

Court of Appeals of the State of Georgia

ATLANTA, February 06, 2020

The Court of Appeals hereby passes the following order:

**A20E0029. YANNI PIZZA, LLC d/b/a GOODFELLAS PIZZA AND WINGS
et al. v. ALL SAINTS EPISCOPAL CHURCH, INC.**

Yanni Pizza, LLC d/b/a Goodfellas Pizza and Wings et al. (“Yanni”) has filed in this Court an “Emergency Motion for Writ of Supersedeas” seeking to stay the execution of a writ of possession following the filing of its notice of appeal in the state court. Yanni’s motion, however, does not comply with Court of Appeals Rule 40 (b) because the relief it requests cannot be had absent of a showing of compliance with OCGA § 44-7-56 (tenant required to pay sums due into the registry of the trial court pursuant to OCGA § 44-7-54 (a) (1) until issue has been finally determined on appeal); see also *Britton v Fed. Nat. Mtg. Assn.*, 307 Ga. App. 581, 582 (2) (705 SE2d 682) (2011) (“An owner of real property who remains in possession following a foreclosure sale of the property becomes a tenant at sufferance. A tenant at sufferance is liable for the reasonable rental value of the premises.”) (citations and punctuation omitted).

Although Yanni contends that it lacks an alternate remedy to seek appellate review in this dispossessory action, we note that Yanni’s September 23, 2019 notice of appeal from the state court’s entry of default judgment on September 17, 2019,¹ remains pending. In fact, in its January 30, 2020 order, the state court specifically

¹ The state court’s September 17, 2019 order required Yanni to pay into the court’s registry \$39,000 in past-due rent, and then a further \$13,000 per month starting October 1, 2019, pending an appeal.

denied All Saints Episcopal Church, Inc.’s motion to dismiss this notice of appeal. Moreover, the state court ordered Yanni to file necessary transcripts within seven days of the January 30 order, and further directed the clerk of the state court to transmit the appeal to this Court once the record is complete.

To the extent that Yanni challenges the state court’s dismissal of its January 14 and January 30, 2020 notices of appeal,² there is no indication that Yanni has sought to appeal these dismissals. See *Boyd v. JohnGalt Holdings, LLC*, 318 Ga. App. 866, 868 (1) (736 SE2d 459) (2012) (“The dismissal of an appeal by the trial court is subject to direct appeal.”) (citation and punctuation omitted).

For the foregoing reasons, Yanni’s emergency motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk’s Office, Atlanta, 02/06/2020

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Castle

, Clerk.

² Yanni’s January 14, 2020 notice of appeal is from the state court’s issuance of a writ possession on January 13, 2020. In the January 30, 2020 notice of appeal, Yanni challenges the state court’s denial of its motion for new trial following the entry of default judgment.