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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000531
Case No. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated,.. Respondents,

vs.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc; American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Anderson Windows, Inc; Atlantic Building Construction Services, d/b/a Gale Contractor Services; Novus Architects, Inc., f/k/a SGM Architects, Inc.; Tallent and Sons, Inc; W C Services, Inc.; CRG Engineering, Inc; CertainTeed Corporation; Kelly Flooring Products, Inc, d/b/a Carpet Baggers; Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe 61; Alderman Construction; Stanley's Vinyl Fences Designs; Cohen's Drywall Company, Inc; Mosley Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc; JMC Construction, LLC; John Doe 1-15,......... Defendants,

of which
Tri-County Roofing, Inc. is the ....Appellant.

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN ORDERING THE DISBURSEMENT OF THE $1 MILLION BOND TO RESPONDENT AFTER ORDERING THAT DISBURSEMENT PRIOR TO THE RESOLUTION OF A COMPANION COVERAGE ACTION WAS IMPROPER?

A. Did the Trial Court Abuse its Discretion in Denying Appellant's Motion for Reconsideration Pursuant to Rule 59(e)?

B. Did the Trial Court Abuse its Discretion in Denying Appellant's Motion for Relief from Judgment Pursuant to Rule 60(b)(1)?

C. Did the Trial Court Abuse its Discretion in Denying Appellant's Motion for Relief from Judgment Pursuant to Rule 60(b)(4)?

STATEMENT OF THE CASE

This matter arises from post-trial orders by the trial court relating to the disbursement of a $1,000,000 supersedeas bond.

In May 2019, Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated, obtained a jury verdict against Appellant Tri-County Roofing, Inc. ("TCR") in the amount of $7,000,000, including $500,000 in punitive damages. (See 8/28/2025 Order, p. 1.)

Following post-trial motions, the trial court entered judgment on July 23, 2019, in the amount of $5,330,000 after applying certain setoffs. (See id.) TCR appealed the trial court's Order denying them additional setoffs and the South Carolina Court of Appeals affirmed the trial court's rulings in part and reversed in part, granting TCR an additional $500,000 set-off for a post-trial settlement. (See id.)

On certiorari, the South Carolina Supreme Court affirmed the Court of Appeals on certain set-off allocations but granted TCR an additional $1,000,000 set-off for a pre-trial covenant-not-to-execute, resulting in a final principal judgment amount of $3,830,000. (See id.)

The Supreme Court remitted the matter to the trial court for calculation and entry of the amended judgment with applicable post-judgment interest. (See id.)

Following remittitur, Respondents sought entry of judgment and for immediate disbursement of the supersedeas bond, arguing that the purpose of the bond is to protect the judgment holder from loss through delay or nonperformance and because the appeals have concluded, they are entitled to immediate payment of the bond proceeds in partial satisfaction of the judgment. (See id., p. 2.)

In response, TCR moved to stay disbursement pending resolution of a related insurance coverage action, arguing that forcing payment prior to the resolution of a companion coverage action would impair TCR's insurer's rights before those coverage issues are resolved. (See id.)

The trial court agreed with TCR and, and by Order dated August 28, 2025, found that the present dispute concerned only funds sought from the remaining non-settling insurer, certain subscribing insurers of Certain Underwriters at Lloyd's London, and Respondents had filed an action seeking a declaration of Lloyd's coverage obligations[1], which was set for trial no later than November 13, 2025. (See id., pp. 3-4.)

The trial court held that while the purpose of supersedeas bonds are to ensure funds are available to satisfy the judgment when due and would ordinarily be subject to disbursement upon remittitur of the case by the appellate court and entry of judgment by the trial court, the present case presented a different situation and a stay of disbursement was necessary to "safeguard[] the insurer's due process rights and avoid[] the potential for disbursements that may not be recoverable." (Id., p. 4.) Specifically, the trial court determined that:

> [T]he equitable and prudent course is to preserve the bond proceeds within the custody of the trial court until the coverage dispute is finally adjudicated, thereby ensuring that the funds remain available for satisfaction of the judgment should Plaintiffs prevail, while safeguarding the insurer's due process rights and avoiding the potential for disbursements that may not be recoverable.

