



ALAN WILSON
ATTORNEY GENERAL

January 13, 2016

The Honorable Scott D. Whittle
Magistrate, County of Lexington
500 Charlie Rast Road
Swansea, South Carolina 29160

Dear Judge Whittle:

You have requested an opinion of this Office on the appropriate procedure to be taken by a magistrates' court during an action for possession and subsequent appeal filed pursuant to the South Carolina Residential Landlord Tenant Act. Specifically, you provide as follows:

I am requesting an opinion concerning the process and effect of SC Code of Laws 27-40-790 and 27-40-800, when a tenant appeals to the Court of Common Pleas from Magistrates Court. Once an appeal is filed should the magistrate hold a hearing consistent with 27-40-790 and require back rent to be paid under subsection 27-40-790(b) and remain current under subsection (a)? If so and there is noncompliance by the tenant, may the magistrate issue the Writ of Ejectment while the case is under appeal?

Secondly if 27-40-790 does not apply to cases on appeal and only 27-40-800 applies, if the tenant fails to comply with the "Undertaking on appeal" does the Landlord apply to the Magistrate for Writ of Ejectment or to the Court of Common Pleas? If the Landlord applies to the Magistrate for the Writ, what effect if any does it have on the pending appeal, and is the Writ appealable to the Court of Common Pleas?

Our analysis follows.

Law / Analysis

As your question is one of statutory interpretation, we first note that the cardinal rule we must follow is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). What the legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Under the plain meaning rule, it is not the court's place to change the meaning of a clear or unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). Thus, where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory

interpretation are not needed and the court has no right to impose another meaning. *Id.* As it is our opinion that the statutes we have reviewed in preparation of this opinion are clear and unambiguous, we will apply their plain meaning below to give effect to the expressed intent of the legislature.

The South Carolina Residential Landlord Tenant Act (“RLTA” or “the Act”) governs residential leases entered into or renewed after July 8, 1986. See S.C. Code Ann. § 27-40-10 to 27-40-940 (2007) (The South Carolina Residential Landlord Tenant Act effective July 8, 1986); see also 14 S.C. Jur. Landlord and Tenant § 2 (2015). The RLTA includes a provision clarifying that unless displaced by the RLTA, principles of law and equity, including the law related to real property, should supplement the provisions of the Act. S.C. Code Ann. § 27-40-30 (2007). In addition, the Act provides that:

Chapter 35, Title 27, Chapter 37, Title 27, and Article 3, Chapter 39, Title 27, of the 1976 Code are not applicable to the leasing or renting or to leases or rental agreements concerning any real property insofar as they are inconsistent with the provisions of this chapter, including the rights and remedies of landlords and tenants thereto.

S.C. Code Ann. § 27-40-920 (2007). As it is relevant to this opinion, we point out that some provisions in Chapter 37, Title 27 pertaining to the ejectment of tenants are applicable to the RLTA, some of which are directly cross referenced within the Act.

Outside of the RLTA, the landlord has three basic remedies for a tenant in default, including distraint, an action for rent, and an action for ejectment. 14 S.C. Jur. Landlord and Tenant § 51 (2015). As to an action for ejectment, a “tenant may be ejected upon application of the landlord or to his agent when (1) the tenant fails or refuses to pay the rent when due or when demanded, (2) the term of the tenancy or occupancy has ended, or (3) the terms or conditions of the lease have been violated.” S.C. Code Ann. § 27-37-10(A) (2007). S.C. Code Ann. § 27-37-20 (2007) provides the procedure to initiate an ejectment proceeding, stating that

[a]ny tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction *shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.*

(emphasis added). It is our opinion that this section is consistent with the RLTA and should therefore be applied to an ejectment proceeding brought by the landlord pursuant to the RLTA.

Under the RLTA, landlords are permitted to terminate a tenant’s lease agreement upon certain occurrences and after following the correct procedures, including noncompliance with the terms of a rental agreement, failure to pay rent, and noncompliance of the tenant to maintain the dwelling unit resulting in materially affecting health and safety. See S.C. Code Ann. §§ 27-40-710; 27-40-720 (2007). If a rental agreement is terminated, among other remedies, the landlord has a right to possession and rent. S.C. Code Ann. § 27-40-750 (2007). If a tenant remains in

possession after the expiration or termination of the rental agreement, the landlord may bring an action for possession. S.C. Code Ann. § 27-40-770(c) (2007).

