

RECEIVED

Nov 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-001584
Civil Action No. 2020-CP-27-00017

Ben A. Barone,.....Respondent,

v.

Jaguar Land Rover North America, LLC,
Peacock Automotive, LLC d/b/a Land Rover Hilton Head, and
Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head, Appellants.

**APPELLANTS’ EMERGENCY PETITION TO ENFORCE
THE AUTOMATIC STAY**

Appellants Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head (“Appellants”), by and through undersigned counsel, hereby petition this Court pursuant to Rule 241(d)(2) of the South Carolina Appellate Court Rules to enforce the automatic stay and to vacate the circuit court’s oral ruling disregarding automatic stay in the captioned case while the issue of whether the entire action is subject to dismissal pursuant to the South Carolina Door Closing Statute, S.C. Code Ann. § 15-5-150, or, in the alternative, whether Georgia law must be applied to Plaintiff’s claims.

The circuit court's refusal to abide by the automatic stay is erroneous and an abuse of discretion. While in some instances Rule 241(a), SCACR, permits a lower court to retain jurisdiction over matters not affected by the appeal, when the appeal involves the fundamental of Plaintiff's capacity to sue in a South Carolina circuit court and, if so, which state's law applies to Plaintiff's claims. In short, there are no matters in this case not affected by the appeal. Further, the circuit court's disregard for the automatic stay, and its insistence that the matter proceed to trial in a matter of days on Monday, November 14, 2022, undermines the basis of Appellants' position on appeal and portends tremendous waste of judicial resources.

South Carolina precedent does not militate in favor of lifting the automatic stay in this action, and the circuit court's oral ruling does not contain any valid basis for doing so. In short, the circuit court improperly disregarded the automatic stay, and Appellants therefore petition this Court to issue an order reversing that decision and reinstating the stay pending appeal.

FACTUAL BACKGROUND

Respondent initiated these proceedings with the filing of his Summons and Complaint in the South Carolina Court of Common Pleas for Jasper County on or about January 9, 2020. In his Complaint, Respondent alleges he is a resident and citizen of the State of Georgia. (Pl.'s Compl. ¶ 1).¹ Respondent alleges Appellants Peacock Automotive, LLC and Coastal States Automotive Group, LLC² have their principal places of business in South Carolina but did not assert their state of incorporation. (*Id.* ¶¶ 4, 6, 9). Appellant Jaguar Land Rover North America, LLC is alleged to

1 Appellants raised Respondent's lack of capacity to sue pursuant to the South Carolina Door Closing Statute in their Answers to Respondent's Complaint. *See* Answer by Def. JLRNA to Pl.'s Compl., p. 4, ¶¶ 29-30; Answer to Pl.'s Compl. by Defs. Peacock Automotive and Coastal States, p. 4, ¶¶ 29-30.

2 Coastal States Automotive Group, LLC is alleged to have been and is the predecessor entity to Peacock Automotive, LLC. (*Id.* ¶ 8).

be and is a foreign corporation organized and existing under the laws of a state other than South Carolina. (*Id.* ¶ 2).

Respondent purchased a 2016 model year Land Rover Range Rover Sport (“2016 Range Rover Sport”), equipped with a “soft-close automatic door feature” from Land Rover Hilton Head on or about June 10, 2016. (*Id.* ¶¶ 10, 12). Respondent presumably used the vehicle without incident until April 27, 2018, when, while at his home in the Atlanta, Georgia area, the driver’s door closed on his thumb, resulting in a “complete traumatic amputation of a portion of his right thumb.” (*Id.* ¶ 13). Respondent claims the 2016 Range Rover Sport is defective and unreasonably dangerous and asserts a negligence cause of action against Appellant Jaguar Land Rover North America, LLC, as well as strict liability and breach of warranty causes of action against all Respondents.

Appellants moved for judgment as to all of Respondent’s claims based upon application of the South Carolina Door Closing Statute via motion filed on or about October 28, 2022. In the alternative, Appellants argued that if Respondent’s claims are permitted to proceed in South Carolina, those claims should be decided according to law of the State of Georgia, where Respondent’s injury occurred. The circuit court held a hearing on Appellants’ motions November 1, 2022.³ At the close of the hearing, the circuit court requested an email from Appellants’ counsel listing the pending motions and indicated a ruling would be forthcoming later in the day. In an email sent November 1, 2022, at 7:45 pm, the circuit court’s law clerk advised counsel for all parties that the court would deny Appellants’ motion pursuant to the Door Closing Statute and declining to apply Georgia law and instructed Respondent’s counsel to submit a “short order” reflecting its ruling. The proposed order was submitted to the circuit court November 3, 2022, and

³ Appellants have requested but not yet received a transcript of the hearing before the circuit court.

entered by the circuit court November 9, 2022. Appellants filed their Notice of Appeal the same day, thereby triggering the automatic stay pursuant to Rule 205, SCRCF.

The circuit court convened a call with counsel for all parties on November 10, 2022. In that call, the circuit court specifically rejected Appellants' position that the automatic stay prohibits further action by the trial court pending appeal and expressed its intention to proceed with the trial of this matter, scheduled to commence Monday, November 14, 2022.

LEGAL STANDARD

Rule 241, SCACR, provides that “[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Further, the “automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court. . . retains jurisdiction over matters *not affected by the appeal* including authority to enforce any matters not stayed by the appeal.” *Id.* (emphasis added). Rule 241(C)(2) is controlling and establishes the standard applicable to a determination of whether the automatic stay may be lifted. Specifically, the trial court “should consider whether such an order [lifting the automatic stay] is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” *Id.*

ARGUMENT

The circuit court's disregard of the automatic stay of these proceedings pending appeal must be reversed and vacated. Otherwise, Appellants will be severely prejudiced by having to defend itself at trial in a case wherein Respondent lacks capacity to proceed in the first instance. Further, forcing Appellants to proceed to trial of Respondent's claims during the pendency of this

appeal presents the substantial risk that the challenge to Respondent's capacity to sue will be rendered moot. In the alternative, and without conceding Respondent has capacity to sue in this State, Appellants are entitled to a determination of which state's law should be applied to his claims if the case proceeds to trial in South Carolina.

