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JUL 23 2013

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The 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. 2010-151573

Appeals From Charleston County
Daniel F. Pieper, Circuit Court Judge
Roger M. Young, Circuit Court Judge

Opinion No. 27279.

Heard March 6, 2013 – Filed June 26, 2013

RETURN TO PETITION FOR REHEARING

Section 1446(d) of the federal removal statute states that upon removal the state court "shall proceed no further unless and until the case is remanded." 28 U.S.C. § 1446(d). Section 1447(c) states in equally plain language that once a certified copy of remand is mailed to the state court, the state court "may thereupon proceed with such case." 28 U.S.C. § 1447(c).

The Court has ruled that Section 1447(c) clearly mandates that the return of jurisdiction to state court be accomplished by the mailing of a certified copy of the order of remand which was not complied with until after the entries of default in these cases. Accordingly, the Court properly held that the state court was without jurisdiction when the defaults were entered, and therefore, the judgments are void.

The Plaintiff has filed a Petition for Rehearing asserting that this Court has overlooked or misapprehended certain matters of law and fact. However, the Court fully considered those matters and the petition should be denied and the remittitur issued forthwith to allow the Defendants to proceed.

I. The Supreme Court fully considered the Fourth Circuit precedent regarding when the federal district court is divested of jurisdiction.

The Plaintiff argues that:

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.

(Respondent's Petition for Rehearing p. 2)

First, the language quoted by the Plaintiff and attributed to the Court is actually a quotation in a parenthetical to a citation to *Arnold v. Garlock, Inc.*, 278 F.3d 426, 437-38 (5th Cir. 2001). That opinion was issued by the Fifth Circuit in an appeal from a Texas district court. The consideration of Section 1447(c) arose in the context of the appellate court's jurisdiction to grant a stay of certain remand orders that had not yet been certified and mailed.

Second, nothing in this Court's opinion purports to change the Fourth Circuit precedent which governs when the federal district courts in this state are divested of the power to reconsider or amend a remand order. Rather, this Court addressed the question of when the jurisdiction resumes in the state court.

The Court wisely considered the sound reasoning of the Missouri and California appellate courts in holding that: "Congress purposefully included the mailing of a certified order as a jurisdictional requirement and, thus, the mere entry of an order is not self-executing as to the jurisdiction of the state court." *Spanair S.A. v. McDonnell Douglas Corp.*, 172 Cal. App. 4th 348, 357 (Cal. Ct. App. 2009) ("Congress made the mailing of a certified copy of the remand order the 'determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference.'"); *State ex rel. Nixon v. Moore*, 108 S.W.3d 813, 818 (Mo. Ct. App. 2003) (holding that the mailing of a certified copy of the remand order is the operative event in the return to state court jurisdiction.)

Contrary to the Plaintiff's convoluted argument, this Court never implies that the federal district court in South Carolina is bound to follow *Spanair*, and in fact, the holdings of these state courts are distinctly different from any question that would be posed to our district courts. In federal courts, any Section 1447(c) issues would deal with when the district courts lose jurisdiction; while in state courts, the Section 1447(c) issue, as here, would be when their power resumes. And, it is up to the South Carolina state courts to determine their jurisdiction.

This Court also fully considered the Fourth Circuit's precedent in *In re Lowe*, 102 F.3d 731, 736 (4th Cir.1996), wherein the federal appellate court held 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.” However, this Court is not bound to follow the Fourth Circuit. By the same token, nothing in this Court’s opinion binds the federal district courts. Under Fourth Circuit precedent, a federal district court lose 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.” *In re Lowe*, 102 F.3d at 736. That precedent does not conflict with this Court’s holding that power does not resume in the state court until the mailing of a certified copy of the remand order.

II. The Court fully considered the lapse in time between the federal court losing jurisdiction and the state court resuming power.

