THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case Nos.: 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham and Vickie B. Graham, ...Appellants,

v.

Town of Latta, South Carolina, ...Respondent.

INITIAL REPLY BRIEF OF APPELLANTS

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ARGUMENTS

I. THE TOWN OF LATTA MISREADS THE LEGAL RATE OF INTEREST STATUTE.

At pages 7 and 8 of its Brief, the Respondent argues that the last phrase of S.C. Code Ann. §34-31-20(B), "according to law," is an incorporation of the *dicta* from *Russo v. Sutton*, 454 S.E. 895 (S.C. 1995) upon which it so heavily relies. Its argument depends upon a grammatical and legal misreading of the sentence.

> (B) A money decree or judgment of a court enrolled or entered **MUST** draw interest according to law. The 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. S.C. Code Ann. 34-31-20(B). [Emph. in original Tort Reform Act of 2005].

"According to law" is a prepositional phrase which modifies the word "interest." Respondent's argument depends upon that prepositional phrase modifying some unspecified earlier words in the sentence; one infers "must draw." The next sentence, however, defines "according to law": the legal rate of interest = prime plus 4. At common law, judgments did not bear interest, Annot., 15 *A.L.R* (*3d*) 411, 414 (1967), so interest is generally allowable only pursuant to statutory enactments. "(I)nterest according to law" means the statutory enactment of the ensuing sentence, the legal rate of interest.

The doctrine of the last antecedent provides that a "limited or restrictive clause contained in a statue is generally construed to refer to and limit and restrict an immediately preceding clause, or the last antecedent." *Black's Law Dictionary* 1390 (9th Ed. 2009). Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is "the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." Thus, a proviso usually is construed

to apply to the provision or clause immediately preceding it. 2A Norman J. Singer, *Sutherland on Statutory Construction* 4733 (6th Rev. Ed. 2000). See also *Barnhart v. Thomas*, 124 S.Ct. 376, 380 (2003); *Alger v. Commonwealth,* 267 Va. 255, 590 S.E.2d 563 (2004). Applying the last antecedent doctrine to S.C. Code. Ann. 15-41-30(A)(9), the United States Bankruptcy Court for the District of South Carolina found that "payable to a beneficiary" modified the word "insurance" instead of the more distant word "proceeds and cash surrender values" in the phrase: "proceeds and cash surrender values of life insurance payable to a beneficiary." The Bankruptcy Court cited *U.S. v. Hayes*, 555 U.S. 415 (2009) for the rule of grammatical construction which provides that a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows. In re *Patel*, 431 B.R. 682, 689-90 (2010). Accord, *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987).

In the absence of the phrase "according to law", the first sentence of the statute would leave the rate of interest undefined, since no such rate exists at common law. Thus modified the interest is made clear by the second sentence of 20(B).

II. A JUDGMENT CREDITOR HAS A LEGAL RIGHT TO THE LEGAL RATE OF POST JUDGMENT INTEREST.

Respondent argues that Section 34-31-20(B) "does not create any legal duty to pay post-judgment interest," at page 13 of its Brief. The South Carolina Supreme Court disagrees.

At common law, judgments did not bear interest, so the statute at issue *creates something*; the pertinent analysis is whether the something it created is a legal duty. In *Calhoun v. Calhoun*, S.C. 96, 529 S.E.2d 14, 339 (2000), the Supreme Court agreed with the judgment creditor that she is "automatically entitled to interest on the money judgment" without regard to whether her Rule 59(e) motion was the first time she requested post-judgment interest and to whether that motion itself was timely. "Where

the law allows interest is a matter of course, it is unnecessary to make demand for it in the pleadings" and "a complainant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course."

Calhoun clearly described an obligation to pay interest which is a legal duty, one so manifest that it need not be asked for, and one so imperative that it cannot be waived by inattentive lawyering.

III. THE RESPONDENT'S BRIEF MISSTATES THE HOLDINGS OF *SEARS* AND *RUSSO*.

The Respondent compounds its misstatement of the *Russo v. Sutton* holding with an equally egregious mischaracterization of the holding in *Sears v. Fowler*. "We hold *Sutton's* unilateral deposit of the funds insufficient to stop accrual of the interest mandated by Section 34-31-20," *Russo* became, in Respondent's hands, a rule of law that a judgment debtor's deposit of funds into the court pending on appeal prevents further accrual of interest.

