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Jun 27 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas, 9th Circuit Court

The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Court Case No. 2021-CP-10-2682

Pet Helpers, Inc..... Respondent

V.

Janet L. Frisco.....Appellant

V.

Melissa Susko..... Third Party Defendant

REPLY TO THE RETURN TO STAY SANCTIONS

Appellant replies to the Respondent’s and Third-Party Defendant’s Return to the Motion to Stay Sanctions pursuant to Federal Rule 8(a)(2) Stay or Injunction Pending Appeal as follows:

(1) Initial motion in the District Court. A party must ordinarily move first in the district court for (A) a stay of judgement or order of a district court pending appeal.

(2) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in Rule 8 (a)(1) may be made to the court of appeals or one of its’ judges. (i) Motion must show that moving first in the district court would be impracticable.

ARGUMENT

Pursuant to Rule 241(d)(1), SCACR, “except where extraordinary circumstances make it impracticable an application for an order lifting the automatic stay or supersedeas must first be

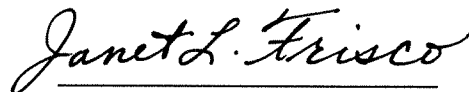
made to the lower court or administrative tribunal which entered the order or decision on appeal, but pursuant to Federal Rule 8 (d) in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge. The thirty-days I had to pay the sanction of \$9638.48 elapsed on June 5th and my appeal was filed on June 3rd so time requirements rendered it impracticable to submit application to the lower court.

Subdivision (a). While the power of a court of appeals to stay proceedings in the district court during the pendency of an appeal is not explicitly conferred by statute, it exists by virtue of the all writs statute, 28 U.S.C. §1651. *Eastern Greyhound Lines v. Fusco*, 310 F.2d 632 (6th Cir., 1962); *United States v. Lynd*, 301 F.2d 818 (5th Cir., 1962); *Public Utilities Commission of Dist. of Col. v. Capital Transit Co.*, 94 U.S.App.D.C. 140, 214 F.2d 242 (1954). And the Supreme Court has termed the power "inherent" (*In re McKenzie*, 180 U.S. 536, 551, 21 S.Ct. 468, 45 L.Ed. 657 (1901)) and "part of its (the court of appeals) traditional equipment for the administration of justice." (*Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9 -10, 62 S.Ct. 875, 86 L.Ed. 1229 (1942)). The power of a single judge of the court of appeals to grant a stay pending appeal was recognized in *In re McKenzie, supra.* *Alexander v. United States*, 173 F.2d 865 (9th Cir., 1949) held that a single judge could not stay the judgment of a district court, but it noted the absence of a rule of court authorizing the practice. F.R.C.P. 62 (g) adverts to the grant of a stay by a single judge of the appellate court. The requirement that application be first made to the district court is the case law rule. *Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission*, 260 U.S. 212, 219, 43 S.Ct. 75, 67 L.Ed. 217 (1922); *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62 (9th Cir., 1951); *United States v. Hansell*, 109 F.2d 613 (2d Cir., 1940). The requirement is explicitly stated in F.R.Cr.P. 38 (c) and in the rules of the First, Third, Fourth and Tenth Circuits. See also Supreme Court Rules 18 and 27.

CONCLUSION

Both the SCACR Rule 241(d)(1) and Federal Rule 8(a)(2) allow appeal for stay of judgement to be made to appeals court under extraordinary circumstances that render it impracticable to be made to the lower court in this case because time requirements restricted the option of applying to the lower court for stay or for supersedeas. If I had applied first to the lower court and they denied it because of their bias in favor of Pet Helpers Inc., a matter of the pending appeal with this court, the Plaintiff's attorney would have filed a Motion to Show Cause and had me incarcerated for nonpayment.

Respectfully submitted,



Janet L. Frisco,
Pro Se Respondent

Dated: June 25, 2022

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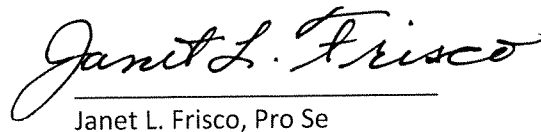
Melissa Susko.....Third Party Defendant

PROOF OF SERVICE

I certify that I have served the Respondents and Third-Party Defendant **Reply to the Return to Stay Sanctions** by delivering the same via email and United States mail, postage prepaid, on June 25, 2022 addressed to the Respondent as follows:

Stephan V. Futeral,
Attorney for the Respondent
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net

Respectfully,


Janet L. Frisco, Pro Se

Dated: June 25, 2022