(Id.)

[1] Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380.

The trial court ordered that Lloyd's deposit $1,000,000 into the registry of the Court, that the supersedeas bond be cancelled/released, and directed the Clerk to discharge the surety and close the bond on the Court's records. (See id. p. 5.)

The trial court also ordered that the funds be retained pending the final resolution of the companion coverage action, and that "[i]f Plaintiffs prevail in the coverage action, the funds and accrued interest shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers." (Id. p. 6.)

However, the trial court also set an outside deadline of 120 days from the issuance of order and directed that the funds be disbursed at the earlier of the resolution of the coverage action or the 120 day deadline. (See id.)

On September 8, 2025, Respondents filed a Motion to Reconsider the August 28, 2025 Order, arguing that Respondents' right to receive the bond proceeds is unrelated to any question of insurance coverage; the trial court improperly considered the equities; and the trial court erroneously relied on facts not in evidence. (See Respondents' 9/8/2025 Motion for Reconsideration, pp. 1-6.) Respondents also sought clarification on whether the funds should be disbursed no less than 120 days from the date of the Subject Order and further sought a ruling on each and every issue raised by Respondents. (See id. pp. 7-8.) TCR opposed the Motion and, by Form 4 Order dated December 11, 2025, the trial court denied Respondents' Motion in part and granted in part to correct a clerical error.[2] (See Appellant's 9/26/2025 Response in Opposition; 12/11/2025 Order.)

Thereafter, on December 30, 2025, the trial court entered a Form 4 Order, directing the Clerk to disburse the funds. (See 12/30/2025 Order.) Appellant immediately contacted the trial court and thereafter filed a Motion to Reconsider pursuant to Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure. (See Appellant's 12/30/2025 Motion for Reconsideration.)

Specifically, Appellant requested the Circuit Court "grant[] a stay of the disbursement of the funds held by the Clerk of Court under the Order filed December 30, 2025, and extend the applicable deadline governing the disbursement of the funds until such time as the Charleston County Master-in-Equity takes up the coverage action entitled Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at

[2] Respondents ultimately appealed the August 28, 2025 and December 11, 2025 Orders, which is currently pending as appellate case number 2026-000077. (See 1/8/2026 Notice of Appeal.)

Lloyd's,London, et al, Case No. 2021-CP-10-04380, solely for the purpose of determining all insurance coverage claims alleged in this matter.

The grounds for this motion included the following rationale: "The original Order regarding the appellate bond and payment of the $1 Million into the Court contemplated resolution of the underlying coverage action entitled Palmetto Point at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd's, London, et al,, Case No. 2021-CP-10-04380, ("underlying coverage action") by December 2025. For various reasons, this did not occur. Earlier this month, counsel for all parties in the companion coverage action participated in an online roster/status conference conducted by the Charleston County Clerk of Court. At that conference, the Clerk advised the parties that the coverage action will be referred to the Charleston County Master-in-Equity for disposition, rather than proceeding on the Circuit Court trial roster. See Order of Reference dated December 22, 2025 … This Order was received from coverage counsel the morning of December 30, 2025. Based on that guidance, the coverage action has not yet been reached for adjudication and will instead proceed on the Master's calendar, with initial consideration anticipated early in the new year. On December 30, 2025, the Court issued is Form 4 Order granting the release of the funds that was deposited with the clerk of court's office, and the accrued interest, to the counsel of record for Plaintiffs. In light of this referral, and consistent with the equitable principles underlying the Court's August 28th Order, Defendant Tri-County Roofing, Inc. respectfully requests that the Court extend the applicable deadline governing the stay of disbursement until such time as the Master-in-Equity takes up the coverage action and sets a schedule for its resolution. This request is made to preserve the status quo and ensure that the Court's intent—preserving the funds while coverage is adjudicated—is effectuated in light of the revised procedural posture."

