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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED
AUG 23 2016
SC Court of Appeals

Case No. 2012-CP-43-2030

Appellate Case No. 2016-000774

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

MOTION TO DETERMINE AUTOMATIC STAY AND FOR RELEASE OF FUNDS

This motion is filed pursuant Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. It is also filed pursuant to *State v. Cooper*, which provides that when there is a dispute about whether the automatic stay applies, the authority to resolve that the dispute is vested in the appellate court. See 342 S.C. 389, 398, 536 S.E.2d 870, 875-76 (2000).

This case involves an appeal from a premises liability case where a verdict of $2,500,000.00 was awarded to the Plaintiff/Appellant Win Myat (hereinafter "Dr. Myat"). The trial court capped the judgment at $300,000.00 finding that the award was limited by the Solicitation of Charitable Funds Act. The Plaintiff/Appellant has appealed

the trial court's decision to cap the jury's award. The Defendant/Respondent has not appealed or cross appealed in any manner and the deadline to do so has now passed.

This motion is being filed because the parties disagree over whether $300,000.00 previously deposited by the Defendant/Respondent Tuomey Heathcare System (hereinafter "Tuomey") with the Sumter County Clerk's Office should be released to Dr. Myat. Dr. Myat contends the funds should be released immediately. Since Tuomey has not appealed the trial court's April 7, 2016 Order, which entered judgment against Tuomey in the amount of $300,000.00, there is no dispute that, at a minimum, these funds are owed to Dr. Myat.

BACKGROUND

In July of 2011, Dr. Myat was injured when he suffered a serious fall while on the premises of Tuomey. Dr. Myat asserted claims of premises liability and negligence against Tuomey. The case was tried in September of 2015, and a jury verdict in favor of Dr. Myat for $2,500,000.00 was rendered against Defendant Tuomey. After the verdict, Tuomey moved, *inter alia*, to reduce the award to $300,000.00 under the provisions of the Solicitation of Charitable Funds Act.[1] By order dated April 7, 2016, the trial court entered an order on all post-trial motions and, finding that Tuomey was entitled to the protections of the Solicitation of Charitable Funds Act, capped the jury verdict at $300,000.00.00. See **Exhibit 1** (Trial Court April 7, 2016 Order). Judgment in favor of Dr. Myat against Tuomey for $300,000.00 was entered on April 13, 2016. See **Exhibit 2** (Judgment). On April 14, 2016, Dr. Myat filed a notice of appeal of the April 7, 2016 Order and is presently prosecuting his appeal seeking reversal of the trial court's order

[1] Specifically South Carolina Code § 33-56-180(A).

which capped the judgment at $300,000.00. Defendant Tuomey has filed no cross appeal of the order and the deadline to do so has run.

On May 3, 2016, Tuomey deposited $300,000.00, with the Sumter County Clerk of Court's Office, in accordance with Rule 67 of the South Carolina Rules of Civil Procedure. Because Tuomey has filed no cross appeal of the Court's April 7, 2016 Order, Plaintiff's entitlement to the $300,000.00 has been finally adjudicated. The pending appeal seeks solely to determine whether Dr. Myat is entitled to the remaining $2,200,000.00 of the jury verdict.

In accordance with Rules 205 and 241 of the South Carolina Appellate Court Rules, Dr. Myat sought release of the funds from the trial court. See **Exhibit 3** (Motion to Release Funds). Tuomey opposed the release of funds on several grounds, namely that the trial court lacked jurisdiction due to the pending appeal, that a bond should be required, and that Dr. Myat must settle his case in order to receive the funds. See **Exhibit 4**. (Tuomey's Response to Motion). By order dated August 12, 2016, the trial court denied the motion to release funds, reasoning that jurisdiction was vested with this Court as to whether the funds should be released.[2] See **Exhibit 5** (Trial Court's August 12, 2016 Order).

