STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
Donald C. Austin,	)	04-CP-14-135
Plaintiff,	)	
vs	)	ORDER
Stokes-Craven Holding Corp.	)	
D/B/A Stokes Craven Ford,	)	
Defendant.	)	
	)	

This matter was before the court on July 18, 2013 for hearing of (1) the plaintiff's motion to determine interest on a money judgment, (2) the plaintiff's motion to order execution on the money judgment, and (3) the defendant's motion to require the plaintiff to post a bond before execution on the judgment. The plaintiff is represented by C. Steven Moskos, Esq., and Brooks R. Fudenberg, Esq. The defendant is represented by Andrew K. Epting, Esq., Michelle Endemann, Esq., and John C. Land, III, Esq.

The current disputes stem from an August 17, 2006 jury verdict in favor of the plaintiff on his fraud cause of action in the amount of $26,371.10 actual damages and $216,600.00 punitive damages, for a total verdict of $242,971.10. The verdict was appealed and affirmed by the Supreme Court of South Carolina in a reported decision, 387 S.C. 22, 691 SE2d 135 (2010). The Supreme Court remanded to the trial court the issue of attorney's fees in a cause of action unrelated to the fraud cause of action. On remand, the Honorable John C. Hayes (the trial judge) awarded the plaintiff the sum of $49,936.50 in trial level attorney's fees. That award is now on appeal to the Supreme Court. Other issues are also pending before the Supreme Court, but the

actual and punitive damage awards are final. In its order dated June 20, 2013, the Supreme Court, *inter alia*, indicated it would "issue an opinion forthwith" on the issues before it.

Until now, all other post-trial proceedings have been presided over by Judge Hayes. In his order filed May 10, 2013, Judge Hayes determined that he had no authority to rule on any remaining issues in the case and that a Third Circuit judge must resolve the instant motions.

The plaintiff asserts that he simply wants to execute on the actual and punitive damages judgment but that the Clarendon County Sheriff wants a court order authorizing execution. The plaintiff wants the court order to include a judicial calculation of post-judgment interest so the execution can proceed. The defendant maintains there is no "final judgment" and that execution would be premature before the Supreme Court issues its final opinion. In that regard, the defendant claims that it has its own claim for attorney's fees pending before the Supreme Court, and that if it is awarded fees, the net effect might be a reduction in the actual and punitive damages award payable to the plaintiff.

The defendant submits that execution is not appropriate as there is no "final judgment". S.C. Code §15-39-30 provides that executions "may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof...." The defendant claims that since monetary award issues are still before the Supreme Court, there is no "final judgment". The defendant cites *Kriti Ripley, LLC v. Emerald Investments, LLC,* (Opinion No. 27277, June 26, 2013) (opinion not yet released for publication) for this proposition. *Kriti Ripley* addresses "final judgments" in the context of S.C. Code §14-3-330 (the appellate jurisdiction of the Supreme Court) and notes that a final judgment is one that "disposes of the cause, ... reserving no further questions or directions for future determination. It must finally dispose of the whole

subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined." (citing and quoting *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 41-42, 21 S.E. 2d 209, 212 (1942) (quoting 2 Am. Jur. 860 § 22).

The issue in *Kriti Ripley* was the appealability of a final judgment, not whether a money judgment was subject to execution when other monetary issues were not judicially resolved. Though it could be said the foregoing definition of "final judgment" should apply across the board, in the instant case, the actual and punitive damage award is final and the judgment's ten years of active energy under §15-39-30 have been ticking since August 17, 2006, the date of the damages award. At the motions hearing, when the court inquired of counsel for the defendant as to whether the defendant contended that the ten years of active energy of the actual and punitive damage award had begun to run on August 17, 2006 or had not yet begun to run at all, counsel replied that he did not want to commit to a position on that point. Though the Supreme Court's ruling in *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 703 S.E. 2d 499 (2010) may relieve concerns in any given case about the expiration of the ten year active energy period, in my view, the actual and punitive damages award in this case constitutes a final judgment of some sort, and efforts to collect that judgment may proceed.

The defendant also cites *Calhoun v Calhoun*, 339 S.C. 96, 529 S.E. 2d 14 (2000) for the proposition that the actual and punitive award is not "final"; on the contrary, *Calhoun* simply stands for the proposition that when a money judgment is finalized, whether in a lower court or an appellate court, interest on that amount, whether it has been modified upward or downward, or remains the same, runs from the date of the original judgment. *Calhoun* does not include any holding or even any *dicta* that would lead to a conclusion that the current judgment is not final.

