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**Mar 19 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA  
CUSTOM CONVERTING, LLC, ..... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA  
CUSTOM CONVERTING, LLC, ..... Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,.....Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH  
WATER SYSTEMS, INC., .....Counterclaim Defendants,

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA  
COMEAU-SHIRLEY are the .....Appellants,

and

DAVID WILSON is the.....Respondent.

**REPLY IN SUPPORT OF PETITION FOR REHEARING**

The Appellants submit this reply in response to the points raised by Respondent.

The Respondent's statement of the case addressing the remand from the Supreme Court is missing information that is necessary to describe the remand process accurately. While Respondent's description of the remand events is not relevant to the petition, Appellants will nevertheless provide the missing information to give the Court a clear understanding of the timeline.

The Supreme Court issued its opinion on June 3, 2020. Thereafter, on June 22, 2020, the Company sent a letter to Mr. Wilson proposing a structured payment process. (R. p. 83). Mr. Wilson did not respond. On July 13, 2020, the Company filed a motion for a remand status conference to address the structured payment process with the lower court. (R. pp. 76-78). The lower court set a hearing for September 21, 2020. Prior to the hearing, on September 2, 2020, Mr. Wilson filed the motion referenced in the return. (R. pp. 87-88).

At the September 21, 2020, hearing, the Company argued the basis for its structured payment process, which included a down payment of \$200,000. (R. p. 136, lines 5-6). The proposal included keeping the supersedeas bond in place to ensure payment, and for each payment to reduce the supersedeas bond by the amount of the payment. (R. p. 136, lines 16-20). The Respondent also argued his motion. The lower court ruled in what appeared to be a compromise decision. It ruled that the Company could make a \$250,000 payment and Respondent could seek the remainder from the supersedeas bond. (R. p. 27). Unbeknownst to the lower court, any payment by the supersedeas bond, whether partial or full, would have the same effect. Accordingly, Appellants instructed the bond company to make the entire payment. The bond company thereafter made the entire payment.

Concurrent with those events, the parties agreed to have the Greenville County master-in-equity decide whether post-judgment accrued during the appeal.

**I. THE COURT SHOULD ADDRESS THE LEAD ARGUMENT**

The preservation question implicates two issue preservation rules. First, an appellate court cannot address a legal issue that was not raised to or ruled upon by the lower court. Second, an appellate court should not address a legal issue that was raised for the first time in a post-trial motion. Our appellate court decisions make clear that the first rule is a *sine qua non* for an appellate court to rule on a legal issue. The Appellants are unaware of any appellate court decision that describes the second issue preservation rule in the same manner. Furthermore, Appellants have presented distinguishing features of this appeal that should create an opportunity for the Court to find the lead argument is appropriate for appellate review. *See Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332-33, 730 S.E.2d 282, 287 (2012) (expressing concerns about a hypertechnical application of a procedural bar). The Appellants respectfully request that the Court rule on the legal argument.

**II. POSTING A SUPERSEDEAS BOND PREVENTS POST-JUDGMENT INTEREST FROM ACCRUING**

The Respondent declines to address the merits of Appellants' legal argument in its response. Instead, it argues that adopting the argument "would turn current authority and practice on its head." (Response, at 5). The Appellant cites nothing for this position. The words chosen by our General Assembly and Supreme Court in Rule 241(c)(1), however, are plain and clear. "The effect of the granting of a supersedeas is to suspend or stay the matter decided in the order . . . on appeal." Rule 241(c)(1), SCACR. When a judgment debtor deposits monies owed into the court pursuant to a court order, that act stays the enforcement of the judgment and the accrual of post judgment interest. *Sears v. Fowler*, 293 S.C. 43, 44 n.1, 358 S.E.2d 574, 575 n.1 (1987). When a

judgment debtor obtains a supersedeas bond pursuant to a court order, it should have the same effect as the deposit of monies into court. Both actions result in the same outcome—a guarantee that the judgment will be paid after an unsuccessful appeal.

**III. THE APPELLANTS' REMAINING ARGUMENTS FOR REHEARING ARE FULLY SET OUT IN THE PETITION**

The Respondent has not raised any points in the response that Appellants believe warrant a reply. The Appellants rely on their remaining arguments set out in the petition for rehearing.

**IV. CONCLUSION**

The petition for rehearing raises issues that the Court overlooked and misapprehended. The Respondent's effort to minimize or distract from these arguments should be rejected. The Appellants respectfully request that the Court grant the petition and issue an opinion addressing the merits of the lead argument. In doing so the Court should hold that no post-judgment interest accrues after a supersedeas bond is entered pursuant to a court order. Alternatively, the Court should grant the petition for rehearing and issue an opinion holding that no post-judgment interest is owed to Respondent as a result of the change in judgment debtor, the posting of a supersedeas bond, and the timely payment of the new judgment. Alternatively, the Court should remand for a determination of whether the veil piercing claim is even a viable claim for Respondent.

*[SIGNATURE PAGE FOLLOWS]*

Dated: March 19, 2024

Respectfully submitted,

s/ Burl F. Williams

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and

DAVID WILSON is the .....Respondent.

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**PROOF OF SERVICE**

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I certify that on March 19, 2024, I served the Reply in Support of Petition for Rehearing  
by sending a copy of the same to the email address for Respondent David Wilson, counsel of

record as identified in the Attorney Information System. Specifically, I certify that a copy was sent to: aarnold@aalawfirm.com.

Dated: March 19, 2024

Respectfully submitted,

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