THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
FEB 21 2024
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge
Case No. 2018-CP-26-00307

Appellate Case No. 2023-001150

Wedgewood Condominium Association, ... Appellant

vs.

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..... Respondents

---

FINAL BRIEF OF APPELLANT

Stacy L. Stanley (S.C. Bar No. 13410)
STANLEY LAW FIRM
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
sstanley@stanleylawfirm.com

Gene M. Connell, Jr. (S.C. Bar No. 1358)
L. Sidney Connor, IV (S.C. Bar No. 1363)
KELAHER CONNELL & COINNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
sconnor@classactlaw.net

Attorneys for Appellant Wedgewood Condominium Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

Treatises

Constitutional Provisions

STATEMENT OF ISSUES ON APPEAL

I.. DID THE TRIAL COURT ABUSE ITS DISCRETION?

II. DOES S.C. CODE ANN. § 34-31-20 PREVAIL OVER RULE 67, SCRCP?

III. DOES CENTEX GET AN INTEREST FREE APPEAL?

IV. WHEN CENTEX CONTESTED LIABILITY IS RULE 67, SCRCP APPLICABLE?

STATEMENT OF THE CASE

Wedgewood Condominium Association (hereinafter "Wedgewood") brought this lawsuit against Centex, a Nevada General Partnership; Balfour Beaty Construction, LLC as successor by merger to Centex Construction Company, Inc. (hereinafter "Centex") for construction defects to the common elements of the Wedgewood Condominium Association located in the Barefoot Resort in North Myrtle Beach, South Carolina. This matter was filed in the Horry County Court of Common Pleas and was assigned to Circuit Judge Carmen Mullen of the Business Court. The case involves claims by Wedgewood of construction defects to include defects to the roofs, siding, attics, walls, bricks, walkways along with building envelope, water intrusion issues and other construction deficiencies. The case was tried to a jury on May 22, 2023. Wedgewood presented Ross Clements, a forensic architect, and Bob Gallagher, a general contractor, who offered a repair estimate. Gallagher's estimate for repairs to the Wedgewood Condominium Association was $9,741,101.60. Clements and Centex's experts all admitted during the trial that there were building code violations, violations of industry construction standards and failure to construct the building pursuant to manufacturer specification. At the close of the testimony, Wedgewood elected to submit only one cause of action to the jury for gross negligence. All of Wedgewood's other causes of action were

voluntarily dismissed by Wedgewood. On May 26, 2023, after a five-day trial, the jury awarded Wedgewood $6,750,000.00 in actual damages.[1]

After the actual damages verdict, the court told the parties it would submit the issue of punitive damages to the jury. Wedgewood's counsel then informed the court that it would like to present Centex's Answers to Plaintiff's Requests for Admission dated November 6, 2019. The court had been presented with the financial reports for Pulte Group for 2015, 2016, 2017 and 2018. After much argument, Wedgewood's counsel agreed to send only one of the financial statements for the year 2018 for the Pulte Group to the jury. (Tr. p. 1067, lines 1-7; R. p. 197).

The 2018 Pulte Group Annual Report which was presented to the jury and admitted in evidence (R. pp. 207-317) showed that Pulte Group's 2018 and 2017 consolidated balance sheets show net assets for 2018 of $10,172,976,000.00 and $9,686,649,000.00 for 2017 (R. p. 254). Further, the Pulte Group Annual Report for 2018 showed that Pulte had outstanding financial results for 2018, that 2018 had been the best year in a decade, that revenues grew by 19% to ten billion dollars, that cash flow from operations alone was $1.4 billion, that Pulte had 5,000 employees, and that Pulte sold 622,000 new homes in the United States in 2018. All of this information which was presented in the Pulte Group 2018 consolidated annual report was evidence for the court to consider regarding Pulte's financial strength.

Also, a portion of the deposition of Eric Lundblad, a 30(b)(6) witness for Centex was offered who testified he was an employee of one of Pulte's subsidiaries, Pulte had merged with Del Webb in 2014, that Pulte purchased and/or merged with Centex in 2009, and that Pulte holds all of these small – large subsidiaries including Centex under the Pulte umbrella. (R. pp. 318-320).

---

[1] Centex has appealed the verdict, and it is pending before this Court (Appellate Case No. 2023-001132). The appeals have not been consolidated.

