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Jan 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-000013

Case No. 19-ALJ-17-0416-CC

Tractor Supply Company,..... Appellant,

v.

South Carolina Department of Revenue, Respondent.

**JOINT MOTION TO RECOGNIZE INAPPLICABILITY OF AUTOMATIC STAY TO
ALC’S ORDER ON TSC’S SECOND RECONSIDERATION MOTION OR,
ALTERNATIVELY, FOR LIMITED REMAND TO ALLOW THAT ORDER TO BE RE-
FILED**

Appellant Tractor Supply Company (“TSC”) and Respondent South Carolina Department of Revenue (the “Department”) (collectively the “Parties”) hereby jointly make this motion to recognize the inapplicability of the automatic stay to the order of the Administrative Law Court (the “ALC” or the “Court”) on TSC’s Second Reconsideration Motion. In the alternative, the Parties jointly move for a limited remand order permitting the ALC to re-file the order denying Second Reconsideration Motion.

Following a contested case hearing, on August 8, 2023, the Honorable Ralph King Anderson, III issued a Final Order (the “Original Order”)¹. On August 18, 2023, TSC filed

¹ The orders and motions referenced herein are voluminous. TSC is happy to provide copies of these documents should the Court request them. For the sake of brevity, only the most relevant are attached hereto.

a Motion to Reconsider the Original Order. On August 21, 2023, *ex mero motu*, the Court rescinded the Original Order while it deliberated on the Motion to Reconsider. On December 4, 2023, the Court issued *two* new Orders: 1) an Amended Final Order (the “Amended Order”); and 2) an Order on Reconsideration Motion (the “Reconsideration Order”). In these two new orders, the Court stood by its original result in ruling adversely to TSC.

In TSC’s view, in these two orders, the Court: 1) erroneously declined to consider certain reconsideration arguments of TSC as they were not in accordance with federal court standards concerning Rule 59(e); and 2) set forth new grounds and reasoning supporting its two new Orders and the adverse result to TSC. As a result, TSC felt compelled to move to reconsider the two new orders in order to preserve all issues for appeal, which motion it filed on December 14, 2023 (the “Second Reconsideration Motion”). *See* Exhibit A. In response to this motion, the Department of Revenue (in its memorandum in opposition) asserted its view that the arguments of TSC are procedurally unsound and that the Court did not rely on new reasoning or grounds for its two new orders. *See* Exhibit B. TSC respectfully disagrees.

As a result of these circumstances, and in order to avoid any claim that its appeal was untimely, TSC filed and served its notice of appeal on January 3, 2024 (the “Notice of Appeal”).² Within thirty minutes of service and filing of the Notice of Appeal, TSC received the filed Order of the ALC denying TSC’s Second Reconsideration Motion (the “Order on Second Reconsideration Motion”). Thereafter, the same date (January 3, 2024),

² Pursuant to Rule 203(b)(6), SCACR, TSC believes that the Notice of Appeal was timely filed within 30 days of receipt of the orders dated December 4, 2023.

TSC filed a corrected and amended notice of appeal, which was the same as what it originally filed but which was amended and corrected to include the Order on TSC's Second Reconsideration Motion (the "Corrected/Amended Notice of Appeal").

Because the Notice of Appeal was filed and served the same date (January 3, 2024) as but just before the issuance of the ALC's Order on TSC's Second Reconsideration Motion, it is uncertain whether the ALC should be considered stayed by the automatic stay (created by the appeal notice) from issuing its order. However, a corrected/amended notice was filed after the issuance of the ALC's order on January 3, 2024. Thus, in these circumstances, the parties believe this Court should recognize that the Amended/Corrected Notice of Appeal was filed after the issuance of the ALC's Order on Second Reconsideration Motion and that, therefore, there is no need to consider that the original Notice of Appeal created an automatic stay that precluded the ALC from taking action on TSC's Second Reconsideration Motion.

Accordingly, the Parties move that this Court issue an order recognizing that the ALC was empowered to enter its Order on Second Reconsideration Motion and that all of the orders are appealed pursuant to the Corrected/Amended Notice of Appeal.

Failing that, and in the alternative, if the Court believes the ALC was not empowered to enter the Second Reconsideration Order as a result of an automatic stay, the Parties jointly move that this Court issue an Order granting a limited remand to the ALC for the sole purpose of the ALC re-filing its same Order on Second Reconsideration Motion.