ARGUMENT

Rule 241 of the South Carolina Appellate Court Rules and S.C. Code § 18-9-130 make clear that money judgments are except from the automatic stay pending appeal. In the present case, Tuomey deposited the $300,000.00 to satisfy the judgment with the

[2] Out of an abundance of caution to ensure his rights were preserved Dr. Myat filed a notice of appeal of the trial court's August 12, 2016 Order. The undersigned believes these two appeals should be consolidated under Rule 214 of the South Carolina Appellate Court Rules. This Motion addresses all issues appealed from the August 12, 2016 trial court order.

Clerk's Office in accordance with Rule 67 of the South Carolina Rules of Civil Procedure, presumably to stop the accrual of interest pending the appeal. Critically, Tuomey took no appeal of the trial court's April 7, 2016 Order, which capped the judgment at $300,000.00, but also denied Tuomey's other post-trial motions.[3] Because Tuomey has filed no cross appeal of the Court's April 7, 2016 Order, Dr. Myat's entitlement to the $300,000.00 has been finally adjudicated. The pending appeal seeks solely to determine if the protections of the Solicitation of Charitable Funds Act should be applied and thus whether Dr. Myat is entitled to the remaining $2,200,000.00 of the jury's verdict. This Court should issue an order to the Sumter County Clerk of Court directing release of the $300,000.00 to Dr. Myat, through his undersigned counsel.[4]

CONCLUSION

This Court should issue an order directing the release of the deposited funds to Dr. Myat. Tuomey took no appeal from the entry of judgment against it for $300,000.00, and has deposited those funds with the Sumter County Clerk of Court. Because the pending appeal (filed only by Dr. Myat) seeks only to determine whether the cap applies to the jury verdict, Dr. Myat is presently entitled to receipt of those funds.

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[3] Tuomey also moved for a new trial and JNOV, which were denied by the trial court.

[4] No bond should be required since Dr. Myat's entitlement to those funds is not conditioned upon the outcome of the pending appeal. The appeal only involves Dr. Myat's right to receive the $2.2M balance of the jury verdict.

August 23, 2016

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
Win Myat	)	Case No.: 2012-CP-43-2030
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tuomey Regional Medical Center	)	**ORDER**
	)	
Defendant.	)	
	)	
	)	

This matter is before the Court on a number of post-trial motions filed by the Plaintiff, Dr. Win Myat, and the Defendant, Tuomey Regional Medical Center. A hearing on these motions was held on March 8, 2016. Present at the hearing were William R. Padget, Esquire, and Francis M. Hinson, IV, Esquire, Attorneys for the Plaintiff, and David C. Holler, Esquire, Attorney for the Defendant. For the reasons set forth below, the Court denies Defendant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict (JNOV). The Court finds that the Defendant is entitled to protection under the South Carolina Solicitation of Charitable Funds Act (SCFA), which caps tort liability of qualifying "charitable organizations" at the same liability limits imposed by S.C. Code Ann. § 15-78-120, the South Carolina Tort Claims Act ($300,000.00 for a single occurrence of liability). Thus, the jury verdict of $2,500,000 is reduced to $300,000. Further, the Court denies Plaintiff's Motions to Reconsider allowing Defendant to amend its answer and reopen its case.

BACKGROUND AND TRIAL

This is a slip and fall case brought by Dr. Win Myat (Plaintiff), a physician employed by

Tuomey Regional Medical Center (Defendant). The complaint was filed on October 15, 2012. On April 21, 2014, Tuomey moved for Summary Judgment on liability. Plaintiff's current counsel, William Padget, filed a Notice of Appearance on July 7, 2014.

A consent scheduling order was entered on November 7, 2014, and a mediation report was filed on February 19, 2015. By Order of May 5, 2015, the case was set for a date certain trial on August 24, 2015.

On August 21, 2015, Tuomey moved to amend its Answer to assert the protections of South Carolina Code Section 33-56-180, also known as the Solicitation of Charitable Funds Act (the Act). Plaintiff's initial complaint asserted, and Tuomey's answer alleged, that Tuomey was a charitable organization. Tuomey had previously identified itself as a charitable organization under the Act subject to the limitation of liability under Section 33-56-180 in its discovery responses to Plaintiff. The Court granted the motion to amend, and on August 24, 2015, Defendant filed an Amended Answer, alleging that it qualified for and should receive a cap on liability under the SCFA. On September 8, 2015, Plaintiff filed a motion to reconsider that decision. On September 10, 2015, Plaintiff filed a reply to Tuomey's amended answer.

