

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Wedgewood Condominium Association,

Plaintiff,

vs.

Centex Homes, a Nevada General  
Partnership; Balfour Beatty Construction,  
LLC as successor by merger to Centex  
Construction Company, Inc. and Centex  
construction, LLC, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2018-CP-26-00307

ORDER

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SC Court of Appeals

This matter is before the Court on motion of defendants Centex Homes, a Nevada General Partnership, and Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC (these entities are collectively referred to herein as "Centex"), pursuant to Rules 62 and 67, SCRCP, and S.C. Code Ann. § 18-9-130 for an Order granting (1) Centex leave to deposit with the Court the amount of judgment entered in this action plus accrued post-judgment interest; and (2) a stay of execution of proceedings to enforce the judgment during the pendency of post-trial motions and any appeals filed in this matter.

A hearing was held before the undersigned on Wednesday, June 14, 2023, where this motion, as well as all post-trial motions including a motion for judgment notwithstanding the verdict, motion for new trial, motion for *nice remittitur*, were heard. Appearing for the plaintiff was its counsel Gene M. Connell. Appearing for the defendants were its counsel Thomas C. Hildebrand, Jr. and William G. DesChamps, IV.

## BACKGROUND

This matter was tried before a jury in Horry County from May 22–26, 2023. At trial, the jury awarded Plaintiff \$6,750,000.00 in actual damages. On May 26, 2023, the Court granted the parties ten (10) days leave to file any post-trial motions. On June 5, 2023, Centex timely filed its Motion for Judgment Notwithstanding the Verdict ("JNOV") or, in the Alternative, for a New Trial, which was orally denied from the bench after hearing the arguments of counsel and relying on the record and memoranda.

- Centex seeks leave, pursuant to Rule 67, SCRPC, to deposit the judgment sum plus post-judgment interest with the Court, which would prevent further accrual of post-judgment interest.<sup>1</sup>
- Centex further moves the Court, pursuant to Rule 62(b) and (d), SCRPC, and S.C. Code Ann. § 18-9-130 for an Order staying the execution of any proceedings to enforce the judgment pending the resolution of post-trial motions and any appeals that are filed.
- Depositing this sum with the Court will guarantee that funds are available for immediate satisfaction of the judgment should it remain in effect following resolution of post-trial motions and any appeals that are filed.

### **I. Request for Leave to Deposit Judgment Sum with Court**

1. On May 26, 2023, judgment was entered in this matter against Centex in the amount of \$6,750,000.00
2. Centex has filed motions for judgment notwithstanding the verdict and for a new trial absolute and for a new trial *nisi remittitur* to reduce the amount of the judgment entered, which were denied on June 14, 2023, after considering the record, memoranda, and the arguments of counsel.

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<sup>1</sup> Centex intends to deposit the funds as soon as possible upon the Court granting it leave to do so. The SC Supreme Court has ruled that depositing the funds without first obtaining leave from the court does not stop the accrual of post-judgment interest. See *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 897 (1995).

3. Centex seeks to deposit with the Court the judgment sum plus accrued post-judgment interest pursuant to Rule 67, SCRCP, to prevent the further accrual of post-judgment interest during the pendency of post-trial motions and any appeals filed in this matter. *See Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995) (“[A] debtor may prevent accrual of interest by depositing the funds under an order of the court. Accordingly, we hold that to stop accrual of interest, a debtor must comply with the plain language of Rule 67.”) (internal quotations omitted).

4. Rule 67, SCRCP, provides that “[i]n an action in which any part of the relief sought is a judgment for a sum of money ... , a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing.”

5. As recognized by the South Carolina Supreme Court, allowing judgment debtors to deposit the amount of the judgment with the court “encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal.” *Russo*, 317 S.C. at 444, 454 S.E.2d at 896.

6. South Carolina appellate courts have approved the practice of depositing judgment sums with the clerk of court under Rule 67 as a means of preventing the continued accrual of post-judgment interest. *See, e.g., Russo*, 317 S.C. at 444, 454 S.E.2d at 896; *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d

566 (Ct.App. 2000); *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884 (Ct.App. 1998).

7. In *Small*, as in this case, the defendant moved for leave to deposit the judgment sum with the court after a jury verdict and entry of judgment in favor of the plaintiff. 330 S.C. 62, 496 S.E.2d 884. The trial court judge held that "it would be an abuse of discretion to refuse to allow the funds to be deposited" under Rule 67. *Id.* at 64, 496 S.E.2d at 885. The Court of Appeals affirmed the trial court's order granting the defendant's motion. *Id.* at 66, 496 S.E.2d at 885.

8. Centex further requested that the Order granting leave to deposit the judgment sum with the Court instruct the clerk of court to deposit the funds into a separate, new interest bearing account with a bank agreed to by the parties and to not distribute any funds until further order of the court specifically authorizing the same. See Rule 67, SCRPC ("[Deposited funds] shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.").

9. Centex further requested that the Court rule that upon payment of the judgment amount and accrued interest as referenced above, that interest at the post-judgment rate shall no longer accrue.

10. Centex has provided Plaintiff with notice of this request and of its intention to deposit the judgment sum with the Court in the event leave is granted.

11. Centex requested an expedited Order on this matter, as post-judgment interest continues to accrue until this request is granted and the funds are deposited.

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II. **Request to Stay Execution of Proceedings to Enforce Judgment**

1. Centex further moved the Court to grant a stay of execution of proceedings to enforce the judgment during the pendency of post-trial motions and any appeals filed in this matter.

2. Under Rule 62(b), SCRCP, a trial court may, “[i]n its discretion and on such conditions for the security of the adverse party as are proper,” stay the execution of any proceedings to enforce a judgment pending the disposition of post-trial motions.

3. Moreover, “[a] notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution.” S.C. Code Ann. § 18-9-130(A)(1) (2014); see *also* Rule 62(d), SCRCP. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the lesser of the judgment amount or twenty-five million dollars. See S.C. Code Ann. § 18-9-130(A)(1); see *also* Rule 241(c)(3), SCACR (“The granting of supersedeas ... under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court ... may deem appropriate.”); S.C. Code Ann. § 15-1-250 (“Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties he may, in lieu thereof, deposit with the officer or into the court, as the case may require, money to the amount for which the bond or undertaking is to be given.”).

4. Depositing the full judgment amount with the Court will guarantee that funds are available for immediate satisfaction of the judgment should it remain in effect following resolution of post-trial motions and any appeals that are filed.


**ORDER**

I find that Centex's motion is appropriate and is hereby granted. Centex may deposit with the court a check for the full amount of the verdict, \$6,750,000.00, together with all accrued interest on that amount through the date that the payment is hand-delivered to the Horry County Clerk of Court. The Clerk of Court is hereby ordered to deposit the funds into a separate, new interest bearing account with a bank agreed to by the parties and to not distribute any of the deposited funds until further order of the court specifically authorizing same. The deposited funds shall be withdrawn only upon the check of the Clerk of Court in favor of the party to whom the court specifically directs. As of the date that the check is hand-delivered to the Clerk of Court, interest at the post-judgment rate shall no longer accrue.

As Centex will deposit the judgment amount and accrued interest into the Court as referenced above, Plaintiff is hereby stayed from taking any action to enforce the judgment pending the resolution and termination of any post-trial motions and any appeals filed in this matter. This stay shall remain in effect until further order of this Court.

AND IT IS SO ORDERED.

6/14, 2023  
Conway, South Carolina

  
The Honorable Carmen T. Mullen  
Presiding Judge  
Fifteenth Judicial Circuit