THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

Lawton Limehouse, Sr., Respondent

v.

Paul H. Hulsey and The Hulsey Litigation Group, LLC,
Petitioners.

Appellate Case No. 2011-196246

and

Lawton Limehouse, Jr., Respondent,

v.

Paul H. Hulsey and The Hulsey Litigation Group, LLC
Appellants.

Appellate Case No. 2010-15173

Opinion No. 27279
Heard March 6, 2013-Filed June 26, 2013

RESPONDENTS' PETITION FOR REHEARING

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The Respondents Petition this Court for rehearing on the following grounds:

I. The Supreme Court overlooked or misapprehended the fact that United States District Courts in South Carolina are divested of jurisdiction when an Order of Remand is entered in the Federal Court as the Federal Courts are bound by Fourth Circuit precedent.

The Supreme Court's decision is premised on a holding that the federal court is not divested of jurisdiction until a certified copy of the remand order is mailed and received by the state clerk.

In the opinion, the Supreme Court states that "This provision creates *legal significance* in the mailing of a certified copy of the remand order in terms of determining the time in which the district court is divested of jurisdiction. On that basis, the federal court is not divested of jurisdiction until the remand order, citing the proper basis under §1447(c) is certified and mailed by the clerk of the district court". Although, this finding reflects the law in the State of California, it is not the law of the federal courts in the State of South Carolina.

The federal district courts in South Carolina are bound by the appellate precedent of the Fourth Circuit Court of Appeals. *See* Cherepinsky v. Sears Roebuck and Co., 455 F.Supp.2d 470 (2006) holding that " this court is bound to follow the unaltered line of Fourth Circuit precedent"; and U.S. v. Sasser, 738 F.Supp.177 (1990) "the court is bound by precedent.."

The Fourth Circuit is likewise bound by circuit court precedent until it is either overruled en banc or superseded by a decision of the United States Supreme Court. See Chisolm v. TranSouth Financial Corporation, 95 F.3d 331, 337 n. 7(4th Cir.1996)

The Supreme Court may believe that the decision by the California Court of Appeals, in Spanair S.A.v. McDonnell Douglas Corp. 72 Cal. App.4th 348 is sound but it is not the law that

is followed by the federal courts in South Carolina.

The Supreme Court's reliance upon the reasoning of the Missouri Court of Appeals is also misplaced. The Missouri Court stated that:

"a rule making clear that jurisdiction to proceed does not immediately revert back to the state court upon the signing of the order allows a civil defendant to retain the right to assert that the order of remand was improvidently entered. Because remands are not appealable, 28 U.S.C. Section 1447(d), it makes sense to allow the federal district court an opportunity to correct any error or misunderstanding before the remand Order is final."

However, federal courts in the State of South Carolina are not bound to follow the reasoning of the Missouri Court of Appeals. Federal judges in South Carolina are bound by the precedent of the Fourth Circuit. The Missouri Court of Appeals has no application to the federal courts in South Carolina.

The Fourth Circuit in In re Lowe, 102 F.3d 731 (4th Cir.1996) rejected the notion that the Federal Court could reconsider its ruling after the Order to Remand the case was entered. The court in Lowe set forth the policy behind the general rule prohibiting review or reconsideration of remand orders when it stated:

"The general rule prohibiting review of remand orders has been a part of American jurisprudence for at least a century. See Thermtron, 423 U.S. at 343. In discussing a statutory predecessor of §1447(d), the Supreme Court notes that the intent of such a rule is "to suppress further prolongation of the controversy by whatever process. In re Pennsylvania Co., 137 U.S. 451, 454, 34L.Ed 738,11 S. Ct. 141 (1980). Thus, this nonreviewability rule rests on a "policy of not permitting interruption of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." United States v. Rice, 327, U.S. 742, 751, 90 S.Ed 982, 66 S. Ct.835 (1946). "Removal in diversity cases, to the prejudice of the state court jurisdiction, is a privilege to be strictly construed;" for this reason, in deciding whether to remand, "the district court has one shot, right or wrong." La Providencia, 406 F.2d at 252-53. This policy is, of course, entirely consistent with a rule that remand orders become nonreviewable as soon as entered." "a remand is effective when the district court mails a certified copy of the remand order to the state court, see 28 U.S.C.A. §1447©) (West 2006), or, if the remand is based on the lack of subject-matter jurisdiction or a defect in the removal process, when the remand order is entered."Citing re Lowe, 102 F.3d 731, 734-36 (4th Cir.

1996). [underlying added]

The Fourth Circuit precedent does not give a federal judge the option of changing an order of remand once it is entered in federal court.

