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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE 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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APPELLANT'S PETITION FOR REHEARING

The Appellant, pursuant to Rule 221, SCACR, petitions this Court for a rehearing of its Opinion No. 2025-UP-324 filed September 24, 2025 and having been received by Appellant's attorney on September 24, 2025. The basis of Appellant's request for rehearing is set forth in the attached Memorandum.

Respectfully submitted,

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October 24, 2025

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APPELLANT'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REHEARING

On September 24, 2025, this Court issued its Opinion No. 2025-UP-324 affirming the Circuit Court's ruling pursuant to Rule 67, SCRCP allowing Centex to deposit a jury verdict for Wedgewood in the amount of $6,750,000.00 into the Clerk of Court for Horry County. The Appellant, in response to this Court's Opinion, respectfully offers the following points this Court overlooked or misapprehended in issuing its Opinion.

I. THE COURT OF APPEALS ERRED IN NOT ADDRESSING THE SEMINAL ISSUE AS TO WHETHER S.C. CODE § 34-31-20 WAS SUPERIOR TO RULE 67, SCRCP.

In South Carolina, when a state court rule (Rule 67, SCRCP) conflicts with a state statute (S.C. Code § 34-31-20) the statute prevails because statutes are enacted by the legislature and are considered the supreme law of the land. Court rules such as Rule 67, SCRCP are designed to aid the court's operation and don't have the force and effect of a statute. South Carolina case law has consistently held that the courts must interpret statutes to achieve the legislative intent and that a conflict between a court rule (Rule 67, SCRCP) and a statute (S.C. Code § 34-31-20) is always resolved in favor of the statute.

In this case, the Court is confronted with the interpretation of S.C. Code §34-31-20 which states in pertinent part:

> In all cases of accounts stated in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

The State rule at issue in this case is Rule 67, SCRCP entitled Deposit in Court which states as follows:

> In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.

Respectfully, the opinion of the Court does not address the tension between S.C. Code § 34-31-20 and Rule 67, SCRCP and renders the interest statute meaningless in derogation of established case law. Appellant at the trial court and in its original brief has continually asserted that Rule 67,

SCRCP could not override S.C. Code § 34-31-20 which mandates that the legal rate of interest shall be awarded.

S.C. Constitution, art. V, § 4 (2009) is not addressed by this Court. That section of the Constitution provides "Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." Further, 1985 Act No. 100, Sections 1 and 3, provide as follows:

> "Section 1. Pursuant to Article V, Section 4A of the Constitution of this State, the Supreme Court of South Carolina has promulgated Rules of Civil Procedure governing practice and procedure in civil actions in the courts of this State, which rules were not disapproved by the General Assembly; and it is the intent of the General Assembly to repeal provisions of the 1976 Code of Laws of South Carolina, to be replaced by the Rules of Civil Procedure."
>
> "Section 3. In event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory provisions as to practice and procedure not repealed in this act, the provision of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure."

In this case the Court has not addressed the conflict between S.C. Code § 34-31-20(B) which specifically mandates interest shall be paid on judgments and Rule 67, SCRCP which make no mention of interest on judgments in either the text or the advisory notes. This Court in its opinion cites numerous cases which allow deposit of judgments into the Court, but does not address the specific issue presented in this case which is S.C. Code § 34-31-20 provides "A judgment ... must draw interest according to law." Clearly Rule 67, SCRCP cannot override the substantive law of this state concerning interest on judgments.

Numerous South Carolina cases are in accord with Wedgewood's position. In *Marichris LLC v. Derrick*, 384 S.C. 345, 682 S.E.2d 309 (Ct. App. 2009), this Court held, "A rule of civil procedure may not limit the provisions of a statute." Further supporting case law is found in the South Carolina

Eminent Domain Procedure Act in which the Supreme Court of South Carolina said, "When the Act conflicts with the South Carolina Rules of Civil Procedure, the Act prevails."[1] *South Carolina Department of Transportation v. First Carolina Corporation of South Carolina*, 369 S.C. 150, 631 S.E.2d 533, (2006). Appellant asserts that the Court in its opinion does not discuss or address the fact that the interest on judgment statute (S.C. Code § 34-31-20) mandates interest and Rule 67, SCRCP does not address this issue or even mention it. The Court in a footnote only states: "We recognize Rule 67 does not stop the accrual of post judgment interest on cases with a governing contractual interest provision or in eminent domain proceedings." However, that is not the issue in this case. The issue squarely presented by Appellant is whether Rule 67, SCRCP overrides the mandatory language of S.C. Code § 34-31-20. In fact, this Court has said on numerous occasions "a claimant is entitled to interest...as a matter of course," which of course leads one to believe that a rule of procedure is not superior to a state statute. See *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004).

