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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY COMMON PLEAS COURT
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2023-001150
Trial Court Case No. 2018-CP-26-00307

Wedgewood Condominium Association, Appellant,

v.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC; Crescent Engineering, Inc., Defendants,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC, are the Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. Does a deposit of judgment under Rule 67, SCRCP, stop the accrual of interest under S.C. Code Ann. § 34-31-20, as the Supreme Court held in *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995)?

II. Did the trial court act within its discretion in permitting Centex, consistent with Rule 67, SCRCP, to deposit judgment with the court and stop accrual of post-judgment interest?

III. Does Rule 67, SCRCP, permit a party to deposit judgment and stop the accrual of post-judgment interest when the party challenges liability on appeal?

INTRODUCTION

There are well-settled procedures for depositing judgment pending appeal. South Carolina Rule of Civil Procedure 67 defines the process. And the Supreme Court has held that compliance with this process stops post-judgment interest from accruing against the debtor. This rule—referred to in South Carolina as the "*Russo* rule"—is consistent with Rule 67's federal counterpart.

This appeal arises out of the circuit court's post-trial order permitting Defendant Centex Homes[1] to follow this well-worn path and stop the accrual of post-judgment interest. After an adverse judgment, Centex sought, and the trial court granted, leave to deposit judgment into the court and stop the accrual of post-judgment interest against Centex. On appeal, the Wedgewood Condominium Association raises a litany of arguments about why the trial court abused its discretion in allowing Centex to deposit judgment in this manner. These arguments are foreclosed, forfeited, and frivolous.

Binding precedent forecloses the only argument Wedgewood preserved—that South Carolina's interest statute, S.C. Code Ann. § 34-31-20, conflicts with Rule 67 and prevents application of the *Russo* rule. In *Russo* itself, the South Carolina Supreme Court considered the interplay between section 34-31-20 and Rule 67 and found no conflict. The statute and rule peaceably coexist, and the trial court properly exercised its discretion in granting Centex leave to make a Rule 67 deposit and halt the accrual of post-judgment interest.

Wedgewood's remaining arguments are unpreserved and erroneous. For instance, Wedgewood contends the trial court lacked discretion to permit a large company like Centex to deposit judgment, but (a) Wedgewood never raised that argument below and (b) neither the plain

[1] For simplicity, the three appellees—Centex Homes, Balfour Beatty Construction, LLC, and Centex Construction, LLC—refer to themselves collectively as "Centex" throughout.

text of Rule 67 nor published precedent supports the argument that only individual defendants or small companies can deposit judgment with the court. Wedgewood also contends that Rule 67 applies only when the depositing party concedes liability, but that argument is based on the prior version of a rule amended 40 years ago.

Wedgewood's appeal argues against settled law, with forfeiture issues to boot. The Court should affirm.

STATEMENT OF THE CASE

In this construction-defect case, after a Horry County jury returned a $6.75 million adverse verdict, Centex Homes filed several post-trial motions. Centex sought judgment notwithstanding the verdict based on the statutes of limitations and repose, and a new trial based on several evidentiary errors.[2]

Centex separately moved for leave to deposit judgment with the court, pursuant to Rule 67 of the South Carolina Rules of Civil Procedure. (R. 013–018). In its Motion, Centex stated that it was prepared to deposit the funds immediately upon the court granting leave, (R. 014 n.1), and that depositing the judgment would "guarantee that funds are available for immediate satisfaction of the judgment" after post-trial motions and a potential appeal, (R. 014). Depositing judgment, Centex explained, would "prevent the further accrual of post-judgment interest" against Centex. (*Id.*) Wedgewood did not respond to Centex's motion before the hearing.

