) (“Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties.”). *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019)
28. Brooks has claimed that she did not have the mental capacity to understand the documents she was executing. A party alleging mental incapacity is required to establish incapacity at the time of the transaction by the preponderance of the evidence. *In re Thames*, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct. App. 2001).
29. Regarding this defense, I have been presented no medical evidence by Brooks that she did not have the capacity to execute the Rental Agreement and Option to Purchase. This is consistent with the statements of the South Carolina Human Affairs Commission that likewise Brooks submitted no evidence to support this claim. See Exhibit 8.
30. Further, I have been presented no evidence by Brooks confirming that she had actually

been diagnosed by a medical professional and was suffering from any illness, disorder, disease which could affect her capacity at the time of the execution of the Rental Agreement and Option to Purchase the property. This is consistent with the statements of the South Carolina Human Affairs Commission that likewise Brooks submitted no evidence to support this claim. See Exhibit 8.

31. To be clear, the undersigned does not believe that he is bound by the findings of the South Carolina Human Affairs Commission, but he considers their findings as persuasive.
32. Brooks also claims that she was placed under duress and essentially forced by Kelley to sign the documents as a result of his intimidation. The party asserting the defense of duress has the burden to prove that the contract was procured via (1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind. *Holler v. Holler*, 364 S.C. 256 (Ct. App. 2005).
33. A contract or release which is procured by duress is not void, but merely voidable and is capable of being ratified. And the person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 748 (D.S.C. 2001).
34. Regarding this defense, even taking all of Defendant's allegations as true, as well as the statement of James Gilyard, Brooks has not carried her burden that she was forced, coerced, or placed under duress by Kelley resulting in her executing the Option to Purchase or other documents against her will. This is consistent with the previous findings of the South Carolina Human Affairs Commission that likewise Brooks submitted no evidence to support this claim. See Exhibit 8.
35. I also find that Defendant did not act promptly to repudiate any of these agreements and therefore she is deemed as having waived her claim of duress as to them.
36. Defendant has the burden of proving the defenses of lack of capacity and duress and, for the reasons set forth above, I find that she has not carried her burden as to either defense.
37. Regarding Plaintiff's claim for attorney's fees, I have reviewed the Rental Agreement (Exhibit 4) and Affidavit in support of attorney's fees (Exhibit 12). The Rental Agreement states that the owner shall be entitled to all costs and attorney's fees (allowed by statute) incurred in connection with an action to enforce the Rental Agreement. Pursuant to the South Carolina Residential Landlord Tenant Act, S.C. Code Ann. § 27-40-710, if a tenant willfully non-complies with a rental agreement, the landlord may recover reasonable

attorney's fees.

- 38. Brooks' continued failure to vacate the property is a willful non-compliance of the Rental Agreement. Further, based on the amount of and complexity of the work provided, the standard rates for the area, and at the ultimate result for the client, the amount of \$3,736.85 in claimed attorney's fees and costs is reasonable.

ORDER

Based on the above findings of salient facts and conclusions of law, it is hereby ORDERED:

- A. Defendant is to vacate the property, along with all of her personal property, on or before **January 28, 2022**. If she does not vacate fully by this time, I will issue a Writ of Ejectment to be enforced by the Lexington County Sheriff's Office;
- B. Defendant is to pay Plaintiffs **\$3,736.85** for attorney's fees and costs incurred related to this matter; and
- C. Defendant's counterclaim for the return of the \$10,000 and attorney's fees and costs is denied.

AND IT IS SO ORDERED.



 s/Michael J. Polk
 Michael J. Polk, Esquire
 Special Referee
 Eleventh Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Carolyn Humphries Frye and DK of SC Corporation,

Plaintiffs,

vs.

Blondell Brooks,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2021-CP-32-00940

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MATTER TO SPECIAL REFEREE**

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IT IS SO ORDERED.

Lexington County Clerk of Court

WE SO MOVE:

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Attorneys for Plaintiffs

WE SO CONSENT:

Johnny E. Watson, Attorney at Law

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Attorneys for Defendant



Lexington Common Pleas

Case Caption: Carolyn Humphries Fry , plaintiff, et al VS Blondell Brooks

Case Number: 2021CP3200940

Type: Order/Referred to Master or Special Referee

So Ordered

s/ Mona Huggins Deputy Clerk Common Pleas for
Lisa M Comer Lexington County Clerk of Court

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Carolyn Humphries Frye and DK of SC Corporation,

Plaintiffs,

vs.

Blondell Brooks,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2021-CP-32-00940

AFFIDAVIT OF DON KELLEY

PERSONALLY APPEARED BEFORE ME, Don Kelley, who being first duly sworn, and joined herein by his client, does state as follows:

1. I am the owner and singular shareholder of Plaintiff DK of SC Corporation ("DK of SC") and authorized to conduct business on its behalf.

2. DK of SC is the tenant of 2438 Bush River Road, Columbia, SC 29210 ("subject property") pursuant to a lease agreement with its titled owner, Plaintiff Carolyn Humphries Frye. On October 5, 2017, DK of SC and Defendant Blondell Brooks ("Brooks") entered into a rental agreement wherein Brooks would sublease the subject property until March 4, 2019, for \$775 per month. The sublease would then revert to a month-to-month sublease.

3. Subsequent to March 4, 2019, I provided Brooks with written notice of termination of the month-to-month and demand she vacate the property. She refused which ultimately resulted in this litigation.

4. As of the date of this affidavit, she is **NOT** current in rent, having not paid rent for March 2022.

FURTHER AFFIANT SAYETH NOT.

Don Kelley

Don Kelley

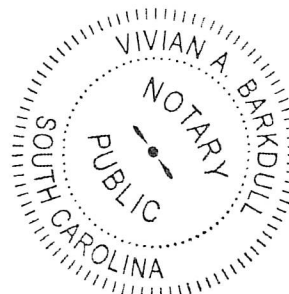
Sworn to before me this

18th day of March, 2022

Vivian Q. Barkdull

Notary Public for South Carolina

My Commission Expires: June 16, 2025



RECEIVED

Mar 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Michael J. Polk, Esq., Special Referee

Appellate Case No. 2022-000099

Blondell Brooks.....Appellant,

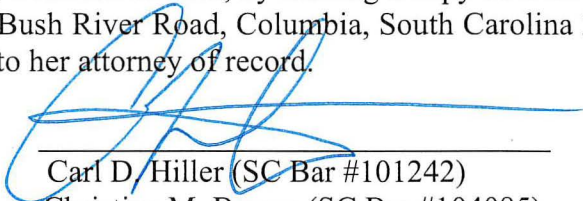
v.

Carolyn Humphries Frye and DK of SC Corporation.....Respondents.

PROOF OF SERVICE

I certify that I have served the Return and Memorandum in Opposition to Appellant's *pro se* motion to stay her eviction on the Appellant, Blondell Brooks, by mailing a copy of it on March 18, 2022 to her at her home located at 2438 Bush River Road, Columbia, South Carolina 29210, as well as by mailing and emailing the same to her attorney of record.

March 18, 2022



Carl D. Hiller (SC Bar #101242)
Christina M. Brown (SC Bar #104085)
HHP LAW GROUP, LLC
924 Gervais Street
Columbia, South Carolina 29201
T: (803) 400-8277
Attorneys for Respondents

OTHER COUNSEL OF RECORD:

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P.O. Box 2305 (29202)
2715 Edgewood Ave.
Columbia, S.C. 29204
Attorney of Record for Appellant

(Pending this Court's ruling on Ms. Brook's request to relieve him as counsel)