

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Master-in-Equity

Mikell R. Scarborough, Master in Equity

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Case No. 2023-001562

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**RECEIVED**  
**Nov 08 2023**  
**SC Court of Appeals**

R&R Landscape and Design,  
LLC f/k/a R&R Landscape,  
Inc and Mark Gonzalez,

Respondent,

v.

The Broadband Companies,  
LLC and Fred Anthony,

Appellants.

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AMENDED  
MOTION TO CONFIRM EXISTENCE OF AUTOMATIC STAY AND  
ENFORCING COMPLIANCE and  
**REQUEST FOR AN EXPEDITED DECISION**

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Appellants hereby submit this motion, pursuant to Rules 205 and 241, SCACR, which seeks for this court to confirm the existence of an automatic stay during the pendency of this appeal and to direct the lower court to comply with the stay, which commenced October 3, 2023.

The lower court ruled on November 6, 2023 that Fred Anthony was in contempt of court for failing to abide by the Orders that were appealed on October 3, 2023. After hearing arguments from the Defendant's Counsel, the Court ruled there was no stay and ordered Mr. Anthony remanded to custody for contempt of court. The Motions and Rule to Show Cause drafted by the Respondents provided

no authority whatsoever to support their argument that there was no stay in effect. Their sole argument is that the Appeal was filed for delay, which is not true. Regardless, the Master in Equity has no authority over the matters that are stayed by the appeal and was in error for holding Mr. Anthony in Contempt.

There are good grounds for the Appellate Court to issue an order Confirming the existence of the Stay under Rule 241 SCACR and holding any orders issued in violation of that stay are void *ab initio*.

Despite the appeal and the stay, the Charleston County Master-in-Equity set and held a hearing on November 6, 2023, several weeks AFTER the appeal was served. In the Rule to Show Cause, filed by the Respondents after the filing of the appeal, the Respondents moved that the Appellants be held in contempt for failure to comply with the order on appeal, despite the fact that a stay was in effect. Because this appeal is pending, the lower court lacked jurisdiction to hold this hearing, and the hearing was a clear violation of the appellate stay. Rules 205 & 241(a), SCACR.

Rule 241(a) says, “As 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...” A Notice of Appeal was Served on the opposing counsel and filed with the Appellate Court on October 3, 2023. Orders appointing receivers are immediately appealable under S.C. Code Ann. §14-3-330(4) and there is no exception to the Appellate stay.

Furthermore, the Notice of Appeal was an appeal of the form order filed on August 11, 2023, and the full order filed on September 25, 2023. This means that the matters decided in both of those orders are stayed. Because of the stay, the receiver has no power or authority granted by those orders. Because of this, the Defendants were under no obligation to respond to the receiver after the Appeal was filed. The Defendants cannot be held in contempt for failing to comply with a stayed order.

If the Respondent’s counsel has an issue with this, the proper forum is the Appellate Court. It should be noted that they know this as they have filed a

Motion to Dismiss the Appeal. Even if the Appeal were to be ultimately dismissed, this would have no bearing on the existence of the stay as of today.

Finally, the Master in Equity has no jurisdiction to determine the existence of an automatic stay. That jurisdiction rests solely with the Court of Appeals. Under Rule 241 SCACR, "appeals automatically stay lower court judgments, with ten enumerated exceptions. However, the Rule provides no procedure to settle disputes as to whether an exception applies. As no procedure is specified, authority to resolve such a dispute is vested in the Supreme Court, not the Circuit Court." *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (S.C. 1985). This rule was extended to include the Appellate Court in *State v. Cooper*, 536 S.E.2d 870, 342 S.C. 389 (S.C. 2000). The Master in Equity made a decision about the stay without any authority because there is none.

This motion seeks for the Court of Appeals to direct the lower court not to proceed with any further matters affected by this appeal, and to vacate any orders issued during the pendency of this appeal involving the receiver, including any orders issued pursuant to motions filed during the stay.

Rules 205 and 241(a), SCACR, require that the lower court acknowledge the existence of the stay while this court reviews the matters on appeal involving the improper appointment of a receiver without notice.

One of the orders appealed in this case came about as a ruling on part of a motion made by the Respondent. In that motion, the Respondent 1) sought attorney's fees and receiver fees although the appointment of the receiver was the subject of the appeal, and 2) sanctions against the Appellant for purportedly not cooperating with the requests of the receiver during the pendency of the appeal.

The Respondent sought this relief during the automatic stay, despite not having properly followed the procedures prescribed in the Rule: "(3) A person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client. The petition shall be captioned the same as the appeal (this was done by Respondent). In addition to the petition and verification, the moving party must contemporaneously file a certified copy of the order, judgment, decree or decision of the lower court or administrative tribunal

and a copy of the notice of appeal with its proof of service.” (This was not done by Respondents.) Additionally, the petition failed to include any of the required information of Rule 241 (4)(A)(B) or(C).

The Supreme Court has held that “[t]he lower court may not act or issue orders that affect an issue on appeal.” Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419, 422 (2007). “Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal[.]” Tillman v. Oakes, 398 S.C. 245, 254-55, 728 S.E.2d 45, 50-51 (Ct. App. 2012). The order issued by the lower court during the pendency of this appeal specifically dealt with actions and requests of the receiver after the filing of the appeal.

This appeal is based on the appointment of a receiver – are matters that are affected by this appeal. See Rule 205, SCACR.

The Respondent has obtained from any court, an order that lifts the appellate stay, though there is a process to seek such relief. Rule 241(c)&(d), SCACR. No application for the lifting of the stay was filed with the appellate court, but instead the application was made with the lower court from which the appeal was being made. The lower court incorrectly held that no stay was in place. In Kearney v. Allen, 287 SC 324, 338 S.E.2d 335 (1985), the South Carolina Supreme Court held that “when there is a dispute as to whether an automatic stay exists under our rule, authority to resolve such a dispute is vested in the Supreme Court. When Kearney was decided, our appellate procedural rules provided that appeals were filed and finalized in the Supreme Court the transferred to the Court of Appeals...Under our current procedure, the vast majority of appeals are filed, processed and decided by the Court of Appeals.” Kearney at 342 SC 399. It is the Court of Appeals which has the power and authority to rule upon the issues arising under SCACR, including those arising under Rule 255, and not the Master-in-Equity.

The matter in question is stayed, and the master is without jurisdiction to hold the hearing. Rule 205, SCACR; Arnal, 641 S.E.2d at 422; Tillman, 398 S.C. at 254-

WHEREFORE Appellants pray for an order

1. Finding the Master acted without authority in finding there was no appellate stay;
2. Finding there is a stay;
3. Directing the lower court not to proceed during the pendency of the appeal with matters affected by this appeal;
4. Finding any orders issued regarding the authority of the receiver, especially after the Supplemental Order of September 25, 2023 should be vacated,

Respectfully submitted,

November 7, 2023

/s/Shawn M. French, Sr.  
Shawn M. French, SC BAR No.: 75007  
Attorney for Appellants  
Mt. Pleasant, SC 29464  
843-606-6440(ph)  
888-850-0948(f)  
shawn@thefrenchlawfirm.com

/s/ Dwayne M. Green  
Dwayne M. Green, Esquire  
Green Law Offices  
Post Office Box 20009  
Charleston, South Carolina 29413  
(843)814-6578  
dwayne@greenlawsc.com  
Attorney for Appellants