Further evidence was presented during the trial from Jeremy Martin, an area construction manager for Centex. (Tr. p. 570; R. p. 180). He offered testimony Centex was a big homebuilder that merged with Pulte and operated in 28 states. (Tr. p. 617; R. p. 181).

After the presentation and argument by counsel, the jury found for Centex on the punitive damages claim. Thereafter, on June 6, 2013 Centex filed a motion for a new trial and a motion for leave to deposit the $6,750,000.00, plus interest, into the Horry County Clerk of Court and to stay execution of all proceedings against Centex to enforce the judgment (R. p. 13).

On June 14, 2023, Judge Mullen heard Centex's motions for judgment notwithstanding the verdict, motion for a new trial and a motion to deposit the judgment amount with the court. At the hearing, the court denied the JNOV and new trial motions but granted Centex's motion to deposit the judgment amount with the court and issued a Form 4 Order on June 14, 2023. (R. p. 7). A formal Order was filed by the trial court on June 16, 2023 allowing Centex to deposit the $6,750,000.00 plus accrued interest to date pursuant to Rule 67, SCRCP. (Trial Court Order; R. p 1). The court found that the deposit into the court of $6,803,167.81 would prevent the further accrual of post-judgment interest during the pendency of any appeals filed in this case. (Trial Court Order; R. p. 1). The trial court's reasoning was "Depositing the full judgment amount with the Court will guarantee that funds are available for immediate satisfaction of the judgment should it remain in effect following resolution of post-trial motions and any appeals that are filed." (Trial Court Order, p. 6; R. p. 6).

Centex immediately deposited via check the judgment amount of $6,750,000.00, plus accrued interest of $53,167.81 into the Clerk of Court. The Horry County Clerk of Court turned over the $6,803,167.81 judgment amount and accrued interest to the Horry County Treasurer's Office who was able to place those funds in an interest-bearing account at the rate of 4.75%.

The Supreme Court in an Order dated January 4, 2023, addressed the issue of interest rates on judgments. The Order provides in pertinent part:

> South Carolina Code Ann. § 34-31-20(B) (2020) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points."
>
> The Wall Street Journal for January 3, 2023, the first edition after January 1, 2023, listed the prime rate as 7.50%. Therefore, for the period January 15, 2023, through January 14, 2024, the legal rate of interest for money decrees and judgments is 11.50% compounded annually

Thus, a substantial difference in interest rates exists between the 4.75% rate which the funds now earn in the custody of the Horry County Treasurer, and the 11.50% rate which the funds would earn pursuant to S.C. Code 34-31-20(B) (2020). This appeal addresses that issue and whether it was error by the circuit court to allow funds to be paid into the court under the specific facts of this case. The difference between 4.75% and 11.50% interest on $6,750,000.00 is significant. As an example, if the $6,750,000.00 judgment earned the statutory interest rate of 11.50% it would be $2,126.71 a day. If it earns 4.75% it would be $878.42 a day.

STANDARD OF REVIEW

The standard of review to stay the accrual of interest of a judgment on appeal is whether the trial court abused its discretion in granting Centex's motion to stay the accrual of post-trial judgment interest under either Rule 62(b) or 67, SCRCP. In *South Carolina Department of Transportation v. First Carolina Corporation of South Carolina*, 369 S.C. 150, 631 S.E.2d 533, (2006) the Supreme

Court held that an abuse of discretion in regard to the interest rate on a judgment occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.

In this case, the trial court erred both as a matter of law and because there is no factual support in the record that Centex was unable to pay the verdict in light of evidence of its high net worth of ten billion dollars which had been presented to the trial court at the punitive damage stage of the trial. (R. pp. 182-187, 254). In fact, the judgment in this case is so small in comparison to the net worth of Centex that it has an "interest free appeal." The record indicates Centex's net worth is $10,172,976,000.00 (R. p. 254) and the verdict was $6,750,000.00. This equates to .06635227% of Centex's net worth which means it is highly unlikely Centex is unable to pay the judgment.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION.