Prior to trial, and in response to Defendant's motion for summary judgment, Plaintiff stipulated that he would not argue that Tuomey had actual or constructive knowledge of the liquid on the floor and failed to correct the problem, but would proceed to trial solely to prove that the liquid on which Plaintiff slipped, was more likely than not, put on the floor by one of Tuomey's employees.[1] This slip and fall case was tried before a jury beginning August 31, 2016. At the close of Tuomey's case on September 1, 2015, Plaintiff moved for a directed verdict, arguing that Tuomey failed to present evidence that it was a charitable organization entitled to

[1] Defendant Tuomey moved for summary judgment on April 21, 2014, arguing that there was no evidence: (1) that Tuomey had actual or constructive knowledge of the dangerous condition (i.e. the liquid on the floor) and failed to remedy it; or (2) that the dangerous condition was created by one of Tuomey's employees.

protection under Section 33-56-180. Tuomey immediately moved to reopen its case and requested judicial notice of its 501(c)(3) status and the protections of Section 33-56-180. Tuomey presented evidence and also offered to submit testimony on its 501(c)(3) status at that point in time. On September 2, 2015, the Court granted Tuomey's motion to reopen its case and took the issue of Tuomey's 501(c)(3) status under advisement. On September 11, 2015, Plaintiff moved to reconsider the Court's reopening of the evidence on the issue of 501(c)(3) status.

During the pendency of the trial and because the parties agreed the application of Section 33-56-180 was a question of law for the court and not a question of fact for the jury, the parties agreed to continue with the trial to a jury verdict and thereafter address issues regarding Tuomey's 501(c)(3) status, if necessary, at a later date. Following a jury verdict of $2.5 million on September 2, 2015, the Court allowed Plaintiff to conduct discovery on the issue of Tuomey's 501(c)(3) status and the application of Section 33-56-180.

The court held a status conference on September 29, 2015. At that conference, a motion to compel (filed on September 29, 2015) by Plaintiff was resolved by consent. Following discovery, a hearing was held on March 8, 2016, on the issue of Tuomey's 501(c)(3) status. The Court entertained arguments on all issues pending at that time.

DISCUSSION

I. Motion for Directed Verdict and Judgment Notwithstanding the Verdict

The standard for ruling on a motion for directed verdict is the same as for a motion for judgment notwithstanding the verdict. A judge can grant a directed verdict motion when the evidence is only susceptible of one reasonable inference. *See e.g., Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011). A motion for judgment

notwithstanding the verdict is a renewal of the motion for directed verdict. SCRCP 50(a) and (b).

"In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 570, 780 S.E.2d 252, 258 (2015) (citing *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002)). Denying motions for directed verdict and JNOV is proper if more than one inference can be drawn from the evidence presented. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994) (citing *Vacation Time of Hilton Head Inc. v. Lighthouse Realty, Inc.*, 286 S.C. 261, 332 S.E.2d 781 (Ct. App. 1985)). Additionally, if the evidence yields an ambiguous inference, i.e., one that is in doubt, denying the motion is similarly appropriate. *Id.*

In making its determination, the trial court does not have the "authority to decide credibility issues or to resolve conflicts in the testimony and evidence." *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998). The trial court looks only at the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). A motion for JNOV should only be granted where there exists no evidence to support the jury's verdict. *Reiland* at 634 (citing *Horry Cnty. v. Laychur,* 315 S.C. 364, 434 S.E.2d 259 (1993)).

The Supreme Court of South Carolina has held that a motion for directed verdict should only be granted in "rare cases." *Linnen v. Commercial Cas. Co.*, 152 S.C. 450, 150 S.E. 127, 128 (1929). "[U]nder the Scintilla rule which prevails in South Carolina, if there is a scintilla of evidence, which is any material evidence that if true would tend to establish the issue in the mind

of a reasonable juror the case should be submitted to the jury for its determination." *Woodle v. Brown*, 223 S.C. 204, 210, 74 S.E.2d 914, 917 (1953).