The Respondent quotes *dicta* from *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987) artfully as if it were held there that a judgment debtor "may stop the running of interest by paying the amount of the judgment into court" while an appeal is pending. *Sears* not only addressed an earlier version of the Legal Rate of Interest statute not applicable here and did not refer to or consider Rule 67, but also definitively rebuts the reliance upon it by Respondent.

> The *sole question* presented in this appeal is whether or not a judgment creditor, who unsuccessfully appeals a money judgment on the ground of inadequacy after having received a judgment in his favor, is entitled to interest under the general interest statute during the pendency of his appeal. We hold that he is not.
> *Sears v. Fowler*, 293S.C. at 45. (emph. supp.).

In a footnote not part of the reasoning which led to its holding, the court addressed a hypothetical neither argued nor briefed, but upon which the Respondent relies for support to its argument that Rule 67 trumps the statute.

More crucial to the issue pending before this Court, however, is the reasoning upon which *Sears* relied to come to its holding. The statute at issue in *Sears* read "shall draw interest according to law". *Sears* noted the "mandatory tenor of the language" but was careful to recognize that the usage of "shall" in the sentence was not a command: "Despite the mandatory tenor of the statutory language, the statute does not automatically apply in every case." *Sears* went on to recognize that it does not apply when the parties have contracted for a different rate and characterizes that observation as "for example." A contract calling for a different rate is an *example*, not the exclusive circumstance where "shall" found its mandatory tenor diluted.

The legislature's recognition that "shall", despite its mandatory tenor, did not automatically result in a command in every case no doubt led it to clarify and change the law by saying a judgment "**MUST** draw interest according to law." The central point of Appellants' Argument III is that South Carolina in 2005 made the post-judgment legal rate of interest more clearly and indubitably mandatory than it had been when *Sears*, *Russo*, and any other case upon which Respondent relies were decided. In support of our argument, Appellants noted that the Tort Reform Act of 2005 uses "shall" correctly only to issue a command to an entity or to describe a future condition and that it always used "must" as a transitive verb to mandate, order, or command a thing in a manner descriptive of the end result of the command. Respondent does not accord the statutory law of South Carolina the respect it, or this court, should when it argues that the Tort

Reform Act of 2005 uses shall and must willy-nilly: "interchangeably." To interchange those words in this statute results in a hodgepodge of grammatically incorrect, logically impossible law: things commanded to perform acts of which they are incapable and entities described in ways to which they may not conform in the absence of a command.

> There is a presumption that equivalent words have an equivalent meaning when repeated in the same statute unless a contrary legislative intent is clearly expressed. Conversely, where different language is used in the same connection in different parts of the statute, it is presumed that the legislature intended a different meaning. Thus, where a legislature uses similar but different terms in a statute, particularly within the same section, it is presumed that the legislature intended such terms to have different meanings. (emph. sup.) 82 *C.J.S. Statutes* §388.

When the legislature uses certain language in one part of the statute and different language in another, the usual rule is that the court assumes different meanings were intended. *DePierre v. U.S.*, 131 S.Ct. 2225 (2011). *Wine v. Commonwealth*, 301 Mass. 451, 457, 17 N.E.2d 545, 548 (1938); *Forst v. Rockingham Poultry Mktg. Co-op., Inc.*, 222 Va. 270, 27-78, 29 S.E.2d 400, 404 (1981). When this state chose to improve the grammar, logic and clarity of the post-judgment interest statute it wisely left no room for doubt about its mandate: interest **MUST** be paid.

CONCLUSION

The public policy of South Carolina, as expressed in its statute law, is that a judgment debtor has a legal duty to pay post-judgment interest at the legal rate. The order below should be reversed.

Respectfully submitted,

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May 21, 2014

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APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The Appellants do not propose any other matters to be included in the Record on Appeal, in addition to those matters previously designated.

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PROOF OF SERVICE

I certify that I have served the **Initial Reply Brief of Appellants** and **Appellants' Designation of Matter To Be Included In The Record On Appeal** on the *Respondent*, through its attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

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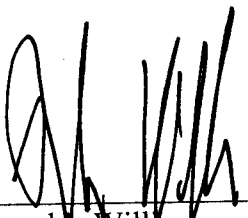
May 21, 2014



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