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Subject: 2015-000985 Bank of America v. Shawn L. Bethea
Date: Wednesday, March 09, 2016 4:45:00 PM

Dear Mr. Bethea:

Good afternoon. Thank you for your call regarding the status of your appeal. Our records reflect that your appeal is still pending. As you requested, here is a link to Rule 241 of the South Carolina Appellate Court Rules, as well as the text of the rule: <http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=241.0&subRuleID=&ruleType=APP>

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 or an individual judge or justice for review of this order. The 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). Upon application to the full appellate court, one original and six copies, and a certificate of service shall be filed with the clerk of the appellate court. If the relief is sought from an individual judge or justice, the original and two copies must be filed with the judge or justice. The individual judge or justice shall forward the original documents, including a copy of any order issued by the judge or justice in the matter, to the clerk of the appellate court as soon as possible.

(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 January 29, 2009, effective April 29, 2009, by order of the same date.

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