"A directed verdict on liability is properly denied where there is any evidence, direct or circumstantial, justifying submission of the issue to the jury." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 513, 506 S.E.2d 497, 503 (1998) (citing *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994). Direct evidence is evidence based on "actual knowledge of the situation and requires no inference by the jury." *State v. Salisbury*, 343 S.C. 520, 525, 541 S.E.2d 247, 249 (2001). On the other hand, circumstantial evidence, also known as indirect evidence, is evidence "based on inference and not on personal knowledge or observation." *Black's Law Dictionary*, Evidence (10th ed. 2014).

> *Indirect* evidence (called by the civilians, *oblique*, and more commonly known as *circumstantial* evidence) is that which is applied to the principal fact, indirectly, or through the medium of other facts, by establishing certain circumstances or minor facts, already described as evidentiary, from which the principal fact is extracted and gathered by a process of special inference . . . .

Alexander M. Burrill, *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* 4 (1868) (emphasis in original).

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). "Any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally convincing to the trier of the facts." *St. Paul Fire & Marine Ins. Co. v. Am. Ins. Co.*, 251 S.C. 56, 59-60, 159 S.E.2d 921, 923 (1968).

Here, prior to the start of trial, Tuomey moved for summary judgment, arguing there was no evidence that: (1) Tuomey had actual or constructive knowledge of the dangerous condition (i.e., liquid on the floor) and failed to remedy it; or (2) the dangerous condition was created by one of Tuomey's employees. In response, Plaintiff stipulated that he would not argue that Tuomey had actual or constructive knowledge of the liquid on the floor and failed to correct the problem, but would proceed to trial solely to prove that the liquid on which Plaintiff slipped was, more likely than not, put on the floor by one of Tuomey's employees.[2] Further, Plaintiff argued that there was ample evidence to show that one of Tuomey's nurses spilled the liquid, and, therefore, summary judgment would be improper.

In a brief and at oral argument, Plaintiff pointed to numerous facts revealed in discovery that, when taken together, created strong circumstantial evidence showing that one of Tuomey's nurses or nurse technicians spilled water on the hospital's floor, thereby creating the dangerous condition that caused Plaintiff to fall and suffer injury. The principle facts revealed in discovery are as follows:

1. On July 6, 2011, at around 5:30 A.M., there was a clear liquid on the floor located adjacent to the same nurses' station where Plaintiff fell. (Depo. of Kathy Sapp, pp. 11-19).

2. The liquid was in a puddle about six to seven inches in diameter. (Depo. of Kathy Sapp, p. 22).

3. Visiting hours at the hospital end at 9:00 P.M. and do not resume until 6:00 A.M. (Depo. of William Whitehouse, p. 22).

4. An ice machine and sink are located in a room near the nurses' station. Visitors are not permitted to use the ice machine or sink, which are only to be used by Defendant's employees. (Depo. of William Whitehouse, p. 13).

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[2] A defendant is liable if its employee creates a dangerous condition on its premises resulting in injuries. *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 491 S.E.2d 690 (Ct. App. 1997).

5. Nurses' duties include delivering ice and water to patients in their hospital rooms. It is the custom and practice of Defendant's nurses to fill cups of ice and water on a cart that is kept in the location where Plaintiff slipped and fell. (Depo. of William Whitehouse, p. 31).

6. It is the nurses' custom and practice to fill the cups of ice and water at around 4:00 A.M. (Depo. of William Whitehouse, p. 31).

7. On the morning of July 6, 2011, Plaintiff slipped and fell in a puddle of clear liquid that was located in the place where nurses had filled cups with ice and water an hour and a half earlier. (Depo. of Kathy Sapp, pp. 11-19, Depo. of William Whitehouse, p. 31).

