

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PRISCILLA CALVO

P.O. Box 5331

North Myrtle Beach, SC 29582

PLAINTIFF,

VS.

RODGER LEE GAMBLE

2710 S. Ocean Blvd., UNIT # 1

North Myrtle Beach, SC 29582

DEFENDANT.

IN THE MAGISTRATE COURT

CIVIL CASE NUMBER 2021CV000047

MOTION AND ORDER FOR DISMISSAL
OF WRIT OF EJECTMENT

RECEIVED

Jun 02 2022

SC Court of Appeals

DEFENDANT'S MOTION AND ORDER FOR DISMISSAL OF WRIT OF EJECTMENT

NOW INTO COURT, through undersigned party, comes **RODGER GAMBLE**, Defendant, petitioning this court seeking to dismiss the County Court's Order for Writ of Ejectment which departed from the essential requirements of law, denied Defendant of statutory procedures ie: due process, since the County Court was without subject matter jurisdiction to issue a Writ of Ejectment against the Defendant.

Pursuant to the SC Code of Laws SECTION 18-7-10 and SCAR 201, Defendant advanced and timely filed an Appeal at the County Circuit Court contesting the original complaint and invoking the Affirmative Defense of wrongful "RETAILIATORY EVICTION", then the County Circuit Court stated to Defendant that the matter was outside of their jurisdiction and that it needed to be appropriately appealed at the State Appellate Court level in Columbia, South Carolina, which is currently where this matter resides.

It is well settled that Plaintiff's action is wrongful and protected by the Appeal, unless, the Appellate Court dismisses this matter for cause, in which case the Plaintiff will be properly notified according to the SCAR.

(1) **To Whom Awarded.** Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.

(2) **Costs Allowed.** The party entitled to recover costs may recover all those costs specified in Rule 222(b), to include the attorney's fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 242(c); (2) the cost of printing the Appendix under Rule 242(e) and (i); and (3) the cost of printing the party's brief(s) under Rule 242(i). The party may also recover an additional attorney's fee in an amount which shall be set by order of the Supreme Court.³ The allowance of additional costs will generally not be allowed except in the most extraordinary circumstances.

(3) **Costs for Printing Irrelevant Matter.** A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal or in the Appendix. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter in the Record on Appeal and/or the Appendix which another party unjustifiably designated to be included in the Record on Appeal.

(4) **Motion for Costs.** A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (2) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

(5) **Taxation.** Costs under this Rule shall be taxed by the Supreme Court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur.

(6) **Applicability.** Costs shall not be awarded in criminal cases or post-conviction relief cases.

Last amended by Order dated January 29, 2009, effective April 29, 2009, by order of the same date.

¹ By order dated October 9, 2018, this filing fee was set at two hundred and fifty (\$250.00) dollars.

² By order dated August 25, 2021, the requirement that petitioner file two copies of the Appendix has been suspended, and the necessary documents will be obtained from the electronic records of the case before the Court of Appeals. This order is available at: <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexid=2622>.

³ By order dated January 17, 2018, the amount of attorney's fee was set at \$2,500.