Under the abuse of discretion standard, the trial court may be reversed if its findings are factually deficient. In its order the trial court judge ordered the judgment to be paid into the court and ultimately a low interest bearing account of 4.75% not the 11.50% required by S.C. Code 34-31-20. However, in making this ruling the court said it "will guarantee that funds are available for immediate satisfaction of the judgment should it remain in effect following resolution of post-trial motions and any appeals that are filed." (Order, p. 6). (R. p. 6). In fact, the parties had just completed a five day trial in which the jury had heard testimony about the net assets of Centex which is ten billion dollars. (R. p. 254). Because the trial court was aware of this testimony, it was a factual error for the trial court to find that it was necessary for the funds to be paid into the court to protect Wedgewood's judgment on appeal. Pulte/Centex is a national home builder and a publicly traded company, thus, there was no need to be concerned about payment of the judgment. In the case relied upon by the trial court, *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895 (1995), there was reason to believe

that the judgment may not be satisfied because the judgment debtor was an individual. The case involved an alienation of affection verdict against Sutton who decided to appeal. Rule 67, SCRCP benefits the judgment creditor by "encourage[ing] the debtor to pay the judgment and assur[ing] the judgment creditor the funds will be available at the conclusion of the appeal." *Russo*, 317 S.C. at 444, 454 S.E.2d at 896. However, when the trial court concludes that there is a likelihood the debtor will be able to pay the judgment after the debtor's appeal has not succeeded on the merits, this benefit turns into prejudice for the judgment creditor by pausing the judgment creditor's statutory right to post-judgment accrual of interest during the pendency of the debtor's appeal. See S.C. Code Ann. § 34-31-20 (2020); *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) ("[A] claimant is entitled to interest from the date of the rendition of the verdict or post-judgment interest as a matter of course.")

Further, an unpublished opinion of this Court, *Davis v. Agape Nursing Rehabilitation Center*, 2022-UP-094 (S.C. Ct. App. March 9, 2022) provides the following salient guidance:

> Our reading of the purpose of Rule 67, SCRCP, is in line with federal law, which for many years did not allow a judgment debtor to utilize Rule 67, Fed. R. Civ. P., and pause the accrual of interest when the debtor denied liability for the judgment and the creditor contested the deposit. *See Blasini-Stern v. Beech-Nut Life Savers Corp.*, 429 F. Supp. 533, 535 (D.P.R.1975); *Dinkins v. Gen. Aniline & Film Corp.* 214 F. Supp. 281, 283 (S.D.N.Y. 1963). Rather courts held the Rule was only to be employed when the debtor conceded liability but there was a dispute about which party in the lawsuit should be paid. *See, also, Alstom Caribe, Inc. v. George P. Reintjes Co.*, 484 F.3d 106, 113 (1st Cir. 2007) ("The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund among those claiming some entitlement thereto.").

Thus, this Court in *Davis* has recognized that Rule 67 is a procedural device which was only intended to provide a place of safekeeping for disputed funds pending resolution of a legal dispute and not to provide a means of altering the contractual relationships and legal duties of each party. See

11 Charles A. Wright, et al. § 2991, Payment Into Court, 12 *Fed. Prac. & Proc. Civ.* § 2991 (3d Ed. 2021).

In this case, Centex skirted S.C. Code § 34-31-20(B) by paying the judgment, plus accrued interest, into the court under the guise that the funds would be available when the appeal was affirmed. In fact, Centex was and is a ten billion dollar corporation and there was never any need for worry by the trial court about collecting the funds. (See Tr. pp. 1053-1057; R. p. 183-187). Thus, the trial court also erred as a matter of law by finding the full judgment amount should be deposited with the court to guarantee immediate satisfaction of the judgment. This was indeed not necessary since the judgment debtor in this case, Centex's, net assets clearly protected Wedgewood so it could collect its judgment at the end of all appeals.

In fact, there was no allegation that Centex would be unable to pay the $6,750,000.00 judgement plus interest at a later date. Quite the contrary, due to Centex's net assets, which had just been offered at the trial, Centex could easily pay this judgment plus interest. Thus, based on the evidence the trial court had just heard, there was no evidence by which the trial court could determine that Centex would not be able to pay the verdict after affirmance on appeal. Finally, and as this court in *Davis* noted, Rule 67, Fed. R. Civ. P. is only to be employed when debtors concede liability and not in a case like this one where the debtor contests not only liability but damages. Here, Centex vigorously contested this case for five years and refused to admit liability. Centex cannot take advantage of Fed. R. Civ. P. 67 since it clearly can pay the judgment as it is mere pocket change to the Centex entities based on their net worth.

II. RULE 67, SCRCP CANNOT OVERRULE S.C. CODE § 34-31-20.

The Court in its ruling failed to reconcile S.C. Code § 34-31-20 and Rule 67, SCRCP. S.C. Code § 34-31-20 states in pertinent part:

> In all cases of accounts stated 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.