Additional evidence was presented at trial, comprising a combination of direct and indirect evidence. The following evidence and testimony was presented to the jury:

1. Around 5:30 A.M. on the morning of July 6, 2011, Plaintiff slipped and fell directly beside the nursing station on Unit 3 South of the hospital.

2. Kathy Sapp, an officer working for the South Carolina Department of Corrections, testified that she witnessed Plaintiff's fall, and, thereafter, rushed to assist him.

3. Plaintiff testified that the slip and fall was due to a puddle of water directly beside the nursing station on Unit 3 South on the aforementioned date and time.

4. Following Plaintiff's fall, witnesses observed a puddle of clear liquid beside the nursing station in the exact location where he had slipped. While their testimony as to the size of the puddle differed slightly, both Officer Sapp and Marilyn Wilson (a CNA employed by Defendant) testified that they saw this puddle of clear liquid on the floor at this location.

5. The fall occurred after the close of the hospital's visiting hours, which had ended at 9:00 P.M. the previous evening and were not scheduled to resume again until 6:00 A.M. Thus, at the time when Plaintiff fell, visitors had not been permitted on Unit 3 South for more than eight hours.

6. Mary Yates, former safety director for Defendant, testified as to the hospital's visiting hours and, when shown a written copy of Defendant's hospital policies and procedures, confirmed that a section found on page 3 establishes the policy for visiting hours.

7. Although patients are sometimes allowed to have visitors stay overnight in their rooms, no witness recalled observing any visitors or other non-employees walking in the halls or around the nursing station of Unit 3 South during the early morning hours of July 6, 2011.

8. The only non-employee exceptions were Officer Sapp and her fellow corrections officer, Sergeant James Austin.

9. Officer Sapp testified that neither she nor Sergeant Austin spilled any liquids on the floor during the night/morning at issue, and, like all the other witnesses, testified that she did not recall seeing any visitors or patients on Unit 3 South that evening/morning.

10. Ms. Yates stated that her investigation of the incident did not uncover any evidence of visitors in the area in the hours preceding Plaintiff's fall.

11. Certified Nursing Assistant (CNA) Marilyn Wilson testified that during the night/morning at issue, there were seven hospital employees working on Unit 3 South: four RNs, two CNAs (one of which was her) and one student technician.

12. Nurse Whitehouse, CNA Wilson, and Ms. Yates all testified that per Defendant's policies and procedures, neither patients nor visitors are permitted to be at or around the nurse's station. Thus, by Defendant's own policy and the testimony of its employees, patients and visitors are not allowed to stand, walk, or otherwise be in the area where Plaintiff slipped and fell.

13. A photograph showed two large purple and white signs displayed prominently in the area where Plaintiff fell. These signs stated: "NO PATIENTS OR VISITORS ALLOWED AROUND OR THROUGH THE NURSING STATION."

14. Ms. Yates testified that, even though Defendant's policies and procedures do not allow nurses to have drinks at the nursing station, nurses have been known to violate this policy.

15. Nurse Whitehouse and CNA Wilson testified that the room containing the ice machine and sink is locked with a combination code on the door. Visitors are not permitted to use the ice machine or sink, which are only to be used by hospital employees. In fact, physicians are not even permitted to enter the small room and are not provided with the combination code to the door.

16. A photograph showed a large red and white sign that was prominently displayed on the door to the room with the sink and ice machine. This sign stated: "Stop! Staff Only."

17. Nurse Whitehouse and CNA Wilson testified that the sink and ice machine are the only sources of water that are located close to the location of the clear liquid on the floor.

18. Nurse Whitehouse and CNA Wilson testified that every morning between the hours of 4:00 A.M. and 5:00 A.M., Defendant's nurses and CNAs use the sink and the ice machine to fill pitchers. These pitchers are then placed on a small cart and wheeled around to the patients on Unit 3 South. Consistent with the staff's custom and practice, this activity took place during the hour immediately preceding Plaintiff's fall.

19. At the time Plaintiff slipped, the cart that Defendant's staff members used to deliver ice and water was located very close to the nursing station. CNA Wilson testified that the nurses' water delivery cart was only about an arm's length from where she saw Plaintiff sitting on the floor immediately following his fall.

