

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)
) FIFTEENTH JUDICIAL CIRCUIT)
COUNTY OF HORRY) CIVIL ACTION NO. 2020CP2605135

Greg Lilly a/k/a Gregory Stuart Lilly, II,)
and Laura Lilly,)
)
Plaintiffs,)
)
vs.)
)
Steven S. Walkup,)
)
Defendant.)
_____)

RECEIVED
ORDER REGARDING
SUPPLEMENTAL MOTIONS
AUG 28 2024
SC Court of Appeals

This matter came before me on July 10, 2024, pursuant to several Motions filed by the Defendant and one Motion filed by Plaintiffs' attorney.

Present at the hearing were William Paul Young, attorney for the Plaintiffs and Steven S. Walkup, *Pro Se*.

The first matter to be heard was Defendant's Motion seeking recusal of this Judge. Defendant's Motion states that he emailed me in November of 2021 with disputed facts of the case and received no reply. The email addressed offered is not, nor has it ever been, my email. Defendant then alleged, "Both Mr. Young and Mr. Clemmons had primarily been litigating in the Master's court for twenty (20) plus years and likely were much more than just acquaintances". This judge has never litigated a case with Mr. Young nor had any personal relationship with Mr. Young. Therefore, Defendant's Motion to recuse is denied.

The second matter to be heard was Defendant's Motion to have any appeal from the case to go to the Supreme Court instead of the Court of Appeals. Mr. Young correctly stated that where an appeal may be filed is subject to the Rules of Appellate

Procedure and not within this Court's jurisdiction. Therefore, Defendant's Motion is denied.

The third matter to be heard was concerning the sworn Affidavit of Defendant filed on June 3, 2024. Defendant filed a second unnotarized affidavit on June 8, 2024, but the Court's decision is not based on whether the second affidavit is notarized or not. Although not in Motion form, the Court decided to treat the affidavit as a Motion to Vacate the Settlement that was put on the record on May 21, 2024. In this affidavit, the Defendant claims that he entered into the settlement under duress and by fraudulent means. In support of his claim, he lists the following:

- a. That the court would not allow Defendant to ever (sic) enter the courtroom prior to start time.
- b. That Plaintiff's attorney told him the affidavits he had filed were not admissible in court for a trial.
- c. That Plaintiff's attorney insisted that Plaintiffs paid off the mortgage in trust and that it was included in discovery.
- d. That Plaintiff's attorney claimed to have receipts of all the alleged damage that were not produced in discovery.
- e. That Plaintiff's attorney "claimed that the court reporter still had not shown and I later learned she was told the wrong courtroom and this seemed all part of a set up".
- f. That Plaintiff's attorney stated "well we'll just try the case if you don't take my offer"

The court then inquired of the Defendant how he was put in duress by the courtroom being locked and whether he was claiming the court was putting him in duress. Defendant did not say that the court was putting him in duress, but that the locked courtroom caused him duress.

Defendant stated the Plaintiffs' attorney stated that the \$20,000.00 mortgage payoff was paid in trust and it was included in the discovery. At this point Plaintiffs' attorney stood and handed Defendant and the court a copy of the wire transmittal showing the payment was made from his trust account.

Defendant went on to say that Plaintiffs' attorney told him he had to take the offer or they would just try the case.

The Plaintiffs' attorney then addressed the court and stated that the legal definition of duress should be addressed and cited *McCann v. Doe*, 660 S.E. 2nd 500, 377 S.C. 373 (pg. 5-6) stating:

Duress is defined as a condition of mind produced by improper External pressure or influence that practically destroys the free Agency of a party and causes him to do an act or form a contract not of his own volition....Duress is viewed with a subjective test, looking at the individual characteristics of the person allegedly influenced, and duress does not occur if the person has a reasonable alternative to succumbing and fails to avail themselves of the alternative.

Plaintiffs' attorney stated that Defendant always had the alternative to proceed with the trial if he chose to do so and therefore had a reasonable alternative.

Plaintiffs' attorney then stated that the offer made to Defendant was eight thousand dollars (\$8,000.00) and that Defendant rejected this offer and countered with ten thousand (\$10,000.00) dollars. After consultation with Plaintiffs, this counter offer was accepted and the settlement was put on the record. Plaintiffs' counsel further stated

that this settlement was enforceable pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure.

This Court does not find that Defendant acted under any duress or undue influence and that he entered into the settlement freely and voluntarily. Therefore, the Motion to Vacate the Settlement is denied.

Having denied the Motion to Vacate, I find that Defendant's Motion to Amend his Answer and Dismiss his Counterclaim is moot.

