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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Robert W. Buffington, Special Referee

Appeal No. 2023-001638

Mae McGruder,..... Respondent,

v.

Dollar General Corporation,
d/b/a Dollar General Store #1677 and Janie Davis,.....Appellants.

**REPLY TO RETURN TO MOTION FOR LEAVE TO FILE
MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO RULE 60(b), SCRCF**

Pursuant to Rule 240(f), SCACR, Appellants Dollar General Corporation, d/b/a Dollar General Store #1677 and Janie Davis (“Appellants”) hereby reply to Respondent Mae McGruder’s (“Respondent”) Return to Appellants’ Motion for Leave to File Motion for Relief from Judgment Pursuant to Rule 60(b), SCRCF (the “Motion”). The Motion makes two arguments. First, that the lower court does not have jurisdiction to hear the Motion pursuant to Rule 205, SCRCF. Second, that Rule 60(b) is not a substitute for an appeal. Both arguments fail.

“During the pendency of an appeal, leave to make [a 60(b)] motion must be obtained from the appellate court.” Rule 60(b), SCRCF; *see also Southeastern Hous. Found. v. Smith,*

380 S.C. 621, 641, 670 S.E.2d 680, 691 (2008) (noting it was required that request for leave to file a 60(b) motion be made from the appellate court once the appeal was pending). Accordingly, Respondent is correct that the appellate court has exclusive jurisdiction over matters on appeal. However, that is the very reason why Appellants have sought leave from this Court to proceed with its Rule 60(b) motion, as required.

Moreover, Appellants are not pursuing relief under Rule 60(b) in lieu of an appeal but rather in addition to the appeal all parties agree is properly pending. Accordingly, there is no basis to preclude Appellants from seeking relief under Rule 60(b) once leave is granted by this Court.

CONCLUSION

For the reasons stated herein, Appellants request leave to file a Motion for Relief from Judgment with the Circuit Court. Appellants also request that, while this matter is being resolved by the Circuit Court, all appellate deadlines be stayed.

Respectfully submitted,

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January 25, 2024

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