20. Hospital employees admitted that water on the floor at that location constituted a dangerous condition.

21. Nurse Whitehouse, who has worked for Defendant since 2009, provided the lay opinion that an employee of the Defendant was the most likely source of the clear liquid.

Considering all the above evidence in the light most favorable to the Plaintiff, more than a scintilla of evidence was presented by which a reasonable jury could conclude that one of Tuomey's agents created a dangerous condition, i.e., that an employee of Tuomey was the most likely source of the liquid on the floor. The evidence, both direct and indirect, is enough for a jury to reasonably determine that, by a preponderance of the evidence, the clear liquid on which Plaintiff slipped and fell was spilled on the floor by an employee of Tuomey.

Tuomey is not entitled to a directed verdict or JNOV, as there was ample evidence to support submitting this case to the jury. Viewing the evidence in the light most favorable to the Plaintiff, as well as all inferences that reasonably can be drawn therefrom, the evidence yields at

least one inference that the source of the liquid was an employee of the Tuomey. Accordingly, Tuomey's Motions for Directed Verdict and JNOV are denied.

II. Motion to Reconsider Amendment

Rule 15 of the South Carolina Rules of Civil Procedure governs the amendments of pleadings, which provides in pertinent part:

> 15(a). Amendments. A party may amend his pleading once as a matter or course at any time before or within 30 days after a responsive pleading is served or, if the pleadings is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

SCRCP 15(a). It is well established that a motion to amend is addressed to the circuit court's sound discretion, and the party opposing the motion has the burden of establishing prejudice. *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. *Id.*

Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and "freely given when justice so requires and does not prejudice any other party." SCRCP 15(a). The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 22-23, 431 S.E.2d 587, 590 (1993). "This rule strongly favors amendments and the court is encouraged to freely grant leave

to amend." *Parker* at 286, 607 S.E.2d at 717 (citing *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)).

A charitable corporation is defined as "a nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code." *Black's Law Dictionary*, Corporation (10th ed. 2014).

Here, in his complaint dated October 12, 2012, Plaintiff alleged Tuomey "is an eleemosynary corporation." Complaint, p.1. In the amended complaint dated November 2, 2012, Plaintiff again alleged that Tuomey "is an eleemosynary corporation organized and existing under the laws of the State of South Carolina." Amended Complaint, p.1. Tuomey, answering the amended complaint of the Plaintiff, admitted to paragraph two of the amended complaint, which contained the allegation that it was an eleemosynary corporation. Answer, p.1.

In its motion to amend, Tuomey stated: "Upon information and belief, Plaintiff has at all times recognized that the charitable entity cap applied to his claim, including without limitation, through the time period in which he demanded $300,000 during a February 18, 2015 mediation." Motion to Amend Answer, p.3. Additionally, Tuomey filed an affidavit of David C. Holler, which stated the following information pertaining to the $300,000 cap:

1. The case was filed by attorney Robert B. (Sam) Phillips. Sam and I had numerous conversations about the $300,000 statutory limitation of Plaintiff's claim during our initial conversation as well as during conversations leading up to Plaintiff's discovery deposition.

2. The case initially appeared on the ADR roster with a mediation deadline of August 29, 2013. Sam Phillips and I agreed to place the case on a scheduling order with discovery deadlines. The statutory cap was discussed during these exchanges.

3. On May 9, 2014, I took Plaintiff's discovery deposition. At the conclusion of his discovery deposition, Sam Phillips and I discussed this case for nearly two (2) hours. We discussed the statutory cap of $300,000 and the fact that no physician has taken Plaintiff out of work. We discussed that

regardless of the outcome of this case, Plaintiff would have only a limited recovery that would not cover his losses.

4. On June 22, 2014, the case was placed on the docket pursuant to the scheduling order. At some point in time, Bill Padget contacted me indicating that Sam Phillips had left his law firm. Bill asked that the case be continued based upon his recent involvement. I agreed. During our initial conversation, and during several subsequent conversations, the statutory cap of $300,000 was discussed.