S.C. Code Ann. § 27-40-790 (2007) is applicable in an action for possession brought by the landlord which the tenant has contested by raising defenses or counterclaims available under the RLTA. When this Section applies, both the landlord and tenant believe they have a right to be in possession of the premises, with the tenant remaining in possession. In such an instance, S.C. Code Ann. § 27-40-790 provides as follows:

In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement:

- (a) The tenant is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check. If the landlord and tenant disagree as to the amount of rent or the time of payments thereof, the court shall hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter. In the event that the basis for the disagreement of the amount of rent due is the landlord's alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing. Rent must not be abated for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his permission or who is allowed access to the premises by the tenant.
- (b) The tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule, provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and cancelled check, or both, indicating that payment has been made to the landlord.
In the event that the amount of rent is in controversy, the court shall determine the amount of rent to be paid to the landlord in the same manner as in subsection (a) or (b) of this section.
- (c) Should the tenant not appear and show cause within ten days, the court shall issue a warrant of ejectment pursuant to § 27-37-40 of the 1976 Code.
Should the tenant appear in response to the rule and allege that rent due under subsections (a) or (b) has been paid, the court shall determine the issue. If the tenant has failed to comply with subsections (a) or (b), the court shall issue a warrant of ejectment and the landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.
- (d) If the amount of rent due is determined at final adjudication to be less than alleged by the landlord, decision must be entered for the tenant if he has complied fully with the provisions of this section.

Section 27-40-790 therefore establishes that rent must be paid by the tenant for his continued use and occupancy of the premises during the duration of the action for possession. Specifically, the tenant must pay rent after the written rule to vacate or a rule to show cause has been issued by the magistrate and must also pay any past rent owed if he or she cannot provide proof to the court that it has already been paid. Pursuant to Subsection (c), a warrant of ejectment must be issued by the magistrate pursuant to S.C. Code Ann. § 27-37-40 if the tenant does not appear at the rule to show cause hearing. If the tenant does appear, a determination must be made if the tenant has complied with payment of rent as specified in Subsections (a) and (b), permitting him to remain in possession, or whether he has not, resulting in his ejectment. Thus, at the rule to show cause hearing, the tenant would either be ejected for nonappearance or the magistrate would have to make a ruling as to whether the tenant is entitled to possession or whether he must be ejected for noncompliance. It is after the issuance of the initial written rule to vacate or show cause, the subsequent rule to show cause hearing, and the ruling of the court, that the case would be ripe for appeal.

Section S.C. Code Ann. § 27-40-800 (2007) permits an appeal of the magistrate to the circuit court, a subsequent appeal to the court of appeals or the Supreme Court, and establishes the procedure to stay execution of a judgment of ejectment during the appellate process. Specifically, such section reads as follows:

- (a) Upon appeal to the circuit court, the case must be heard, in a manner consistent with other appeals from magistrates' court, as soon as is feasible after the appeal is docketed.
- (b) 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 the magistrate in accordance with § 27-40-780, as it becomes due periodically after the judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking.
- (c) The undertaking by the tenant and the order staying execution may be substantially in the following form:
.....
- (d) If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the circuit court. Upon the motion and upon notice to all interested parties, the court shall hold a hearing as soon as is feasible after the filing of the motion and determine what modifications, if any, are appropriate. No judgment for ejectment may be executed pending a hearing on the motion, provided the tenant complied with the terms of the undertaking.
- (e) 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 § 27-37-40 of the 1976 Code.

- (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.

Again, the appellate process would apply after the magistrate's ruling on the ejectment proceeding as determined at the rule to show cause hearing. S.C. Code Ann. § 27-40-800 permits a delay in effectuating the tenant's ejectment, *i.e.* a stay in judgment allowing the tenant to remain in possession of the premises during the appellate processes. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided and relief ordered in the appealed order, judgment, or decree and continues for the duration of the appeal unless thereafter lifted. 3 S.C. Litg. Forms & Analysis § 40.2 (2015). However, there are exceptions to the general rule, such as an appeal of an ejectment proceeding, where conditions must be met before a stay is implemented. Id.