The fourth matter to come before the Court was Plaintiffs' Motion to Compel the Settlement. Having found a valid settlement agreement exists; This Court orders the following:

- a. That Defendant comply with the terms of the settlement as recorded in the record of the court within ten (10) days that includes executing deeds with regard to the property as agreed under the settlement.
- b. This Court also orders, with regard to the expenses of this hearing, the Defendant will pay five hundred (\$500.00) dollars toward the expenses of this hearing, including the court reporter time and Plaintiffs' attorney's time. I further direct that the five hundred (\$500.00) dollars be reduced directly from the funds being held in trust by Mr. Young for the payment to Defendant. The payment to Defendant should be reduced by \$500 to \$9,500.
- c. In the event that Defendant fails to comply with the Order of this Court, the Court will find the Defendant in contempt of this court, and a Rule to Show Cause should be filed with this court with regards to the disposition of that

contempt at such time after ten (10) days have passed without compliance by the Defendant, if that should occur.

IT IS SO ORDERED.

[SIGNATURE PAGE OF MASTER IN EQUITY TO FOLLOW]



Horry Common Pleas

Case Caption: Greg Lilly , plaintiff, et al VS Steven S Walkup
Case Number: 2020CP2605135
Type: Order/Compel

So Ordered

s/Alan D. Clemmons 3088 Master in Equity

JUSTIA

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2012 South Carolina Code of Laws

Title 18 - Appeals

Chapter 9 - APPEALS TO SUPREME COURT AND COURT OF APPEALS

Section 18-9-160 - Staying judgment to execute conveyance.

Universal Citation: SC Code § 18-9-160 (2012)

If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

HISTORY: 1962 Code Section 7-416; 1952 Code Section 7-416; 1942 Code Section 787; 1932 Code Section 787; Civ. P. '22 Section 652; Civ. P. '12 Section 390; Civ. P. '02 Section 351; 1870 (14) 362; 1999 Act No. 55, Section 30, eff June 1, 1999.

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2019 South Carolina Code of Laws

Title 18 - Appeals

Chapter 9 - Appeals To Supreme Court

And Court Of Appeals

Section 18-9-150. Deposit or surety

when judgment requires delivery of

documents or personalty.

Universal Citation:

SC Code § 18-9-150 (2019) ○

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If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

HISTORY: 1962 Code Section 7-415; 1952 Code Section 7-415; 1942 Code Section 786; 1932 Code Section 786; Civ. P. '22 Section 651; Civ. P. '12 Section 389; Civ. P. '02 Section 350;

RULE 241
STAY AND SUPERSEDEAS IN CIVIL ACTIONS

(a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

(b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

- (1)** Money judgments as provided in S.C. Code Ann. § 18-9-130.
- (2)** Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.
- (3)** Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.
- (4)** Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.
- (5)** Judgments directing the sale of perishable property as provided in S.C. Code Ann. § 18-9-220.
- (6)** Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630.
- (7)** Worker's compensation awards as provided in S.C. Code Ann. § 42-17-60.
- (8)** An appeal from an order granting an injunction or temporary restraining order.
- (9)** Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. § 63-3-530(A)(2).
- (10)** Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.
- (11)** Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).

(c) Supersedeas or Lifting of Automatic Stay.

(1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.

(2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

(3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

(4) If an order is issued pursuant to Rule 241(c)(1), the terms of that order continue in effect during the pendency of the appeal unless modified or revoked by the lower court, the administrative tribunal or the appellate court or judge or justice of the appellate court which issued it, or by a superior court. The granting of any relief pursuant to this Rule shall not be construed to affect the validity of the judgment, order, decree, decision and any liens until the judgment, order, decree or decision is reversed or modified by the appellate court.

(d) Procedure for Obtaining Lift of Stay or Supersedeas.

(1) Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal. The issuance of an *ex parte* order or decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance.

(2) After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending for review of this order. An individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.

(3) A person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client. The petition shall be captioned the same as the appeal. In addition to the petition and verification, the moving party must contemporaneously file a certified copy of the order, judgment, decree or decision of the lower court or administrative tribunal and a copy of the notice of appeal with its proof of service.

(4) The petition shall contain:

(A) the factual background necessary for an understanding of the petition. If the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements;

(B) the grounds for the petition, and legal arguments with supporting points and authority;

(C) a showing that an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested. A certified copy of the lower court's or administrative tribunal's ruling must be included. If no application was made to the lower court or administrative tribunal, then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.

(5) The petition and accompanying documents shall be served on the opposing party(ies) and filed with the clerk of the appellate court together with proof of service.

(6) A supersedeas or order lifting the automatic stay may be issued *ex parte* only where exigent circumstances require that action be taken before there is time for a hearing. An *ex parte* order shall issue only if:

(A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and

(B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required.

(7) Any 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.

Last amended by Order dated April 30, 2024.