THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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

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FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

ARGUMENT

I. SOUTH CAROLINA COURTS HAVE NEVER CONSIDERED WHETHER S.C. CODE § 34-31-20 IS SUPERIOR TO RULE 67, SCRCP.

The Respondents argue that the Supreme Court has considered the intersection of S.C. Code § 34-31-20 and Rule 67, SCRCP. They are wrong. In fact, a tension exists between S.C. Code § 34-31-20 and Rule 67, SCRCP. S.C. Code § 34-31-20 provides judgments shall "shall draw interest according to law." Rule 67, SCRCP cannot overrule S.C. Code § 34-31-20 which requires interest. Under the scenario argued by Respondents, a judgment creditor could pay a judgment into the court, file an appeal and pay no interest. This flies in the face of the plain language of S.C. Code § 34-31-20 and this question has never been squarely presented to the Supreme Court. Further, it is well settled in this state that a Rule of Civil Procedure cannot limit 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."). The Respondents never address this issue other than to say that *Russo* settles the matter. In fact, this issue has not been decided. All *Russo* found was that Sutton's unilateral deposit of the funds is insufficient to stop accrual of interest mandated by S.C. Code § 34-31-20. (See *Russo,* 454 S.E.2d at 896).

Respondents also argue *Graham v. Town of Latta* controls. *Graham v. Town of Latta* is an unpublished decision of this Court (2016-UP-331) filed June 29, 2016. Under well-established rules, unpublished decisions may not be cited as authority in this state. Further, Respondents' argument that a judgment in this state not accrue interest is ludicrous. Respondents cite *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987) for that proposition. However, in that case, respondent appealed a judgment in her favor. The *Sears* Court simply applied the majority rule that a judgment creditor

cannot obtain interest when it appeals the insufficiency of a verdict. This is certainly not the case here in that Wedgewood has not appealed the judgment.

Finally, while not binding on this Court, the Superior Court of Vermont in *Energy Savers, Inc. v. McKelvy* (Superior Court of Vermont, Civil Division, March 7, 2023) cited *Russo v. Sutton*, 454 S.E.2d 895 (S.C. 1995) when a judgment debtor attempted to seek permission to deposit the sum of an arbitration award and stop the accrual of post judgment interest. The Vermont trial judge then went through the history of Federal Rule of Civil Procedure 67 and noted Rule 67's purpose is to provide "a place of safekeeping for disputed funds pending the resolution of a legal dispute." *LTV Corp. v. Gulf States Steel, Inc. of Alabama*, 969 F.2d 1050, 1063 (D.C. Cir. 1992) (Wald, J.) (citation omitted), or in other words, "to relieve the deposition of responsibility for a fund in dispute." 12 Federal Practice and Procedure, *supra* § 2991. Though the rule may be useful in other circumstances, its primary use is "to permit a stakeholder who disclaims all interest in the action to pay or deliver the money or thing in suit into court."

The *Energy Savers* Court went on to say nothing in the text of Rule 67 suggests that it should be interpreted to toll the accrual of post judgment interest nor should it be interpreted to permit appellants to take risk-free appeals. Further noting that would be the consequence of appellant's proposal in this case: to deposit the principal amount of the arbitration award into court and thereby toll the accrual of penalties and interest during the pendency of the appeal, without making the principal amount available to the judgment creditor. The Vermont judge further stated: "Such an interpretation would change a 'rather unimportant rule' into a very important one."

Energy Savers further found the effect of the proposed deposit would be to reduce the post judgment interest rate from 12% (which is imposed by statute) to whatever market rate is applicable to deposits in federally insured banks. The court noted neither of these consequences are fair, and

both are contrary to the ordinary principle that the Rules of Civil Procedure shall not be construed as to abridge, enlarge or modify any substantive rights of persons provided by law.

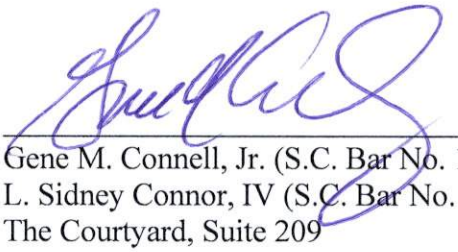
Appellant asserts that the Vermont Court's reasoning is persuasive in that it allows an appellant to have a risk-free appeal, not be liable for a judgment interest rate of 12%, and to essentially "take a swing at the fence." This can certainly not be the purpose of the Supreme Court's opinion in *Russo* in that it essentially encourages appeals and thus more unnecessary work for this Court. Respondents' argument to the contrary, Rule 67, SCRCP was never intended to trump a state statute requiring interest on judgments, The Supreme Court has never said so and has never addressed with certainty the situation that this appeal clearly presents: whether an appellant can ignore S.C. Code § 34-31-20 and deposit a judgment into the court knowing that it will not be liable for the interest rates provided by law. If the General Assembly had intended Rule 67, SCRCP to trump S.C. Code § 34-31-20, it would have said so in the judgment interest statute. As this Court has said many times, the court will not rewrite a statute and will apply its plain meaning. Accordingly, Appellant requests this Court reverse the decision of the trial court.

CONCLUSION

In summary, Appellant requests the Court issue a bright-line ruling that S.C. Code §34-31-20 may not be overruled by Rule 67, SCRCP. Further, that this Court declare Centex is liable to pay interest pursuant to S.C. Code § 34-31-20 from the date of the verdict.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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CERTIFICATE OF COUNSEL

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

(Signature on following page)

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