After a hearing and supplemental submission by Respondent, the trial court denied Appellant's Motion to Reconsider by Order dated February 3, 2026. (See 2/3/2026 Order.)

Appellant timely filed its Notice of Appeal on March 6, 2026. (See 3/6/2026 Notice of Appeal.)

STANDARD OF REVIEW

Motions for reconsideration pursuant to Rule 59(e), SCRCP, are presumptively reviewed under an abuse of discretion standard. See, e.g., Pollard v. Cty. of Florence, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994).

The decision to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). On appeal, the standard of review is limited to determining whether there was an abuse of discretion. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004).

An abuse of discretion arises when the order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). An abuse of discretion also occurs "when the trial court is vested with discretion, but the ruling reveals no discretion was exercised." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

LAW/ANALYSIS

I. THE TRIAL COURT ERRED WHEN IT ORDERED THE DISBURSEMENT OF THE $1 MILLION BOND TO RESPONDENT AFTER ORDERING THAT DISBURSEMENT OF THE FUNDS PRIOR TO THE RESOLUTION OF A COMPANION COVERAGE ACTION WAS IMPROPER.

The record shows that the trial court stayed the disbursement of the $1 Million Bond until after the companion coverage action was resolved. At the time that Order was entered, the parties and the trial court understood that the coverage action would be resolved within 120 days. However, circumstances changed and resolution of the coverage action within that time frame was no longer achievable.

Nevertheless, the trial court adhered to the 120 day deadline in direct conflict with and in contravention with its well-reasoned conclusion that a stay of disbursement was necessary to maintain the status quo, "safeguard[] the insurer's due process rights and avoid[] the potential for disbursements that may not be recoverable." (8/28/2025 Order, p. 4.)

As further explained herein, the trial court abused its discretion in denying Appellant's Motion for Reconsideration, and this Court must reverse the trial court's Order and direct the trial court to enter an order altering or amending its previous Orders to direct that the $1 million be re-deposited into the registry of the Court and not be disbursed at any time prior to the resolution of the companion coverage matter.

A. The Trial Court Abused its Discretion in Denying Appellant's Motion for Consideration Pursuant to Rule 59(e).

A motion pursuant to Rule 59(e) is the proper vehicle to request a trial court to alter or amend the judgment and also seek reconsideration of issues and arguments. See Elam v. S.C. DOT, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

"A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule. Id.

The South Carolina Supreme Court encourages motions for reconsideration, explaining that "'[t]he wisdom of giving [trial] courts the opportunity promptly to correct their own alleged errors is all the justification needed' for the practice of freely allowing a motion for reconsideration." Id. at 22, 602 S.E.2d at 779 (quoting Blair v. Equifax Check Services, Inc., 181 F.3d 832, 837 (7th Cir. 1999)).

"Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993).[3]

Here, the trial court should have granted Appellant's Rule 59(e) motion to correct a clear error of law and prevent manifest injustice. The trial court properly determined that a stay of the disbursement of the $1 Million Bond was necessary to "safeguard[] the insurer's due process rights and avoid[] the potential for disbursements that may not be recoverable". (8/28/2025 Order, p. 4.)

The referral of the coverage action to the Master in Equity resulted in a significant change to the circumstances supporting the trial court's August 28, 2025 Order. Nevertheless, the trial court firmly adhered to the 120-day deadline, resulting in a clear and operative error of law and manifest injustice to Appellant by endangering its insurer's due process rights and causing the disbursement of funds that may not be recoverable.