In adopting the rule that the power resumes in state court when the certified order is mailed, it is apparent that the Court considered that the transfer of power would not be simultaneous and that there would be gaps of time in which neither the federal nor the state court would have the power to act. However, the Court wisely concluded that: “[W]e do not believe 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.”

The Plaintiff argues that the Court overlooked the fact that the hiatus in this case was not brief because, while the remand order was entered on July 20, 2006, the certified order was not filed in state court until March 9, 2009, over two and a half years later. In fact, the Court specifically noted when the certified order was filed and the state court resumed power. However, the prolonged time period in this case was not of the Defendants’ making, and hopefully, such a delay will not occur in the future. In most cases, the hiatus should be brief, but in any event, the fact that a clerical oversight by the district court created a prolonged hiatus cannot override the clear language of the statute.

III. This Court's decision does not create any problem with the Fourth Circuit's jurisdictional precedent.

The Plaintiff argues that this Court has not considered that the decision in this case “creates a conundrum for the bench and bar in South Carolina” because the federal judges are bound by Fourth Circuit precedent.” However, as discussed above, this Court’s decision should have no impact on the federal district court following Fourth Circuit precedent on when they lose jurisdiction.

The Plaintiff also speculates that the federal clerks will refuse to mail certified orders and that our federal District Judges do not care if the district clerk mails a certified copy of the remand order:

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 would 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 district court and electronically transmitted to the state clerk, hence further frustrating the due process of law. CITE

(Respondent’s Petition for Rehearing pp.5-6)

First, the Plaintiff’s dire prediction is ridiculous and an insult to the honorable judicial officers who serve in our federal district courts, and this Court’s decision should not be changed based on such ludicrous speculation that the federal judiciary will refuse to mail a certified order. Second, the record in this case proves that the District Court did eventually provide a certified copy that was filed in the state court on March 5, 2009. And, any party can request the clerk of court to mail a certified copy in compliance with the statute.

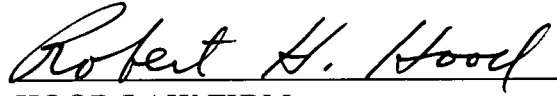
Finally, the Plaintiff argues that the Court's decision on Section 1447(c) creates a problem with the Court's ruling on when the Defendants have to answer. The Court held the time for filing an Answer was tolled until the state court resumed jurisdiction, and directs that on remand, "the cases [are] to recommence from the procedural point at which the Charleston County Clerk of Court received the federal court's certified remand order."

Defendants submit that given the circumstances and the posture of the case, that the only conclusion that can be reached on this record is that jurisdiction resumed on March 5, 2009. Accordingly, when the remittitur is issued and filed in the trial court, the instruction to "recommence" on that date effectively turns the clock back to March 5, 2009, and the tolling ceases.

CONCLUSION

Wherefore, based on the foregoing, the Defendants respectfully submit the petition for rehearing should be denied because the Court fully considered all the applicable laws and the facts in this record, and correctly applied the clear, mandatory language of Section 1447(c) in holding that the power did not resume in the state court until the certified copy of the remand order was filed.

Respectfully submitted,



HOOD LAW FIRM, LLC

Robert H. Hood

James B. Hood

Deborah Harrison Sheffield, *Of Counsel*

172 Meeting Street ~ Post Office Box 1508

Charleston, SC 29402

Phone: (843) 577-4435 ~ Fax: (843) 722-1630

A. Camden Lewis

Keith M. Babcock

Ariail E. King

LEWIS & BABCOCK, LLP

1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

(803) 771-8000

Fax (803) 733-3534

Attorneys for the Petitioners

Paul H. Hulsey and The Hulsey Litigation Group

July 19, 2013

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CERTIFICATE OF SERVICE

I, Robert H. Hood, attorney with the law firm of Hood Law Firm, LLC, do hereby certify that I have served the Return to the Petition for Rehearing upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said counsel as follows:

Frank M. Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, South Carolina 29464

This 19 day of July, 2013.


ROBERT H. HOOD

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