The question now becomes the calculation of post-judgment interest pursuant to S.C. Code §34-31-20 (B). Specifically, the question is whether the post-judgment interest rate is an annually adjusted rate or a fixed rate. This is an important question, as in this case there is a difference of approximately $76,000.00 between adjusted and fixed accrued interest through August 7, 2013. The plaintiff maintains the rate is a fixed at 11.25% *per annum*. The defendant maintains the rate "could be as low as zero", apparently a continuation of its assertion noted above that there is not yet a final judgment, and therefore, no right of execution.

§34-31-20 (B), amended for judgments entered on or after July 1, 2005, provides that a **"judgment of a court enrolled or entered must draw interest according to law"** and that **"[T]he legal rate of interest 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."** 34-31-20 (B) further provides that the Supreme Court shall issue an order by each January 15 "confirming the annual prime rate." Finally, 34-31-20 (B) concludes by providing that "[F]or 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." (emphasis added). This language clearly provides that, at least for 2005 judgments, there is a fixed rate for the life of the judgment.

The instant judgment was entered on August 17, 2006. In its January 4, 2006 order, the Supreme Court stated "for judgments entered between January 15, 2006 and January 14, 2007, the legal rate is 11.25% compounded annually." It appears clear that the Court was tracking the language of §34-31-20(B) for 2005 judgments and ordered the 11.25% rate to remain constant throughout the life of a judgment entered within the designated time frame. However, it is worth

noting that in its January 2007 order, the Court modified the 2006 language and stated "for the period January 15, 2007 through January 14, 2008, the legal rate of interest for judgments and money decrees is 12.25% compounded annually." For every year beginning in 2007, the Court's interest rate orders have been identical, except for publication of the new rate and new effective dates.

My decision must be guided by the plain language of the statute, and the statute provides for a judgment to accrue interest at a rate "equal to the prime rate ... published for each calendar year **for which** the damages are awarded plus four percentage points, compounded annually." The phrase "for which", in my view, can only be interpreted to mean "during which". Damages "are awarded" only once. The year during which the damages were awarded in this case was 2006. The legal interest rate for damages awards entered during that year was and is 11.25%, compounded annually. This court has never gone through the exercise of calculating post-judgment interest in a written order, but taking into account the contentious background of this litigation, the court will do so here. For the judgment year ending August 16, 2007, the balance of the judgment was $270,305.34; for the judgment year ending August 16, 2008, the balance was $300,714.69; for the year ending August 16,2009, the balance was $334,545.09; for the year ending August 16, 2010, the balance was $372,181.41; for the year ending August 16, 2011, the balance was $414,051.81; for the year ending August 16, 2012, the balance was $460,632.63; and for the year ending August 16, 2013, the balance will be $512,453.80. Beginning August 17,

2013, another compounding anniversary, the *per diem* for the next judgment year will be $157.95.[1]

In its motion, the defendant claims the current appeal precludes execution at this stage and that a bond should be required before any execution can proceed. The court is aware of no appellate court rule, statute, or case law that would require the posting of a bond or a delay in execution under the current circumstances. Rule 241, SCACR, does not apply to the execution sought by the plaintiff. S.C. Code §18-9-130 contemplates the posting of a bond in situations in which there is a notice of appeal from a judgment directing the payment of money. With regard to the actual and punitive damages award the plaintiff seeks to collect, there is no pending notice of appeal.

The defendant also claims the execution is "excessive in amount". The court agrees the amount sought is substantial, but the amount is based on a damages award affirmed by the Supreme Court, with post-judgment interest calculated according to statute. It is substantial, but not excessive.

The defendant claims the execution should not proceed because the plaintiff used certain confidential records to assist him in effecting the execution. The defendant has presented no evidence to prove this position.

The defendant complains that counsel for the plaintiff did not serve the execution notice on its counsel and that it was filed without notice to the defendant. The plaintiff correctly points out that there is no legal requirement for notice of an execution to be given to the judgment

[1] In my view, the most equitable way to apply post-judgment interest would be through an interest rate adjusted annually; however, §34-31-20 (B) mandates a fixed rate, with the rate to be determined as of the calendar year in which the damages were awarded.

debtor or its counsel. Perhaps it would be advisable to give notice in certain circumstances, but it is not required.

Based upon the foregoing, it is

ORDERED that the Sheriff of Clarendon County execute on the plaintiff's judgment of $242,971.10, plus accrued interest at the rate of 11.25% *per annum*, compounded annually, interest to begin on August 17, 2006, with the annual compounding anniversary being that date; it is further

ORDERED that no bond is required.

GEORGE C. JAMES, JR., JUDGE
THIRD JUDICIAL CIRCUIT

August 1, 2013