The court in Lowe stated that "we hold that a federal court loses jurisdiction over a case as soon as its order to remand the case is entered. From that point on, it cannot reconsider its ruling even if the district court clerk fails to mail to the state court a certified copy of the remand order." The Fourth Circuit then instructed the district court to return the case to the state court.

One may ask, why does the state court not want to resumes its' suspended jurisdiction as soon as the federal court is divested of jurisdiction? Why should a South Carolina resident's due process of law be delayed when the federal court's jurisdiction ends?

II. The Supreme Court overlooked or misapprehended the length of the jurisdiction hiatus when it held "we do not believe that the fear of a brief jurisdictional hiatus between the federal and state court should dictate a result that is clearly contrary to the plain terms of the statute."

In this case there was no brief jurisdictional hiatus. The remand divesting the district court of jurisdiction was entered in federal court on July 20, 2006. The certified copy of the remand order was filed in the Charleston County Clerk's office on March 9, 2009, over two and a half (2 ½) years later.

The United States Supreme Court in Thermtron Productics, Inc. v. Hermansdorfer, 96 S.Ct. 584 (1976) commented on what Congress intended with respect to remand orders when it stated " there is no doubt that in order to prevent delay in trial of remanded cases by protracted litigation of jurisdictional issues, United States v. Rice, 327 U.S. 742 at 751, 66 S.Ct. 835 at 838,

90 L.Ed 982, Congress immunized from all forms of appellate review any remand order issued on the grounds specified in s 1447(c), whether or not the order might be deemed erroneous by an appellate court."

Our Supreme Court has also embraced the general policy of law not to encourage the prolonging of litigation. See Brown v. Palmetto Baking Co. S.C. 183, 187 (1952).

III. The Supreme Court overlooked or misapprehended the problems that are created by establishing jurisdictional precedent which is at odds with the precedent of the Fourth Circuit.

This decision creates a conundrum for the bench and bar in South Carolina.

Federal judges in South Carolina are bound by the Fourth Circuit Courts holding in Lowe that the federal court is divested of jurisdiction once the order of remand is entered in federal court regardless of the failure of the clerk to file a certified copy in the state clerk's office. Federal judges and clerks are supervised and bound by the precedent of the Fourth Circuit. Federal judges are not bound by the South Carolina Supreme Court relative to matters dealing with the interpretation of federal statutes.

As stated in the opinion, "although federal and state courts form one system of jurisprudence, federal courts have no general supervisory power over the state courts, and there is nothing a state court can do to affect federal practice and procedure."

There are number of problems that can arise. If the federal clerk, which is bound by Lowe, insists on using the electronic filing system to electronically transmit the remand order to the state clerk without certification, litigants could be left in jurisdictional hiatus indefinitely, since this court has no power to direct the federal court to change federal procedure and federal

courts have no general supervisory power over the state courts.

It is also doubtful that a United States District Court Judge cares if the state court chooses not to resume its suspended jurisdiction once the remand order is entered in federal court and electronically transmitted to the state clerk, hence, further frustrating the due process of law.

A problem is also created relative to this courts ruling that the time for answering is tolled until the state clerk receives a certified copy of the remand order. If the state clerk is mailed a certified copy of the remand order there is an inevidable delay between the time the remand order is filed in the state clerk's office and then transmitted to counsel. This delay impacts this court's ruling that the time for filing an Answer is tolled in state court until the state court clerk receives the federal court's certified remand order as notice to counsel of the filing is delayed.

It is respectively submitted that it would be far better for our state court to be in harmony with the federal court relative to the issues of divesting and vesting of jurisdiction. The state court should resume jurisdiction as soon as the order of remand is entered in federal court. Counsel immediately knows when an order of remand is entered in the federal clerk's office as counsel receives notice electronically when the order is entered.

CONCLUSION

The state court and the federal courts need to be in harmony concerning when a federal court is divested of jurisdiction and when the state court's suspended jurisdiction resumes. This opinion frustrates harmony as it is at odds with the Lowe decision decided by the Fourth Circuit in 1996. This opinion creates delay in the administration of justice and rewards a Defendant who improperly removed a case from state court to federal court. It punishes two (2) Charleston County residents who commenced lawsuits against a Charleston County resident and Charleston

County law firm in state court.

For the reasons set forth herein the Respondents respectfully request that the Court grant the Respondents' Petition for Rehearing.

Respectfully Submitted,

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This 10th day of July, 2013

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PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Petition for Rehearing by United States Mail, postage prepaid, on July 10, 2013, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H. Hood, Esquire and James B. Hood, Esquire, located at Hood Law Firm, P.O. Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A. Camden Lewis, Esquire and Ariail E. King, Esquire, located at Lewis & Babcock, LLP, P.O. Box 11208, Columbia, SC 29211.

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July 10th, 2013