5. On September 10, 2014, Tuomey's discovery responses identified the liability insurance carrier and policy numbers "with limits of coverage sufficient to meet Tuomey's limits of liability as set forth in the South Carolina Solicitation of Charitable Funds Act (Section 33-56-180)."

6. On February 18, 2015, the case was mediated by Richard Hinson. The statutory cap was discussed extensively and Plaintiff's opening demand was the statutory cap of $300,000. The case was not settled.

7. On Friday, August 21, 2015, I reviewed the Answer in preparation for trial and immediately realized that I had failed to assert the statutory cap for charitable entities. I immediately called Plaintiff's counsel and asked for his consent to amend the answer. Bill Padget indicated that he was aware that the defense had not been pled but was not in a position to consent.

8. I immediately thereafter placed a conference call to the trial judge and Bill Padget indicating that I would be moving to amend the answer. The trial judge was advised generally of our respective positions regarding the motion to amend and how it may affect the trial of the case set for August 24, 2015. During this conversation with the trial judge, Bill Padget indicated that he was not aware that the statutory cap had not been pled until sometime after the mediation held on February 18, 2015.

9. At all times during my discussions with Plaintiff's counsel, it has been stated and understood that Tuomey was entitled to the statutory cap for charitable entities. At no time has anyone challenged my statements that the statutory cap would apply. In the absence of such a challenge, I did not have any reason to review the Answer prior to my trial preparations.

Affidavit of David C. Holler.

Thus, this Court cannot find that Plaintiff satisfied his burden of establishing prejudice. On the contrary, Plaintiff's complaint coupled with the affidavit of David C. Holler show that the Plaintiff was on notice of the statutory cap and had ample opportunity to refute it. Therefore,

this Court finds that justice was furthered by allowing Tuomey to amend its answer and that Plaintiff was not prejudiced as a result of the amendment.

III. Motion to Reconsider Reopening

"The decision whether to reopen a record for additional evidence is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion." *Brenco v. S.C. Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008). "A trial judge enjoys considerable latitude and discretion in these matters." *Brown v. La France Indus.*, 286 S.C. 319, 325, 333 S.E.2d 348, 351 (Ct. App. 1985). It is an abuse of discretion to reopen a case where reopening will prejudice the non-moving party. *See Perry v. Smalls*, 308 S.C. 259, 262, 417 S.E.2d 611, 613 (Ct. App. 1992) (noting that because there was no prejudice to the opposing party, it was not error to reopen the case).

Here, at the close of Tuomey's case on September 1, 2015, Plaintiff moved for a directed verdict based upon a lack of evidence that Defendant was a charitable organization entitled to protections under South Carolina Code Section 33-56-180. Tuomey immediately moved to reopen its case. On September 2, 2015, the Court granted Tuomey's motion to reopen its case and took the issue of Tuomey's 501(c)(3) status under advisement.

Throughout the trial, this Court was under the impression that the question of Tuomey's 501(c)(3) status was one to be decided by the court and not for the jury. Additionally, there was evidence presented in support of Tuomey's motion to amend its answer that lends further credence to the position that Plaintiff was not prejudiced by this Court's decision to allow Tuomey to reopen its case. Therefore, this Court finds that the Plaintiff was not prejudiced by the decision to reopen this case because the matter was a question for the court and Plaintiff had adequate notice of the issue.

IV. Solicitation of Charitable Funds Act

The South Carolina Solicitation of Charitable Funds Act (SCFA) caps tort liability of qualifying "charitable organizations" at the same liability limits imposed by South Carolina Code Section 15-78-120, also known as the South Carolina Tort Claims Act ($300,000.00 for a single occurrence of liability). S.C. Code Ann. § 33-56-180(A). The SCFA provides both general and specific definitions of a "charitable organization." The SCFA provides a general definition in Section 33-56-20: Subsection 33-56-20(1)(a)(I) provides that "charitable organization" means a person "determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code." The Charitable Funds Act provides a specific definition in Section 33-56-170(1): "Charitable organization" means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or (501)(d) of Title 26 of the United States Code, as amended."