Further, each year the South Carolina Supreme Court sets the annual rate for judgment interest. On January 4, 2023, the South Carolina Supreme Court set the annual rate of interest at 11.50%. Despite the command of S.C. Code § 34-31-20 that legal interest shall be 11.50% percent as per S.C. Code § 34-31-20, the trial court found that Rule 62, SCRCP and Rule 67, SCRCP allowed the trial court to disregard the mandatory command of the interest statute on judgments in favor of a rule of civil procedure. It is well settled that statutes are acts of the legislature and are superior to the rules of civil procedure on substantive matters. Accordingly, as a matter of law the trial court could not find that Rule 62, SCRCP and Rule 67, SCRCP override S.C. Code § 34-31-20 which mandates that the legal rate of interest shall be awarded. Accordingly, it was error for the trial court to not apply the legal interest rate of 11.50% to the judgment.

It is well-settled in South Carolina that a rule of civil procedure may not limit the provisions of a statute. See S.C. Constitution, art. V, § 4 (2009) ("Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts."). In this case, the court is confronted with a conflict between S.C. Code § 34-31-20(B) which specifically says interest shall be paid on judgments and Rule 67, SCRCP which make no mention of interest on judgments in either the text or the advisory notes.

Appellant's counsel raised that very issue in the hearing of June 14, 2023. He argued to the trial court as follows:

> Mr. Connell: -- I -- I think I would ask -- ask the Court to make a ruling on whether or not Rule 67 supersedes South Carolina Code Section 34-31-30 [*sic*], which is the interest statute.
>
> The Court: Yeah.

> Mr. Connell: Is that the rules of civil procedure cannot -- are not superior to the interest statute. The interest statute says all judgments collect whatever -- whatever Justice Beaty sets every year in January.
>
> The Court: Right.
>
> (Tr. p. 136, lines 15-25, p. 137, lines1-3). (R. p. 154, p. 155).
>
> Finally, Appellant's counsel stated:
>
> The Supreme Court has never discussed the interplay between Rule 67 of the Rules of Civil Procedure ... and the interest statute. And we believe that if the Court, when faced with that issue, would find that interest would accrue at a regular rate, whatever that is as of Justice Beaty's decision in January. So we do not agree that they should be able to deposit the money into the court. And it -- all it does, it gives you a free appeal. And so that does -- and I -- I must say, ---
>
> (Tr. p. 137. lines 9-21). (R. p. 155)

In fact, South Carolina case law is in accord with Wedgewood's position. In *Marichris LLC v. Derrick*, 384 S.C. 345, 682 S.E.2d 309 (Ct. App. 2009), this Court held, "A rule of civil procedure may not limit the provisions of a statute." Further supporting evidence is found in the South Carolina Eminent Domain Procedure Act in which the Supreme Court of South Carolina said, "When the Act conflicts with the South Carolina Rules of Civil Procedure, the Act prevails." *South Carolina Department of Transportation v. First Carolina Corporation of South Carolina*, 369 S.C. 150, 631 S.E.2d 533, (2006). This is the majority rule around the country. See *Richardson v. Blaine County*, 526 P.3d 976 (Idaho 2023); *Bevan v. State*, 434 P.3d, 516 (Utah Ct. App. 2018); *AT & T Info. Sys. Inc. v. Wallemann*, 827 S.W. 2d 217 (Mo. Ct. App. 1992).

It is well established in this state that there is a pecking order in regard to statutes, case law, rules of court and state regulations. The Constitution, of course, is supreme. Statutory law is second and rules of court are third. In applying this hierarchy, Rule 67, SCRCP cannot override or supplant

S.C. Code § 34-31-20(B) (2020). In *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), the Supreme Court made clear the following:

> It is not the court's place to change the meaning of a clear and unambiguous statute, Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Here, the legislature has decreed that all judgments shall earn interest under State law in clear unmistakable language. (See S.C. Code § 34-31-20(B) (2020). It thus follows naturally that a South Carolina Rule of Civil Procedure (Rule 67) cannot override the statute which requires interest on judgments. One only need look at S.C. Code § 15-1-10 which provides that when the South Carolina Rules of Civil Procedure were enacted there was a clear legislative intent that those rules would not undermine or abrogate State law. See S.C. Code § 15-1-10. Rules of Construction.