At the hearing, Wedgewood acknowledged that binding precedent from the Supreme Court, *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), "apparently allows" Centex to stop post-judgment interest by depositing judgment. (R. 154, lines 10–13). Wedgewood opposed Centex's

[2] The arguments Centex made in the motion for judgment notwithstanding the verdict and new trial are raised in Centex's separate appeal from the trial court's denial of that motion. *See* Appellate Case No. 2023-001132.

motion anyway. Its sole argument in opposition was that, despite the Supreme Court's holding in *Russo*, South Carolina's general interest statute, S.C. Code Ann. § 34-31-20, requires post-judgment interest to accrue even after judgment is deposited with leave of court. Wedgewood thus asked the court to:

> [M]ake a ruling on whether or not Rule 67 supersedes South Carolina Code § 34-31-[2]0, which is the interest statute. Because Your Honor, our position would be on appeal . . . is that the rules of civil procedure cannot—are not superior to the interest statute.

(R. 154, lines 10–25). The trial court rejected Wedgewood's premise, concluding Rule 67 and the interest statute "can live harmoniously together" so there was no need to reconcile the two. (R. 158, line 24–R. 159, line 6). The remainder of the hearing centered on the mechanics depositing the judgment with the court. The trial court stated that the judgment deposit should be in the highest-interest account, "because whoever wins is going to want the interest." (R. 162, lines 11–18).

The court granted Centex's motion on June 16, 2023. (R. 006). The order required the clerk to "deposit the funds into a separate, new interest-bearing account with a bank agreed to by the parties." (*Id.* (emphasis omitted)). That same day, Centex deposited $6,803,167.81, reflecting the judgment plus then-accrued interest. The parties selected an account with 4.75 percent interest.

STANDARD OF REVIEW

"The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion." *S.C. Dep't of Transp. v. First Carolina Corp.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." *Oien Fam. Invs., LLC v.*

Piedmont Municipal Power Agency, 424 S.C. 168, 175, 817 S.E.2d 647, 651 (Ct. App. 2018) (quotation and emphasis omitted).

ARGUMENT

I. There is no conflict between S.C. Code Ann. § 34-31-20 and Rule 67.

Wedgewood's only preserved argument is that S.C. Code Ann. § 34-31-20 (Supp. 2020) precluded Centex from using a Rule 67 deposit of judgment to stop the accrual of post-judgment interest. Appellant's Brief ("App. Br.") at 7–10. Binding precedent forecloses that argument.

A. The Supreme Court's holding in *Russo v. Sutton*, along with later precedents from this Court, foreclose Wedgewood's argument.

The Supreme Court has already answered the precise issue Wedgewood raises—"whether a judgment debtor's deposit of a judgment into court, pending the debtor's own appeal of the judgment, stays accrual of post-judgment interest." *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995). It does. *Id.* at 443–44 ("[A] judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest."). The Court of Appeals has called this rule "unmistakably clear," stated that "the court of appeals is bound" by it, and explained that challenges to it are attempts to "argue[] against precedent." *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 620, 529 S.E.2d 566, 568–69 (Ct. App. 2000). The Court of Appeals has followed *Russo* several times. *Id.*; *Small v. Pioneer Mach., Inc.*, 330 S.C. 62, 65, 496 S.E.2d 884, 885–86 (Ct. App. 1998). The federal rule also aligns with *Russo*. *See Zelaya/Cap. Int'l Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1303 (11th Cir. 2014) ("The federal courts . . . have overwhelmingly held that post judgment statutory interest stops accruing once the disputed funds are deposited into the court's registry."). *Russo* resolves this case.

In *Russo*, the Supreme Court performed precisely the analysis Wedgewood requests—it analyzed the interplay between South Carolina's interest statute, S.C. Code Ann. § 34-31-20, and