Appellant also cited multiple decisions of the federal court interpreting Rule 67, SCRCP which support Wedgewood's position. In *U.S. for Use of Garrett v. Midwest Const. Co.*, 619 F.2d 349 (5th Cir. 1980), the Fifth Circuit held that the mere filing of a motion to deposit does not stop the accrual of interest. In *Com. Insurance Co. v. Szafarowicz*, 483 Mass. 247, 131 N.E.3d 782 (2019), the Massachusetts court held Rule 67 does not expressly provide for abatement of post judgment interest – a point which has never been addressed by this state's courts. In *Governo L. Firm LLC v. Bergeon*, 487 Mass. 188, 166 N.E.3d 416 (2021), that court held post-judgment interest does not stop because the defendant makes an offer to satisfy a judgment conditional on a party foregoing its appeal

[1] Why the Court would say the Eminent Domain Act prevails over a Rule of Civil Procedure and the interest statute does not in this case, is contradictory since both are statutes and must be construed in conformity with art. V, § 4 (2009) of the Constitution.

right. *In re Dep't of Energy Stripper Well Exemption Litig.*, 124 F.R.D. 217 (D. Kan. 1989) the court held that the appellant could not deposit funds into the court registry to halt the accrual of interest. Each of those Courts reasoning was that the rule allowing for deposit of funds into the registry of court cannot be used as a means of altering the interest statute.

There are also significant policy reasons why a judgment in South Carolina mandates interest. Those reasons include the fact that a defendant should not get a "free appeal" by depositing the funds in the Clerk of Court's Office and not being responsible for interest at the prevailing rate. The use of Rule 67, SCRCP is by its very language not designed or intended to allow that result. The rule is silent on this issue. If Rule 67, SCRCP was allowed to circumvent the interest statute, verdicts would be appealed consistently and this would result in an interest "free appeal" – a result which does not benefit the judgment creditor.

In fact, the very text of Rule 67, SCRCP 67 does not address the mandatory requirement of interest on judgments found in S.C. Code § 34-31-20. This position is echoed by the opinion of a Vermont trial judge's ruling in *Energy Savers, Inc. v. McKelvy* (Superior Court of Vermont, Civil Division, March 7, 2023) in which he stated in regard to the tolling of interest on judgments that interpretation of Rule 67 would change a "'rather unimportant rule' into a very important one."

II. *RUSSO V. SUTTON*, 317 S.C. 441, 444, 454 S.E.2D 895, 896 (1995) HAS NO APPLICATION TO THE LEGAL ISSUE IN THIS CASE.

This Court in its opinion cites *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) for the position that a verdict may be paid into the court and no interest would accrue under S.C. Code § 34-31-20. However, this appeal argues a constitutional matter which was not decided in *Russo*. This appeal concerns whether Rule 67, SCRCP can override the mandatory language in S.C. Code § 34-31-20. The *Russo* Court was never presented on appeal with the novel legal issue raised in this case. Here, Appellant argues that S.C. Code § 15-1-10 provides "Neither the promulgation of the

rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of the state but shall affect only matters of practice and procedure." Of course S.C. Code § 15-1-10 is in harmony with the Supreme Court's decision in *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), in which the Court noted that where a statute's language is plain and unambiguous "the court has no right to impose another meaning." Appellant's citation to these authorities was not addressed by the Court in issuing its opinion in this case. The Court's opinion merely cites the cases which have allowed a verdict to be deposited into the court pending an appeal and does not address the issue raised by Appellant.

None of the reported South Carolina cases have raised the constitutional argument of the superiority of S.C. Code § 34-31-20 over Rule 67, SCRCP. In fact, the only case which even tangentially addresses this matter squarely assists the Appellant's position. In *South Carolina Department of Transportation v. First Carolina Corporation of South Carolina*, 369 S.C. 150, 155, 631 S.E.2d 533, (2006), the Supreme Court held that a deposit of monies pursuant to Rule 67 was inapplicable because the Eminent Domain Procedure Act provided for post judgment interest on condemnation judgments and specifically provided in the event of a conflict that statutes prevailed over the rules of civil procedure. The same situation occurs here in that S.C. Code § 34-31-20(B) mandates all judgments must draw interest according to law.[2] S.C. Code § 34-31-20(B) is also buttressed by the case law, the South Carolina Constitution and the time honored rule that a substantive statute will override any rule of court which is inconsistent with that statute. There is no

[2] The term "shall" in a statute means that the action is mandatory. See *Johnston v. South Carolina Dept. of Labor, Licensing and Regulation, South Carolina Real Estate Appraisers Bd.*, 365 S.C. 293, 617 S.E.2d 363, rehearing denied (2005); *Collins v. Doe*, 352 S.C. 462, 574 S.E.2d 739 (2002); *Charleston County Parents for Public Schools, Inc. v. Moseley*, 343 S.C. 509, 541 S.E.2d 533 (2001); *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000); *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998).

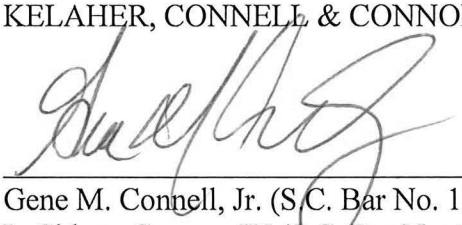
difference between the Eminent Domain Act and the interest statute – both are statutes and must be obeyed. We do not have different classifications of statutes in South Carolina – every statute by its own terms is superior to a Rule of Civil Procedure – if there is a conflict the substantive statute prevails as a matter of constitutional law.

CONCLUSION

Appellant requests the Court withdraw it opinion and hold that Appellant is entitled to interest at the statutory rate allowed by S.C. Code § 34-31-20 and that Rule 67, SCRCP has no application on its face.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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