> SECTION 3. In event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory procedures as to practice and procedure and procedure not repealed in this act, the provisions of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of the state but shall affect only matters of practice and procedure.

As a result of Section 3 of S.C. Code § 15-1-10, the General Assembly made clear that a Rule of Civil Procedure could never affect a substantive right. In this case, Wedgewood has the substantive right under South Carolina law to collect interest on its judgment as S.C. Code § 34-31-20(B) (2020) mandates all judgments shall earn interest. Thus, there is a specific conflict or tension between Rule 67, SCRCP and S.C. Code § 34-31-20(B) (2020), and under well-established rules, a statute will always override a rule of civil procedure when substantive legal rights are involved.

III. CENTEX GOT A FREE BITE OF THE APPLE BY BEING ALLOWED AN INTEREST FREE APPEAL.

As was argued before the trial court, Centex is a billion dollar corporation. It sought to pay these monies into court to stop the running of interest at 11.50%. Unlike *Russo*, Centex's assets and financial wherewithal guarantee a recovery of the judgment and the interest when the Court of Appeals affirms the appeal of the $6,750,000.00 verdict. In effect, Centex asks the court for a "risk free appeal," i.e., one without interest. This is not what was envisioned by the Supreme Court in *Russo* which was to protect the judgment creditor on appeal by requiring the judgment debtor who might wind up being insolvent to pay the verdict up front. In this case, there is no such concern because of Centex's vast wealth and because it is one of the largest homebuilders in the United States. The trial court, after listening to the testimony of a five day trial including the net worth of Centex, should have concluded based on the trial testimony that there was no need for a deposit of the verdict into the court because Centex was indeed very solvent. See *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) (Claimant is entitled to interest...as a matter of course.)

IV. CENTEX CONTESTED LIABILITY AND THUS WAS NOT ENTITLED TO THE PROTECTIONS OF RULE 67, SCRCP.

The trial in this case was hotly contested over five days after five years of intense litigation. Centex produced multiple expert witnesses who denied liability for Appellant's damages. Those witnesses include Robert Carter, a forensic engineer from Greenville, and his partner, L.G. "Skip" Lewis. Each of those experts admitted that there were building code violations, violations of manufacturers' specifications and violations of industry construction standards. However, those same experts denied any substantial damages to Wedgwood's building and contested liability through the entire trial. As this Court is aware, the federal courts have on multiple occasions allowed Fed. R. Civ. P. 67 to be employed only where a debtor concedes liability but there is a dispute about which party

should be paying the loss. See *Alstom Caribe, Inc. v. George P. Reintjes Co.*, 484 F.3d 106, 113 (1st Cir. 2007).

This is definitely not the case here in that Centex refused to concede liability and indeed prior to the trial settled its third-party claims with all of the subcontractors it sued and then tried the case against Wedgewood.[2] Further, during the trial Centex asserted its affirmative defenses including the statute of repose, comparative negligence, the statute of limitations and other affirmative defenses. Centex was clearly not conceding liability as envisioned under Rule 67, SCRCP. Thus, in theory, the *Russo* rule can never apply when a judgment debtor has ample funds available and is a large multinational corporation such as Centex as it gives those large companies an "interest free appeal." It only encourages Centex to pay its money into the court and have an appeal without risk. Something which Rule 67, SCRCP was not intended or designed to allow for in federal practice. If the court were to allow this practice to continue, verdicts would be appealed by major corporations, those monies would be paid into the court and those corporations would "present their interest free appeal." It could cause an avalanche of appeals and open the flood gates for protracted appeal litigation. This is definitely not the spirit or intent of Fed. R. Civ. P. 67, and thus the trial court in this case abused its discretion by granting Centex's motion.