Rule 67. After citing the post-judgment interest provision in section 34-31-20(B), the Court in *Russo* noted that it had "not previously specifically addressed" whether a judgment debtor could "stop accrual of interest" by depositing a judgment into court, "pending the debtor's own appeal," in accordance with Rule 67. *Russo*, 317 S.C. at 443. The Court noted its prior holding that a judgment *creditor* who appeals is not entitled to interest, because he "delays his right to judgment," so "the debtor ... should not be required to pay interest." *Id.* at 443 (discussing *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987)). The Court distinguished that from prior cases holding that a judgment *debtor* is "liable for any interest" pending an appeal, but may "stop[] the running of judgment interest" by "payment of the judgment into Court." *Id.*[3] Although neither *Sears* nor *Manning* involved a judgment debtor's "own appeal," the Court found the "logical extension of these cases is that a judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest." *Id.* The Court quoted Rule 67, under which "a party, upon notice ... and by leave of court...may deposit with the court all or part of the [judgment for a sum of money]." *Id.* at 444 (quoting Rule 67, SCRCP). The money is thereafter controlled by court order: it "shall be deposited as directed by the court" and "shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs." *Id.* The Court held Rule 67's procedure was consistent with its prior holding that a debtor could "prevent accrual of interest" on a judgment "by depositing the funds 'under an order of the court.'" *Id.* at 444. The rule "encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal." *Id.*

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[3] In *Horry County v. Woodward*, 291 S.C. 1, 351 S.E.2d 877 (Ct. App. 1986), the Court of Appeals applied the rule to allow a county debtor in a condemnation action interplead the judgment amount to the court and thereby stop interest pending the losing party's appeal). And in *Manning v. Brandon Corporation*, 163 S.C. 178, 161 S.E. 405 (1931), the Supreme Court applied the rule to permit a debtor to stop interest pending a creditor's appeal.

Under *Russo*, section 34-31-20 of the South Carolina Code and Rule 67 are harmonious because a Rule 67 deposit simply provides an end point for interest accrual, it does not stop interest from accruing in the first place. *See id.* And while the court in *Russo* ultimately denied a post-judgment interest stay because the losing party had not complied with Rule 67, *id.* at 444–45, subsequent precedent resolved any ambiguity. In *Duval* and *Small*, the Court of Appeals applied the rule and affirmed trial court decisions to stay post-judgment accrual of interest after a deposit in accordance with Rule 67. *Duval*, 339 S.C. at 620; *Small*, 330 S.C. at 65.

Wedgewood never grapples with *Russo* or its progeny, instead incorrectly claiming (through referencing its trial court argument) that the Supreme Court had never considered the intersection of section 34-31-20 and Rule 67. App. Br. at 9. One read of *Russo* proves that wrong. 317 S.C. at 443–44. Because *Russo* answered the question, it binds this Court. S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.").

* * *

The Court has already rejected, in brisk fashion, the exact same specious arguments Wedgewood advances here. In *Graham v. Town of Latta*, the appellant advanced the same foreclosed argument that § 34-31-20 superseded Rule 67, so a judgment debtor could not stop interest from accruing by depositing the judgment with the court. *Graham v. Town of Latta*, No. 2014-000208 (S.C. App. 2014), Final Brief of Appellant at 1, filed July 9, 2014. It framed the question on appeal as whether "Rule 67 SCRCP negate[s] S.C. Code Ann § 34-31-20(B)'s mandate that a tortfeasor must pay the legal rate of interest after judgment." *Id.* at 1. This Court rejected that argument in a single-sentence, unpublished opinion that cited, *inter alia*, *Russo*. No. 2014-000208, 2016 WL 3595771, at *1 (Ct. App. June 29, 2016). This is the same statute, same rule, and same argument. It should be the same result. The Court should affirm.

B. Even in the first instance, there is no conflict between section 34-31-20 and Rule 67.

Wedgewood's argument that section 34-31-20 precludes a judgment debtor from using Rule 67 to stop accrual of interest is not only foreclosed, it is also wrong.

Wedgewood's argument relies on the premise that the interest statute (S.C. Code Ann. § 34-31-20) is irreconcilable with Rule 67. Wedgewood proclaims the trial court determined that Rule 67 "override[s]" section 34-31-20, and that the court "disregard[ed]" the statute. App. Br. at 8. But section 34-31-20 can prevent a Rule 67 deposit from staying accrual of interest, as Wedgewood claims, only if the two provisions conflict. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 570, 703 S.E.2d 197, 201 (2010). A conflict exists only if section 34-31-20 mandates post-judgment interest in all instances, such that staying post-judgment interest for any reason (as a Rule 67 deposit does) violates the statute. There is no conflict here.

