

RECEIVED

May 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2022-CP-22-00176
Appeal Number: 2022-000513

KEVIN PENLAND

Appellant

v.

KEY LARGO MOBILE HOME PARK,

Respondent

PETITION FOR SUPERSEDEAS

The Appellant hereby petitions the court to stay ejectment on appeal pursuant to Pursuant to Rule 241 of the South Carolina Appellate Court Rules. On April 27, 2022, the Appellant filed with the court of common pleas an Undertaking with language substantially consistent with the requirements of S.C. Code § 27-40-800, which is attached hereto as Exhibit 1. According to S.C. Code § 27-40-800(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.”

The wording of the statute is clear that “it is sufficient” to stay the ejectment for the tenant to sign the undertaking, and that the judge “shall order stay of execution upon the undertaking.” The only discretion in the language of the statute is the determination of rent to be paid.

At the bond hearing before the magistrate court, during the pendency of the appeal to the court of common pleas, the rental obligation was set at \$390.00 per month. This was the amount requested by Respondent, and Appellant is not contesting that amount at this time. This amount, \$390.00 per month, was listed on the Undertaking filed by Appellant, and Appellant has continued paying rent on time each month pursuant to the magistrate’s bond order and the undertaking that was filed.

However, the Georgetown County Public Index shows an entry of “Decline to Sign” for the undertaking on April 29, 2022, without explanation. A copy of the public index entry is attached as Exhibit 2. Appellant’s counsel was not notified of this rejection, and learned of it only by reviewing the public index. As a result of the circuit court judge’s failure to order stay of execution, the Georgetown Magistrate Court has informed the Appellant that they have already re-issued the writ of ejectment to be executed by the Sheriff. The writ of ejectment was posted on Mr. Penland’s door on the evening of May 5, 2022. A copy of that writ is attached as Exhibit 3.

EXHIBIT 1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)	FIFTEENTH JUDICIAL CIRCUIT
)	
Kevin Penland,)	
)	
Appellant)	BOND TO STAY EXECUTION ON
)	APPEAL TO COURT OF COMMON
)	PLEAS
)	
vs.)	
)	
Key Largo Mobile Home Park, LLC,)	
)	
Respondent)	C.A. NO.: 2022-CP-22-00176

Now comes the tenant in the above entitled action and respectfully shows the court that a judgment of ejectment was issued against the tenant and for the landlord on March 2, 2022 by the presiding magistrate. Tenant appealed the judgment to the circuit court. On April 22, 2022, the Circuit Court issued an order affirming the lower court's decision, and the tenant appeals the decision to the Court of Appeals.

The tenant is obligated to pay rent in the amount of \$390.00 per month due on the 1st day of each month.

Tenant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the court and moves the Circuit Court or Court of Appeals to stay execution on the judgment for ejectment until this matter is heard on appeal and decided by the Court of Appeals.

Date: 04/26/2022 

Tenant

Upon execution of the above bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the circuit court. If Tenant fails to make any rental payment within five days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issued dealing with possession must be dismissed, and the sheriff may dispossess the tenant.

Date: _____ _____
Judge or Clerk

EXHIBIT 2



Georgetown County Fifteenth Judicial Circuit Public Index



Georgetown County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Kevin Penland VS Key Largo Mobile Home Park