As set forth in Subsection (b) quoted above, to stay an order of ejectment, the tenant must sign an undertaking agreeing to pay the landlord the amount of rent decided by the magistrate at a specified time. S.C. Code Ann. § 27-40-800(b) (2007). After the undertaking is signed, "any magistrate, clerk, or circuit court judge shall issue a stay of execution upon the undertaking." Id. Any disputes in the time or amount of the rent to be paid must be decided by the circuit court upon a motion by the aggrieved party for modification of the terms of the undertaking. Id. at § 27-40-800(d). Furthermore, upon the failure to make a payment within five days after the rent is due as specified in the undertaking, a warrant of ejectment must be issued by the clerk, pursuant to S.C. Code Ann. § 27-37-40, after application of the landlord to execute the judgment. Id. at § 27-40-800(e). If the case is subsequently appealed to the court of appeals or the Supreme Court, an identical procedure to stay execution of the judgment for ejectment to that outlined above must be followed. The tenant must sign an undertaking agreeing to pay rent in the amount determined by the circuit court, and thereafter the stay of execution is issued by the judge with jurisdiction of the appeal. Id. at § 27-40-800(f)(1). A failure to pay rent as provided in the undertaking permits the landlord to execute the judgment by following the same procedure as outlined above. Id. at § 27-40-800(f)(2).

Conclusion

It is our belief that the language of the above statutes is clear and unambiguous, requiring us to apply the plain meaning of those statutes to effectuate the intent of the legislature. As such, it is our opinion that S.C. Code Ann. § 27-40-790 would be applied by the magistrate prior to S.C. Code Ann. § 27-40-800 becoming applicable. To summarize, S.C. Code Ann. § 27-40-790 outlines the procedure to be followed should a tenant remain in possession after the magistrate issues a written rule requiring the tenant to vacate the premises occupied by him or to show

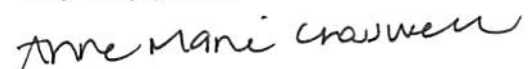
cause why he should not be ejected within ten days after service of a copy of the rule upon the tenant. For continued use and enjoyment of the premises, the tenant must continue to pay all rent that becomes due during the ejectment proceeding and all past rent owed if proof cannot be provided to the court that past rent has already been paid. If the parties are in disagreement as to the amount or time that rent is to be paid, the magistrates' court must hold a hearing to preliminarily determine the issue.

As also outlined in S.C. Code Ann. § 27-40-790, the rule to show cause hearing occurs next. Should the tenant not appear and show cause, the magistrate must issue a warrant of ejectment pursuant to S.C. Code Ann. § 27-37-40. If the tenant appears to show cause and alleges that all rent due has been paid, the court must make a ruling as to possession. If the tenant has failed to comply, the court is to issue a warrant of ejectment and the landlord must be placed in full possession of the premises. It is at this point in the proceedings that the case would be ripe for appeal and S.C. Code Ann. § 27-40-800 would be applied. In other words, prior to appeal, the rule to show cause hearing would have been held and the magistrate's determination as to ejectment would have been made.

If the tenant appeals a judgment of ejectment, Section 27-40-800 allows the judgment to be stayed, permitting the tenant's continued use of the premises until the appeal is heard and decided by the circuit court. However, as explained by Section 27-40-800, the stay is not automatic; rather, the tenant must sign an undertaking that he will pay rent in an amount and time previously determined by the magistrate. After the undertaking is signed, any magistrate, clerk, or circuit court judge can issue a stay of execution upon the undertaking. If any dispute arises regarding the amount or due date of payment, a motion for modification of the undertaking must be made to the circuit court for a hearing and determination as soon as feasible. If rent is not paid within five days after the due date as provided in the undertaking staying the execution of judgment, a warrant of ejectment is to be issued by the clerk of appropriate jurisdiction after application of the landlord and the tenant shall be ejected by his regular or special constable or by the sheriff of the county, as specified in S.C. Code Ann. § 27-37-40.

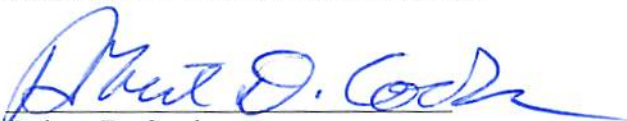
If we can answer any further questions, please do not hesitate to contact our Office.

Very truly yours,



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Assistant Attorney General

REVIEWED AND APPROVED BY:



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