Contrary to Wedgewood's position, section 34-31-20(A) does not require post-judgment interest to accrue until the judgment creditor receives the funds. Wedgewood quotes subsection (A) and underlines language stating that money due "shall draw interest according to law." S.C. Code Ann. § 34-31-20(A); App. Br. at 7–8. That provision, however, does not mandate post-judgment interest. The full text of the provision states:

> In all cases of accounts stated and *in all cases wherein any sum or sums of money shall be ascertained and*, being due, *shall draw interest according to law*, the legal interest shall be at the rate of eight and three-fourths percent per annum.

S.C. Code Ann. § 34-31-20(A) (emphasis added). The italicized language about how money "shall draw interest" is part of a condition precedent: that is, the subsection applies only in "cases wherein any sum or sums of money shall be ascertained and . . . shall draw interest according to law." *Id.* If that condition is met, then the "legal interest" is 8.75 percent. *Id.* But this subsection does not define when money "shall draw interest," nor does it require that money draw interest in all

instances—rather, it assumes that interest is required. *Id.* Wedgewood's interpretation of the phrase "shall draw interest according to law" to mean that all judgments must accrue interest until the judgment creditor receives the funds inserts language that does not exist and strips the language from its context. *See Se. Toyota Distributors, LLC v. Jim Hudson Superstore, Inc.*, 387 S.C. 508, 514, 693 S.E.2d 33, 36 (Ct. App. 2010) ("A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law.").

Subsection (B) also does not require post-judgment interest in all instances. The provision states that a "judgment of a court enrolled or entered must draw interest according to law." S.C. Code Ann. § 34-31-20(B). But as the Supreme Court has recognized, "[d]espite the mandatory tenor of the statutory language, the statute does not automatically apply in every case." *Sears*, 293 S.C. at 45.

Notably, neither provision says anything about events that, "according to law," *stop* a judgment or other amount "being due" from drawing interest. As the court in *Russo* held, a Rule 67 deposit is one such action that can "stop accrual of interest." 317 S.C. at 443–44.

Attempting to distinguish *Russo*'s harmonious application of section 34-31-20(B) and Rule 67, Wedgewood argues for pages that a statute controls over a conflicting rule of civil procedure. *See* App. Br. at 7–10. This is true but immaterial—the takeaway from *Russo* is that they do not conflict. And amidst that argument, but without further explanation, Wedgewood cites a case that holds a judgment debtor's Rule 67 deposit did not stop accrual of statutory interest. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 631 S.E.2d 533 (2006). That case does not help Wedgewood.

Unlike this case, *First Carolina* involved a condemnation action. *See First Carolina*, 369 S.C. at 155 & n.2 (differentiating *Russo* because "*Russo* is not a condemnation action"). Condemnation law, unlike other actions, requires post-judgment interest for the duration: "Where the market value of the property is not paid contemporaneously with the taking, the owner is entitled to interest for the delay in payment from the date of the taking until the date of the payment." *S.C. Dep't of Transp. v. Faulkenberry*, 337 S.C. 140, 148, 522 S.E.2d 822, 826 (Ct. App. 1999) (quotation marks omitted). The underlying purpose of this interest also is different: in condemnation proceedings, "[t]his payment of interest has been described as not an award of interest in the traditional sense but rather a good yardstick by which to determine the rate of return on the property owner's money had there been no delay in payment[.]" *Id.* at 149–50 (quotation marks omitted). Thus—unlike the post-judgment interest Wedgewood seeks—statutory interest for condemnation awards is considered part of "just compensation," which accrues through the time the property owner receives payment. *See id.* at 150. That condemnation-specific rule drove the result in *First Carolina*, where the court, in interpreting the Eminent Domain Act, emphasized that the Act "clearly requires post judgment interest to be added to any judgment which is not paid within the twenty day period." 369 S.C. at 155.