(Signature on Following Page)

Respectfully submitted,

NELSON MULLINS RILEY SCARBOROUGH, LLP

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Counsel for Appellant Tractor Supply Company

SOUTH CAROLINA DEPARTMENT OF REVENUE

By: s/ Jason P. Luther (with permission – see attached)

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Revenue

January 8, 2023

Eileen Hindman

From: Mitch Brown
Sent: Monday, January 8, 2024 1:13 PM
To: Eileen Hindman
Subject: FW: Tractor Supply Company matter

From: Jason Luther <Jason.Luther@dor.sc.gov>
Sent: Monday, January 8, 2024 12:57 PM
To: Mitch Brown <mitch.brown@nelsonmullins.com>
Subject: RE: Tractor Supply Company matter

External Source/Sender notice

Use caution responding or clicking links/attachments.

Good afternoon Mitch,

Happy new year to you also, I hope all is well with you. I was wondering how you all might approach the timing conundrum; I think your proposed joint motion is appropriate. You have permission to sign on our behalf.

Jason



Jason Luther

Chief Legal Officer

Office of General Counsel

803-898-5785 | mobile: 803-240-6446 | Jason.Luther@dor.sc.gov

South Carolina Department of Revenue | dor.sc.gov

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From: Mitch Brown <mitch.brown@nelsonmullins.com>
Sent: Monday, January 8, 2024 10:46 AM
To: Jason Luther <Jason.Luther@dor.sc.gov>
Subject: Tractor Supply Company matter

Hello Jason:

Happy new year to you and I hope you are well! In light of the odd timing issues that occurred with regard to the appeal of the ALC's orders, and the Judge's final order on the second motion to reconsider, I put together the attached. Can you please review this and let me know if you agree for the Department? This is a housekeeping issue which I think just needs to be cleared up in advance instead of letting it sit there. I do not see any harm to any party from this. Thanks!

Mitch

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v.

South Carolina Department of Revenue, Respondent.

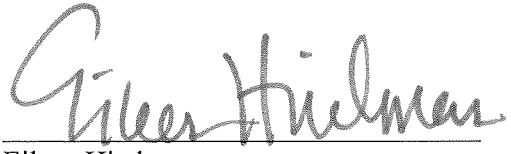
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, hereby certify that I have served the Administrative Law Court and all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings: Joint Motion to Recognize Inapplicability of Automatic Stay to ALC's Order on TSC's Second Reconsideration Motion or, Alternatively, for Limited Remand to Allow that Order to be Re-Filed

Counsel Served: Via E-Mail
Marcus D. Antley, Esq.
W. Allen Myrick, Esq.
Jason P. Luther, Esq.
South Carolina Department of Revenue
300-A Outlet Pointe Blvd. (29210)
P.O. Box 12265
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marcus.antley@dor.sc.gov
allen.myrick@dor.sc.gov
jason.luther@dor.sc.gov

Counsel for Respondent

A handwritten signature in cursive script that reads "Eileen Hindman". The signature is written in black ink and is positioned above a horizontal line.

Eileen Hindman
Administrative Assistant

January 8, 2024

Eileen Hindman

From: Eileen Hindman
Sent: Monday, January 8, 2024 4:54 PM
To: marcus.antley@dor.sc.gov; allen.myrick@dor.sc.gov; jason.luther@dor.sc.gov; Mitch Brown; John Von Lehe; Bobby Streisel; Bryson Geer; Donna Mills
Subject: Tractor Supply Company v. SCDOR - Appellate Case No. 2024-000013
Attachments: TSC - 2024.01.08 Joint Motion re Automatic Stay.pdf; TSC - 2024.01.08 Jason Luther approval email.pdf; Exhibit A - 2023.12.14 TSC - Petitioners Mtn To Reconsider.pdf; Exhibit B - 2023.12.27 - DOR's Response to Tractor Supply Company's Mtn. to Reconsider Amended Final Order.pdf; TSC - 2024.01.08 Proof of Service.pdf

Good afternoon.

Attached for service upon you in the above matter is a Joint Motion to Recognize Inapplicability of Automatic Stay to ALC's Order on TSC's Second Reconsideration Motion or, Alternatively, for Limited Remand to Allow that Order to be Re-Filed, with exhibits, email from Counsel for Respondent SCDOR approving of this joint filing, and Proof of Service.

Thank you.



EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT

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