Case Number:	2022CP2200176	Court Agency:	Common Pleas	Filed Date:	03/01/2022
Case Type:	Common Pleas	Case Sub Type:	Use AP Case Type 910	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Culbertson, Benjamin H.
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	04/22/2022		
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Penland, Kevin	Decline to Sign:Order/Consent Order	Filing		04/29/2022-12:42		
Penland, Kevin	NEF(04-26-2022 04:41:11 PM) Proposed Order/Consent Order	Filing		04/27/2022-08:10		
Penland, Kevin	Order/Order Cover Sheet \$25.00	Filing		04/26/2022-16:41		
Penland, Kevin	Appeal/Notice of Appeal No Fee	Filing		04/22/2022-16:36		
Penland, Kevin	Service/Proof Of Service	Filing		04/22/2022-15:55		
Penland, Kevin	NEF(04-22-2022 12:31:36 PM) Order/Electronic Form 4	Filing		04/22/2022-12:31	04/22/2022-12:31	
Penland, Kevin	Ord/Electronic Form 4/Magistrate Order For Eviction Affirmed	Order		04/22/2022-12:31	04/22/2022-12:31	
Penland, Kevin	NEF(04-21-2022 03:19:06 PM) Affidavit/Affidavit of Penland	Filing		04/21/2022-15:43	04/22/2022-15:43	
Penland, Kevin	Affidavit/Affidavit of Penland	Filing		04/21/2022-15:19	04/22/2022-15:19	
Penland, Kevin	4/22/2022_MOTION_Roster /Notice of Case Roster Publication Se	Action		04/14/2022-10:16	04/22/2022-10:16	
Boan, Jason Preston	4/22/2022_MOTION_Roster /Notice of Case Roster Publication Se	Action		04/14/2022-10:16	04/22/2022-10:16	
Ozollins, Jon A.	4/22/2022_MOTION_Roster /Notice of Case Roster Publication Se	Action		04/14/2022-10:16	04/22/2022-10:16	
Penland, Kevin	NEF(03-31-2022 03:17:41 PM) Notice/Notice of Appearance	Filing		03/31/2022-16:23	04/22/2022-16:23	
Penland, Kevin	Notice/Notice of Appearance	Filing		03/31/2022-15:17	04/22/2022-15:17	
Penland, Kevin	Amended/Notice of Appeal	Filing		03/31/2022-15:17	04/22/2022-15:17	
Boan, Jason Preston	4/22/2022_MOTION_Roster /Notice of Case Roster Publication Se	Action		03/18/2022-14:43	04/22/2022-14:43	

Penland, Kevin	4/22/2022 MOTION Roster /Notice of Case Roster Publication Se	Action	03/18/2022-14:43	04/22/2022-14:43
Penland, Kevin	Appeal/Notice of Civil Appeal (Workflow)	Action	03/11/2022-16:29	04/22/2022-16:29
Key Largo Mobile Home Park	NEF(03-10-2022 10:56:23 AM) Reply/Other	Filing	03/10/2022-11:18	04/22/2022-11:18
Key Largo Mobile Home Park	Reply/Certificate of Service	Filing	03/10/2022-10:56	04/22/2022-10:56
Key Largo Mobile Home Park	Notice/Notice of Appearance	Filing	03/10/2022-10:51	04/22/2022-10:51
Penland, Kevin	Appeal/Appeal Returned Received	Action	03/10/2022-08:38	04/22/2022-15:40
Penland, Kevin	Order/Denying In Forma Pauperis	Order	03/08/2022-10:16	04/22/2022-10:16
Penland, Kevin	Service/Certificate Of Service	Filing	03/03/2022-15:40	04/22/2022-15:41
Penland, Kevin	Motion/Magistrate Civil Appeal/No Doc	Motion	03/01/2022-16:36	04/22/2022-15:44
Penland, Kevin	Motion And Affidavit To Proceed In Forma Pauperis/Penland	Motion	03/01/2022-16:35	03/08/2022-16:35
Penland, Kevin	Appeal/Notice of Magistrate Civil Appeal	Filing	03/01/2022-16:28	04/22/2022-16:45

CMSWeb 6.1 © 2019 South Carolina Judicial Branch • All rights reserved

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
)
)
)

2021CV221060104
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
WRIT OF EJECTMENT

Key Largo Mobile Home Park, Llc
Po Box 15849
Surfside Beach, SC 29575
(843) 232-0750

PLAINTIFF(S)

Vs

Kevin Penland	Taylor Keefer
510 Key Largo Ave, Lot 27 (Key Largo Mhp	510 Key Largo Ave, Lot 27 (Key Largo Mhp
Murrells Inlet, SC 29576	Murrells Inlet, SC 29576

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the **2nd of March 2022**, you are hereby Ordered to proceed to the premises located at **510 Key Largo Ave, Lot 27 (Key Largo Mhp Murrells Inlet, SC 29576**.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them 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.

March 2, 2022



Central Jury

_____, 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 premise.
- 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 ejectment.
- 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