The trial court's refusal to grant Appellant's Motion for Reconsideration was therefore controlled by an error of law and driven by factual conclusions

[3] South Carolina's Rule 59(e) is "practically identical" to the federal rule and, as a result, our courts often cite to federal jurisprudence when analyzing motions to alter or amend. See, e.g., Elam, 361 S.C. at 22, 602 S.E.2d at 779.

that lacked evidentiary support. As a result, the trial court abused its discretion in denying Appellant's Motion.

Consequently, this Court should reverse the trial court's Order and direct the trial court to enter an order altering or amending its previous Orders and direct that the $1 million not be disbursed at any time prior to the resolution of the companion coverage matter.

B. The Trial Court Abused its Discretion in Denying Appellant's Motion for Relief from Judgment Pursuant to Rule 60(b)(1).

Alternatively, this Court should reverse the trial court's August 28, 2025, Order pursuant to Rule 60(b), SCRCP. Rule 60(b)(1), SCRCP, allows a trial court to relieve a party from a final judgment or order due to mistake, inadvertence, surprise, or excusable neglect.

Motions made pursuant to Rule 60(b)(1) "shall be made within a reasonable time" and "not more than one year after the judgment, order or proceeding was entered or taken." "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief." BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

"In order to gain relief under Rule 60(b)(1), SCRCP, a party must first show a good faith mistake of fact has been made". Williams v. Watkins, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009).

In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Mictronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001).

Thematically, the August 28, 2025 Order was predicated on the disbursement not occurring until after the companion coverage action could be resolved. Accordingly, Appellant asserts it was incongruent that the trial court, after agreeing a stay of disbursement was necessary, would then order disbursement after circumstances had changed and the coverage action had not resolved. When the trial court ordered disbursement on December 30, 2025, Appellant acted promptly in seeking the requested relief by filing its Motion that very same day.

Additionally, for the reasons previously stated, Appellant presents a meritorious defense insofar as the requested stay is necessary to "safeguard[] the insurer's due process rights and avoid[] the potential for disbursements that may not be recoverable". (8/28/2025 Order, p. 4.)

Finally, Respondents are not prejudiced by the requested relief because the funds would be secure and continue to bear interest. Conversely, Appellant now faces prejudice to the extent that the funds are no longer secured in the registry of the Court.

Accordingly, the trial court abused its discretion in denying Appellant's Motion for Reconsideration and this Court must reverse the trial court's Order and direct the trial court to enter an order altering or amending its previous Orders and direct that the $1 million not be disbursed at any time prior to the resolution of the companion coverage matter.

C. The Trial Court Abused its Discretion in Denying Appellant's Motion for Relief from Judgment Pursuant to Rule 60(b)(4).

Rule 60(b)(4), SCRCP, allows a trial court to relieve a party from a final judgment, order, or proceeding when the judgment is void.

"A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

"The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996).

"A judgment is not rendered void by irregularities which do not involve jurisdiction." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (citing Thomas & Howard Co., 318 S.C. at 291, 457 S.E.2d at 343.).

Here, Appellant was deprived of due process when the trial court directed disbursement of the funds on December 30, 2025, despite the significant change in circumstances, denying Appellant its day in court to contest the disbursement. The effect of the December 30, 2025, Order is to deny Appellant's insurer the ability to contest coverage in the companion action.

Accordingly, the trial court abused its discretion in denying Appellant's Motion for Reconsideration and this Court must reverse the trial court's Order and direct the trial court to enter an order altering or amending its previous Orders and direct that the $1 million not be disbursed at any time prior to the resolution of the companion coverage matter.

CONCLUSION

Consequently, whether this Court were to analyze the trial court's Order under Rule 59(e), Rule 60(b)(1), or Rule 60(b)(4), the trial court committed an abuse of discretion in denying Appellant's Motion for Reconsideration and, as a result, this Court must reverse the trial court's Order and direct the trial court to enter an order altering or amending its previous Orders and direct that the $1 million be disbursed at any time prior to the resolution of the companion coverage matter.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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