Because this "is not a condemnation action" and does not involve application of the Eminent Domain Act, the interpretation of the Eminent Domain Act's statutory-interest mandate applied by the court in *First Carolina* has no relevance. *Id.* at 156 n.2. *Russo* controls, and requires affirmance.

II. The trial court did not abuse its discretion by permitting Centex to deposit judgment with the court.

Wedgewood's other main argument tries to assign error based on an argument it never made. Wedgewood contends that the trial court abused its discretion in permitting Centex to

deposit the judgment under Rule 67 because Centex is a large company and, in Wedgewood's view, "the *Russo* rule can never apply when a judgment debtor has ample funds available and is a large multinational corporation[.]" App. Br. at 4–6, 12. This argument is unpreserved and incorrect.

A. Wedgewood's argument is unpreserved.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (quotation marks omitted). This rule is important because it "give[s] the trial court a fair opportunity to rule on the issues" and gives the appellate court "a platform for meaningful appellate review." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011).

Wedgewood ***never argued*** to the trial court that Centex's size and profitability was a reason to deny Centex's motion to deposit judgment. *See id.* Wedgewood's sole argument to the trial court in opposition to Centex's motion was that the interest statute conflicts with and supersedes Rule 67. (R. 154, lines 23–25 (arguing that "the rules of civil procedure . . . are not superior to the interest statute")). During the hearing on the Centex's motion, Wedgewood referred to that argument as what its "position would be on appeal." (*Id.*, lines 19–20). But as discussed in Section I, this argument has been rejected expressly by South Carolina courts. Wedgewood never argued that Centex's net worth was a reason to deny the motion, nor did it ask the court to make certain factual findings. The trial court thus had no "opportunity to rule" on that issue, giving this Court no ability to review. *Herron*, 395 S.C. at 465. This argument should be rejected as unpreserved and thus procedurally barred. *Id.* at 470.

B. There is no large-company exception to Rule 67.

Even if the Court reached the merits, it should reject Wedgewood's argument for an exception to Rule 67 for "large multinational corporations."

The plain text of Rule 67 contains no large-company exception. The rule applies "[i]n an action" involving monetary judgments and permits "a party" to deposit a judgment with the court. Rule 67, SCRCP. The rule does not limit the kinds of "actions" or kinds of "parties" that can deposit a judgment. The discriminatory rule Wedgewood seeks finds no support in Rule 67.

Nor does *Russo* create an atextual large-company exception to Rule 67. The court in *Russo* stated broadly that "a judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest." 317 S.C. at 444. It does not discriminate based on the company's size.

Wedgewood disputes none of this. Instead, it seizes on a portion of the court's opinion in *Russo* that explained the ***benefits*** of the *Russo* rule are that it "encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal." *Id.* Wedgewood attempts to twist this language into a test the trial court must apply before determining whether the judgment debtor can deposit funds. App. Br. at 6–7 (claiming there "was *no evidence* by which the trial court could determine that Centex would not be able to pay the verdict") (emphasis added). But the language in *Russo* was a "rationale" for the rule, not a test. *Duval*, 339 S.C. at 620. And this Court has held that large companies can utilize the rule. *Id.* (life-insurance company); *Small*, 330 S.C. at 65 (heavy-machinery manufacturer). A trial court need not make findings about the defendant's ability to pay a judgment before exercising its discretion to apply Rule 67.

Moreover, the benefits identified in *Russo* are not furthered only by permitting deposit by a potentially insolvent debtor. One of the benefits identified for the *Russo* rule was "encouraging the debtor to pay the judgment." *Russo*, 317 S.C. at 444. This benefit is advanced in every case. Using the carrot of stopping post-judgment interest, the *Russo* rule encourages the judgment debtor

to pay the judgment immediately, avoiding potential drawn-out payment disputes. The Court is undoubtedly aware of the time, expense, and court resources expended on judgment-enforcement actions each year. *See generally* Randa Trapp, et al., *Mastering the Art of Judgment Collection*, AM. BAR ASS'N (Sept. 15, 2021) ("judgment collection and enforcement can be every bit as complex and challenging as the proceedings that gave rise to the judgment in the first instance, if not more").[4] This rule avoids such a situation.