Multiple federal decisions interpreting Rule 67, SCRCP support Wedgewood's position. In *U.S. for Use of Garrett v. Midwest Const. Co.*, 619 F.2d 349 (5th Cir. 1980), the Fifth Circuit held that the mere filing of a motion to deposit does not stop the accrual of interest. In *Com. Insurance Co. v. Szafarowicz*, 483 Mass. 247, 131 N.E.3d 782 (2019), the Massachusetts court held Rule 67 does not

---

[2] Centex brought third party complaints against all of the subcontractors who built Wedgewood and then entered into secret settlements with them prior to trial. Now Centex seeks to reverse Wedgewood's judgment and keep those secret settlement funds it collected from its subcontractors for itself.

expressly provide for abatement of post judgment interest – a point which has never been addressed by this state's courts. In *Governo L. Firm LLC v. Bergeon*, 487 Mass. 188, 166 N.E.3d 416 (2021), that court held post-judgment interest does not stop because the defendant makes an offer to satisfy judgment conditional on a party foregoing its appeal right. *In re Dep't of Energy Stripper Well Exemption Litig.*, 124 F.R.D. 217 (D.. Kan. 1989) the court held that the appellant could not deposit funds into the court registry to halt the accrual of interest. The Court's logic was that the rule allowing for deposit of funds into the registry of court cannot be used as a means of altering contractual relationships and legal duties of parties.

In sum, Rule 67, SCRCP under federal precedence can only assist a judgment debtor like Centex in two situations: (1) If two or more parties seek the same fund or thing (or a stake-holding plaintiff interpleads two or more claimants), and the party in possession does not contest liability to someone; (2) If plaintiff demands a sum of money or delivery of a specific object and defendant can seize liability for part, but not all, of what plaintiff wants. Other than those two circumstances, judgments deposited into the circuit court cannot stop accrual of interest for multinational corporations who have billions of dollars such as Centex. To find otherwise clearly ignores the command of S.C. Code § 34-31-20 and encourages "interest free appeals" to this court which prejudices judgment creditors and backlogs the appellate courts. See also B*each Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002) (relying on federal law interpreting federal rule and applying to South Carolina rule when South Carolina rule is same as corresponding federal rule).

As Rule 67 Federal Advisory Notes make clear, "there are situations in which a litigant may wish to be relieved of responsibility for a sum or thing but continue to claim an interest in all or part of it. In those cases the deposit-in-court procedure should be available; in addition to the advantages

to the party making the deposit, the procedure gives the other litigants assurance that any judgment will be collectible." 97 F.R.D. at 226 The Advisory Committee Notes are reprinted in Vol. 12A.

Clearly this is not the case here in that Centex had more than sufficient funds to pay if the verdict is affirmed on appeal. Thus, it was error as a matter of law based on the testimony offered at the trial to allow Centex to pay the judgment into the court and thus avoid interest from accumulating pursuant to S.C. Code § 34-31-20 when its financial records clearly show its ability to easily pay the judgment.

CONCLUSION

The trial court abused its discretion in allowing the monies from the judgment to be placed in the Clerk of Court's Office. First, the trial court abused its discretion in that there was overwhelming evidence of the Defendant's ability to pay. The court failed to consider that evidence in reaching its decision. Second, the trial court committed a legal error when it refused to hold that the interest statute prevailed over a rule of civil procedure which does not even address the same topic, i.e., interest, in the text of the rule. Accordingly, the Appellant requests the court vacate the order placing the judgment amount in the Clerk of Court pending the outcome of the appeal of the verdict as it prejudices Wedgewood and encourages "interest free" appeals.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
L. Sidney Connor, IV (S.C. Bar No. 1363)
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
sconnor@classactlaw.net

Stacy L. Stanley (S.C. Bar No. 13410)
STANLEY LAW FIRM
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
sstanley@stanleylawfirm.com

February 20, 2024

Attorneys for Appellant Wedgewood Condominium Association

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge
Case No. 2018-CP-26-00307

Appellate Case No. 2023-001150

Wedgewood Condominium Association, ... Appellant

vs.

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.

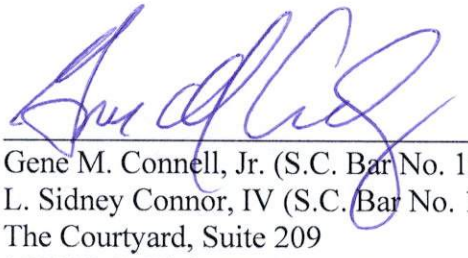
OF WHICH:
Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, are..... Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Final Brief of Appellant** complies with Rule 211(b) SCACR.

(Signature on following page)

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr. (S.C. Bar No. 1358)
L. Sidney Connor, IV (S.C. Bar No. 1363)
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
sconnor@classactlaw.net

Stacy L. Stanley (S.C. Bar No. 13410)
STANLEY LAW FIRM
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
sstanley@stanleylawfirm.com

February 20, 2024

Attorneys for Appellant Wedgewood Condominium Association