

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Case No. 2019-CP-18-00980
Appellate Case No. 2023-001762

Andrey Gergel and Sonja M. Wyatt,.....Respondents,

v.

Alexander Opoulous, III, Tina B. Opoulous, Sebrina Leigh Jones, and Luxury Land and
Homes, Inc, Defendants,

Of Whom Tina B. Opoulous is the.....Appellant.

RESPONDENTS' RETURN TO THE APPELLANTS'
PETITION FOR SUPERSEDEAS

The Respondents Andrey Gergel and Sonja M. Wyatt submit this Return to the Appellants Petition for Supersedeas pursuant to Rule 241(c) SCACR. The Appellants' Petition should be denied.

The Appellants have failed to follow the procedure for obtaining supersedeas, which should lead to a denial of their petition. Pursuant to Rule 241(d) SCACR, the application for supersedeas must "first be made to the lower court or administrative tribunal which entered the order or decision on appeal." The only exception for that is where there are extraordinary circumstances. None of have been alleged by the Appellants.

The Appellants have made no application for any supersedeas to the Honorable Maite Murphy whose Order of October 18, 2023, is the one being appealed. There is no pending application before Her Honor. There are no “extraordinary circumstances” described in the petition before this Court. Further, there are no concerns about preserving jurisdiction or preventing a contested issue from becoming moot. SCACR 241(c)(2). Further, the Appellants made no motion pursuant to Rule 62(b) to Judge Murphy seeking to stay the judgment or sought to post any bond before Judge Murphy. *C-Sculptures, LLC v. Brown*, 393 S.C. 27, 709 S.E.2d 705 (Ct. App. 2011)(an appeal does not stay the judgment unless the judge before whom the judgment was obtain grants a stay, citing S.C. Code Ann. 18-9-130(A)(1)) The policy express in Rule 62(b) favors the judgment creditor over the judgment debtor. *Stearns Bank Nat’l Ass’n v. Glenwood Falls, LP*, 375 S.C. 423, 653 S.E.2d 276 (2007). There has to be an application before Judge Murphy. Without an application pending before Judge Murphy, the petition must fail not only by Appellate Court Rule but by statute and policy.

The original judgment in this case was entered on May 6, 2022, after a trial by a jury in which the Alexander Opoulous, III, and Tina B. Opoulous chose to represent themselves. The jury returned a verdict for \$217,000.00 against them. That is a money judgment for which no stay is provided pursuant to Rule 241 SCACR. *See also* S.C. Code Ann. 18-9-130. The Appellants’ petition should also fail as they have not stated the amount of any bond they would post pursuant to S.C. Code Ann. 18-9-130. *Moorhead Constr., Inc. v. Enterprise Bank of S.C.*, 410 S.C. 286, 765 S.E.2d 1 (Ct. App. 2014)(posting of a bond stays execution of money judgment under S.C. Code 18-9-130(A)(1)). Again,

without a pending motion for the amount of a bond before Judge Murphy, the petition must fail.

The Respondents request that this petition be denied due to the Appellants failure to follow the Appellate Court Rules, the applicable statutory provisions, and policy. .

Respectfully submitted.



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Attorneys for the Respondents

Mt. Pleasant, South Carolina
February 8, 2024

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SC Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
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The Honorable Maite Murphy

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Andrey Gergel and Sonja M. Wyatt,.....Respondents,

v.

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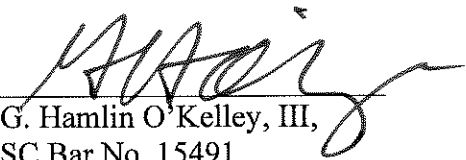
Of Whom Tina B. Opoulous is the.....Appellant.

PROOF OF SERVICE

I certify that I have served the Respondents' Return to the Appellants' Petition for Supersedeas by depositing a copy of same in Via Email sfutral@charlestonlaw.net and Via US Mail, addressed to Stephan V. Futeral, Futeral and Nelson, LLC, 1004 Anna Knapp Blvd., Suite 3, Mount Pleasant, SC 29464.

Mount Pleasant, South Carolina
February 8, 2023

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February 8, 2024

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SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org
AND US MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

*RE: Andrey Gergel v Alexander Opoulus, III, et al.,
C/A No.: 2019-CP-18-00980 Appellate Case No. 2023-001762
Client File No.: 3032.0001*

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the Respondents' Return to the Appellants' Petition for Supersedeas and Proof of Service in the above-referenced matter.

Should you have any questions, please feel free to contact me.

With kindest regards, I remain

Yours very truly,

G. Hamlin O'Kelley, III

GHOIII/atd
Enclosures

Cc: Stephan V. Futeral, Esq.
sfuteral@charlestonlaw.net