The unpublished decision of *Davis v. Agape Nursing Rehabilitation Center*, 2022 WL 702579 (Ct. App. Mar. 9, 2022)—the only authority Wedgewood musters in favor of its position—is not to the contrary. *Davis* arose from a trial court's ***denial*** of a motion to deposit judgment, and thus the appellant there argued the opposite of here: that the trial court had ***no discretion*** to deny entry of judgment. *Id.* at *4 (appellant argued it was entitled to deposit judgment "as a matter of right"). Both in *Davis* and here, Rule 67 gives the trial court discretion in whether to permit deposit of disputed funds. *See id.*

III. Rule 67 applies when parties dispute liability.

Wedgewood's final substantive argument appears to be that a party cannot deposit judgment if it contests liability because Rule 67 applies only to the "safekeeping of disputed funds." App. Br. at 6–7, 11–14.[5] This is another unpreserved argument. (R. 154, lines 19–25) (arguing only that section 34-31-20 conflicts with Rule 67); *Stevens & Wilkinson*, 409 S.C. at 567. This argument also is frivolous.

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[4] Available at https://www.americanbar.org/groups/business_law/resources/business-law-today/2021-september/you-have-a-judgment/.

[5] Wedgewood interchangeably made this argument at several points in its brief: most notably, in Part I, App Br. at 6–7, and in Part IV, *id.* at 11–14. For simplicity, Centex addresses all Wedgewood's arguments here.

Rule 67's plain language permits deposit of judgment "in ***any*** action" involving monetary judgments, "whether or not that party claims all or any part of the sum." Rule 67, SCRCP. *Russo* involved a judgment debtor's dispute of liability. *See Russo*, 317 S.C. at 443 ("After our opinion in *Russo I* was issued, Russo instituted this supplemental proceeding to recover post-judgment interest accrued during the pendency of the appeal[.]"); *Russo v. Sutton*, 310 S.C. 200, 201, 422 S.E.2d 750, 751 (1992) ("Appellant argues that these 'heart balm' causes of action should be abolished retroactively.) ("*Russo I*"). The debtor failed to stop interest pending his merits appeal not because Rule 67 did not apply, but because he failed to provide notice and obtain leave of court, as required by Rule 67. *Russo*, 317 S.C. at 444-45. In fact, there are ample examples of South Carolina cases where parties deposited judgment *and* contested liability on appeal. *See, e.g.*, *Taylor v. Taylor*, 434 S.C. 307, 314 n.6, 315, 863 S.E.2d 335, 339 & n.6 (Ct. App. 2021); *Duval*, 339 S.C. at 618, 620; *Small*, 330 S.C. at 64–65. These authorities resolve the issue.

Wedgewood's contrary position is not based on Rule 67 or South Carolina authorities. Rather, it is based on an assertion that the analogous federal rule of procedure applies only if the judgment debtor concedes liability. App. Br. at 11–12. That argument has not been correct since 1983. As Wright & Miller's venerable treatise explains: "Before 1983, leave [to deposit judgment] could also be refused if the would-be depositor denied that it was liable to pay the sum in question, but ***the rule was amended*** in that year to allow deposit by a party who claims an interest in the fund or thing." 12 Fed. Prac. & Proc. Civ. § 2991 (3d ed.) (emphasis added).[6] South Carolina's Rule 67 tracks the post-amendment language of the federal rule.