Here, the circuit court did not address or even consider the determinative factors established by Rule 241(C)(2). Indeed, the circuit offered no justifiable basis to support its decision to lift the automatic stay beyond the fact that a date had been established for trial and that, in the circuit court's view, trial should proceed irrespective of the notice of appeal pending in this Court. The circuit court did this *sua sponte* without any party having moved to lift the stay in either the trial or the appellate tribunal. What the circuit court failed to recognize is that this appeal affects the very existence of a case that hinges on question of whether Respondent has capacity to sue at all. Stated differently, if Respondent lacks capacity to have his claims heard in a South Carolina state court, any action taken by that court is a nullity. Delaying a decision on this issue portends substantial waste of resources for the parties and the South Carolina judicial system.

Pursuant to Rule 17(b), SCACR, "capacity to be sued is a question of the law of South Carolina." *Graham v. Lloyd's of London*, 296 S.C. 249, 255, 371 S.E.2d 801, 804 (Ct. App. 1988). Likewise, our appellate courts have determined that the South Carolina Door Closing Statute, S.C. Code Ann. 15-5-150, affects a party's capacity to sue and that a decision regarding capacity to sue pursuant to that statute is subject to immediate review. *See Farmer v. Monsanto Corp.*, 353 S.C. 553, 557, 579 S.E.2d 325, 327 (2003). In light of the public policy considerations underpinning the Door Closing Statute, this Court should enforce the stay until such time as it has fully considered and addressed the issues raised in this appeal.

CONCLUSION

For the reasons stated herein, Appellants respectfully request the Court issue an order vacating the circuit court's *sua sponte* decision to ignore the automatic stay and directing that no further action be taken in the trial court pending the outcome of this appeal.

November 10, 2022

By: s/ Carmelo B. Sammataro
J. Kenneth Carter, Jr. (SC Bar No. 12812)
Turner Padget Graham & Laney, PA
Post Office Box 1509
Greenville, SC 29602
Phone: (864) 552-4600
Fax: (864) 552-4620
KCarter@TurnerPadget.com

Carmelo B. Sammataro (SC Bar No. 69746)
Abigail C. Bray (SC Bar No. 104604)
Turner Padget Graham & Laney, PA
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957
SSammataro@TurnerPadget.com
ABray@TurnerPadget.com

H. Lanier Brown, II (*Pro Hac Vice*)
Watkins & Eager PLLC
1904 First Avenue North, Suite 300
Birmingham, AL 35203
Phone: (205) 598-2199
Fax: (205) 449-1750
lbrown@watkinseager.com

ATTORNEYS FOR APPELLANTS

RECEIVED

Nov 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-001584
Civil Action No. 2020-CP-27-00017

Ben A. Barone,.....Respondent,

v.

Jaguar Land Rover North America, LLC,
Peacock Automotive, LLC d/b/a Land Rover Hilton Head, and
Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head, Appellants.

PROOF OF SERVICE

I certify this 10th day of November 2022 that I have served a copy of APPELLANTS’
EMERGENCY PETITION TO ENFORCE THE AUTOMATIC STAY upon other counsel of
record via electronic mail addressed to the following:

Austin H. Crosby, Esquire
John E. Parker, Jr., Esquire
Mary B. Lohr, Esquire
Parker Law Group, LLP
P. O. Box 457
Hampton, SC 29924
acrosby@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
mlohr@parkerlawgroupsc.com
ATTORNEYS FOR RESPONDENT

E. Merritt Farmer, Jr., Esquire
The Farmer Law Firm
361 N. Shelmore Blvd.
Mt. Pleasant, SC 29464
mfarmer@thefarmerlawfirm.com

(Signature page to follow.)

November 10, 2022

By: s/ Carmelo B. Sammataro

J. Kenneth Carter, Jr. (SC Bar No. 12812)
Turner Padget Graham & Laney, PA
Post Office Box 1509
Greenville, SC 29602
Phone: (864) 552-4600
Fax: (864) 552-4620
KCarter@TurnerPadget.com

Carmelo B. Sammataro (SC Bar No. 69746)
Abigail C. Bray (SC Bar No. 104604)
Turner Padget Graham & Laney, PA
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957
SSammataro@TurnerPadget.com
ABray@TurnerPadget.com

H. Lanier Brown, II (*Pro Hac Vice*)
Watkins & Eager PLLC
1904 First Avenue North, Suite 300
Birmingham, AL 35203
Phone: (205) 598-2199
Fax: (205) 449-1750
lbrown@watkinseager.com

ATTORNEYS FOR APPELLANTS

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

November 10, 2022

RECEIVED

Nov 10 2022

SC Court of Appeals

VIA ELECTRONIC MAIL

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Ben A. Barone v. Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head
Appellate Case No.: 2022-001584
File No.: 09887.107

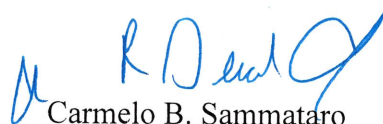
Dear Ms. Kitchings:

Enclosed please find the Appellants' Emergency Petition to Enforce the Automatic Stay and Proof of Service regarding the above-referenced matter. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Austin H. Crosby, Esquire
John E. Parker, Jr., Esquire
Mary B. Lohr, Esquire
E. Merritt Farmer, Jr., Esquire
(w/enc., via electronic mail)