

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Danny Rose,

Plaintiff,

v.

Robert Rose, Gloria Rose-Ruch, Mary
Margaret Doll Rose, and John Does 1-99

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CA No. 2022-CP-23-04451

ORDER

RECEIVED

Nov 06 2023

SC Court of Appeals

This matter comes before the Court upon motions by Defendants seeking to compel discovery and to set bond. Defendants' motions filed on August 2, 2023 and September 15, 2023 are DENIED.

On May 26, 2023, this Court granted Plaintiff's motion for judgment on the pleadings as to two of its claims against Defendants and awarded attorneys' fees and expenses. In accordance with the Court's order, the Clerk of Court entered judgment against Defendants for the full amount owed to Plaintiff, plus pre-judgment interest and costs. Thereafter, Defendants appealed that order. Defendants now seek an order compelling Plaintiff to appear for a deposition and conduct other discovery, contending they are entitled to conduct discovery on the causes of action not at issue in the order on appeal. Defendants point to Rule 205, SCACR, which authorizes matters "not affected by the appeal" to proceed in the lower court while an appeal is pending. Plaintiff opposes the motion, arguing the discovery Defendant seeks is inextricable to the matters on appeal, and it would either force repetitive depositions (if the Court's prior order is reversed) or would be moot (if the Court's prior order and judgment is affirmed), resulting in additional and unnecessary costs

to Plaintiff. Therefore, Plaintiff argues, judicial economy necessitates the issues on appeal be resolved before additional discovery is undertaken.

The Court agrees with Plaintiff. It is unlikely that Plaintiff's deposition testimony would not affect the appeal. Importantly, the Court finds judicial economy is served by allowing Defendants' appeal to be resolved. That way, all parties have a clear understanding of the matters at issue, if any.

Second, Defendants seek to post a bond pursuant to S.C. Code §18-9-130(A). However, this request is not procedurally proper at this time and is therefore denied. Pursuant to §18-9-130(A)(1), the execution of a judgment is not stayed while on appeal unless the presiding judge grants a stay of execution. Where such a stay is entered, it must be accompanied by a bond or surety equal to the lesser of the amount of the judgment or one million dollars. Defendants did not seek a stay of execution; therefore the Court lacks authority to set bond. In addition, pursuant to statute, the bond required would be equal to the amount of the judgment. Further, Plaintiff has represented to the Court he has not attempted to execute on the judgment under appeal. Accordingly, the Court denies Defendants' motion. Nothing in this Order should be construed as limiting Defendants' ability to post an appeal bond as authorized by Rule or statute.

IT IS SO ORDERED

SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Danny Rose vs. Robert Rose , defendant, et al

Case Number: 2022CP2304451

Type: Order/Other

So Ordered

G.D. Morgan Jr.