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[6] Nothing in Wedgewood's authorities alters this result. The leading federal case Wedgewood cites, *U.S. ex rel. Garrett v. Midwest Construction Co.*, held that a *motion* to deposit did not stop post-judgment interest. 619 F.2d 349, 353 (5th Cir. 1980). It said nothing about whether a proper *deposit* stopped judgment from accruing. And *In re Department of Energy Stripper Well Exemption Litigation* did not permit a Rule 67 deposit to stop accrual of interest because the parties' settlement

Wedgewood compounds this misguided argument by arguing elsewhere that this Court's unpublished decision in *Davis* endorses the pre-1983 version of the rule. *See, e.g.*, App. Br. at 6 ("[T]his Court in *Davis* has recognized that Rule 67 is a procedural device which was only intended to provide a place for safekeeping of disputed funds . . ."); *id.* at 7 ("[A]s this court in *Davis* noted, Rule 67 is only to be employed when debtors concede liability . . ."). That argument misreads *Davis*. The court in *Davis* discussed the pre-1983 version of the federal rule ***only*** to explain how, when the federal rule was expanded in 1983 ("to allow debtors who contested liability for the judgment to utilize the Rule"), it added a provision requiring deposit in an interest-bearing account. 2022 WL 702579, at *5; *see* Rule 67(b), FRCP ("The money must be deposited in an interest-bearing account . . ."). South Carolina's version of Rule 67 "omits the portion of the rule requiring the deposit to be made in an interest-bearing account" but is otherwise "almost identical in language to its federal counterpart." *Davis*, 2022 WL 702579, at *5. So, because South Carolina's version of Rule 67 lacks the interest-bearing account requirement, *Davis* concluded there must be some "safeguard on the judgment creditor's right" to obtain post-judgment interest. *Id.* That "safeguard" is "the discretion of the trial court" in determining whether to permit deposit in the first instance and, if so, under what conditions. *Id.* Quite simply, *Davis* did not cabin Rule 67 to disputed-fund cases, and the rule does not permit such a reading.

IV. Wedgewood's policy arguments miss the mark.

Lastly, Wedgewood's brief is full of arguments about why it is bad policy to permit Centex to pay a judgment immediately into the court. App. Br. at 11. The general tenor of these arguments is that it allows companies to appeal without the risk of accruing additional interest. *Id.* These non-

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agreement barred it. 124 F.R.D. 217, 220–21 (D. Kan. 1989). And *Alstom Caribe, Inc. v. George P. Reintjes Co.* did not state Rule 67 applies only where a debtor concedes liability; rather, the facts in that case involved a disputed fund. 484 F.3d 106, 113–14 (1st Cir. 2007).

legal arguments carry no significance. *See generally Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 276, 802 S.E.2d 794, 800 (2017) ("[W]e would exceed our judicial role were we to allow Defendants' policy arguments to override the policy expressed by the General Assembly[.]"). But the arguments are also wrong.

The South Carolina legislature, by tying post-judgment interest to the prevailing prime rate, assesses interest based on the approximate rate the invested money would earn on the open market. *See* S.C. Code Ann. § 34-31-20(B). And a sophisticated company like Centex (or, more accurately here, its insurer) would likely invest that money if it had it. So, by ceding control of that money to the court immediately after judgment, rather than investing it to further its own business purposes, Centex's insurer does not obtain some nebulous "windfall," as Wedgewood posits. The purpose of post-judgment interest—"compensation for the use of another's money"—is not furthered by ordering interest on money already deposited. *See generally Hall v. White, Getgey & Meyer Co.*, No. 97-cv-320, 2007 WL 1080302, at *1 (W.D. Tex. Apr. 6, 2007). And what's more, if Centex wins its merits appeal (as it contends it will), its insurer will receive that money in return. So it, too, could theoretically lose out on money that could have been earned above the deposit-rate interest.

Put simply, the *Russo* rule does not inherently favor one party or another. Rather, it recognizes that two neutral goals—encouraging prompt payment and ensuring the funds will be available—are often worth the tradeoff of lower interest rates for the duration of the appeal. *Russo*, 317 S.C. at 444. The policies underlying the *Russo* rule are neutral, sound, and were advanced by the trial court's decision here. This Court should affirm.

CONCLUSION

The Court should affirm the trial court's decision to grant Centex leave to deposit judgment and stop the post-judgment accrual of interest.

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Respectfully submitted,

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