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**Aug 01 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Appellate Case No. 2020-000320

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Associated Receivables Funding, Inc., ..... Respondent,

v.

Dunlap, Inc.; James Stephen Dunlap, an Individual; Dunlap Industrial  
Coating Services, Inc.; Dunlap Industrial Services, Inc.; Classic Industrial  
Services, Inc.; and Mark Beuerle, an Individual, ..... Defendants,

Of Which Classic Industrial Services, Inc. is the ..... Appellant.

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**RETURN OF APPELLANT TO RESPONDENT'S 2d PETITION  
FOR THE IMPOSITION OF A SUPERSEDEAS BOND OR,  
IN THE ALTERNATIVE, LIFT OF STAY**

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*Attorney for Appellant*

Classic Industrial Services, Inc., Appellant, by and through its undersigned counsel, respectfully submits this Return to Respondent's Renewed (Second) Petition for the Imposition of a Supersedeas Bond or, in the Alternative, Lift of Stay. The Petition must be denied for two reasons: (1) on procedure, it is defective; (2) on merit, it is without.

**I. DEFECTIVENESS AS TO PROCEDURE**

The relief sought by this Petition is Respondent's fourth bite at the proverbial apple:

- i. By order dated March 5, 2020, the lower court granted Appellant's motion to stay the execution of judgment pending appeal, and did not require any amount of bond for security;
- ii. Respondent filed a Rule 59(e) motion as to this decision, and that was denied by order dated November 9, 2020;
- iii. On January 18, 2021, Respondent filed its first petition with this Court to impose a bond pending appeal or otherwise lift the stay. That petition was denied on March 4, 2021;
- iv. On June 20, 2024, the Court issued an opinion in the underlying appeal; and,
- v. Now, as of July 19, 2024, Respondent has filed this second Petition for the same relief sought in prior motions and petitions.

In light of this procedural history, it would seem that Respondent is asking the Court to reconsider its prior decision on the relief sought in the Petition, which is resolved by Rule 240(i), SCACR: "The court will not entertain petitions for rehearing on a motion or

petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.”

Respondent previously asked this Court to impose a bond or otherwise lift the stay of execution. The Court denied that petition. The Court's denial did not dismiss or finally decide either party's appeal. Accordingly, if this Petition is considered a request for reconsideration, Rule 240(i) forecloses that avenue of relief.

Further on that point, the first paragraph of the Petition asserts that it is filed under Rule 241(d)(7), SCACR, which provides that “[a]ny party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision.” The lower court issued the decision by which Respondent became “aggrieved;” Respondent then filed a petition in this Court seeking review of that decision, and that was denied three years ago. This leads to the obvious question: *as a procedural matter, what new decision is there that has caused Respondent to become aggrieved in a way that it wasn't previously?*

Maybe Respondent has submitted this Petition as a new request for relief under Rule 241. If so, then Respondent has failed to observe the material procedural requirements. See Rule 241(d), SCACR. Among other things, the Appellate Court Rules establishing the “procedure for obtaining lift of stay or supersedeas” expressly require the presentation of the matter to the “lower court or administrative tribunal” in the first instance, not the Court of Appeals.

Simply stated, this Petition is not procedurally appropriate, whether it is deemed a new request for relief or a reconsideration of a request for relief that was previously denied.<sup>1</sup>

## **II. DEFICIENCY AS TO MERITS**

As a practical matter, the Petition should be denied because Respondent is not entitled to the relief sought. Respondent claims that it is owed \$404,728.98, comprising principal and interest at 8.75% “compounding annually,” which is error.

Respondent has applied the post-judgment interest statute—which provides for interest to be “compounded annually”—to the pre-judgment interest Respondent was awarded by the lower court. It is not clear why. South Carolina Code § 34-31-20(a), establishing pre-judgment interest, does not contemplate compound interest, whereas § 34-31-20(b) (regarding post-judgment interest) expressly does. Consistent with the appellate decisions of this State, when a statute allows for the recovery of interest but does not address whether interest is simple or compound, interest is simple. See, e.g., Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636 (2006) (citing Tilley v. Pacesetter, 333 S.C. 33, 508 S.E.2d 16 (1998)).

In short, Respondent is not presently owed \$400,000 and security in such an amount is not appropriate pending the disposition of these appellate proceedings.

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<sup>1</sup> Respondent asserts that “it would be patently unfair for the Appellant to not be required to post a supersedeas bond or for Respondent to continue to have to wait to collect while Appellant’s Motion for Rehearing and, then, possible Writ of Certiorari are determined.” (Pet. at 2.) The applicable rules of procedure establish a mechanism by which the question of fairness pending appeal may be adjudicated and, in this case, has been adjudicated. It is curious why Respondent failed to acknowledge it has filed its own petition for rehearing from the June 20 decision.

**CONCLUDING STATEMENT**

For the foregoing reasons, Appellant respectfully requests the Court to deny the relief requested in Respondent's Petition, and to make provision for such other and further relief as the Court deems just and proper.

Respectfully,

*s/ Steven Edward Buckingham*

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Of Which Classic Industrial Services, Inc. is ..... Appellant.

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**PROOF OF SERVICE**

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The undersigned counsel for Appellant hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

**Document(s):** Appellant’s Return to Respondent’s Renewed Petition for Imposition of a Supersedeas Bond or, in the Alternative, Lift of Stay

**Counsel Served:** For Respondent  
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Means of Delivery: *Via Email Only*

**Courts Served:** Office of the Clerk of the Court of Appeals  
ctappfilings@sccourts.org

Means of Delivery: *Via Email Only*

**Date:** August 1, 2024

Respectfully,

*s/ Steven Edward Buckingham*

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