"The construction of a statute is a judicial function and responsibility." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551 (Ct. App. 2013) (quoting *State v. Jacobs,* 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011)). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551 (Ct. App. 2013) (quoting *State v. Sweat,* 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010)). "When the meaning of words is so plain and obvious, the courts cannot speculate on the intention. To do so would be an

assumption of legislative power." *Indep. Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950).

In the instant case, the Defendant asserts the definitions of "charitable organization" in Section 33-56-20 and Section 33-56-170 are synonymous and consistent with each other. Defendant argues that the Internal Revenue Service is the sole determiner of 501(c)(3) tax status based on the plain and ordinary meaning of the two definitions. Plaintiff, on the other hand, asserts the removal of the term "determined" from Section 33-56-170 signals legislative intent that "charitable organization" not be synonymous with the definition found in Section 33-56-20. Plaintiff further asserts that in construing the provisions of Section 33-56-170, qualifying as a charitable organization eligible for protections of a cap on its liability is not wholly dependent on whether the organization has received an IRS determination of tax-exempt status. Rather, the proper inquiry is whether the organization meets the provisional requirements of an organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

Defendant urges the Court to defer to the IRS to make the determination as to whether it qualifies and continues to qualify for the protections of Section 33-56-170. In doing so, Defendant relies on tax assessment cases from the federal courts to support its position that only the IRS has the authority to revoke or rescind its tax exempt status. Conversely, Plaintiff maintains that the state statute requires the Court to conduct an analysis to determine whether the entity qualifies for the protections of the SCFA by reference and incorporation of Section 501(c)(3) of Title 26 of the U.S. Code. The plain language of the statue, Plaintiff argues, dictates that the qualification for the protections of the SCFA is a legal determination that must be made by this Court.

Plaintiff argues that even though this Court does not have the authority to revoke 501(c)(3) status, this Court does have the power to decline application of the statutory limit on liability if it finds that the Defendant has failed to meet the criteria necessary to qualify as a 501(c)(3) corporation. Specifically, Plaintiff asserts that the Defendant should not be allowed to derive the benefits of the statutory cap because Tuomey Regional Medical Center permitted its earnings or assets to inure to the benefit of a private individual.

Protections under the Charitable Funds Act are premised on an organization's eligibility as a 501(c)(3) under federal law. Unless operating exclusively for 501(c)(3) purposes, there is no longer a charitable purpose entitling that organization to the protections of the Charitable Funds Act. This Court agrees with the Plaintiff's contention that if an organization is acting in a manner inconsistent with its stated charitable purposes that would invalidate its 501(c)(3) status, this Court has the authority to not permit the organization to avail itself of the protections of the SCFA.

However, the Court finds nothing that would support a finding that Tuomey Regional Medical Center acted in a manner inconsistent with its stated charitable purpose. The Court is unaware of any evidence of a challenge by any citizen of Sumter County that citizens were declined medical care based on ability to pay. Further, the Court is not aware of any action taken by the IRS to revoke Tuomey's 501(c)(3) status as a result of earnings or assets inuring to the benefit of a private individual or any other activity that may be inconsistent with 501(c)(3) status. Tom Moran, tax counsel for Tuomey Regional Medical Center, testified that at the date of the injury—July 6, 2011—and at the date of the final hearing in this matter—March 8, 2016—Tuomey met both the general and specific definitions of "charitable organization" found in

Section 33-56-20 and Section 33-56-170. The Court finds nothing that would refute Mr. Moran's testimony.

Defendant was allowed to reopen its case to determine whether it was, at the time of the injury, a 501(c)(3) corporation as determined by the Internal Revenue Service. The Court finds that Tuomey was a 501(c)(3) corporation exempt from taxation at the time of the Plaintiff's injury. The Court finds that Tuomey's 501(c)(3) status qualifies it as a "charitable organization" under the SCFA to which the statutory limit on liability applies. Therefore, the Court applies the statutory cap to the jury verdict in this case, thereby reducing the verdict from $2,500,000 to $300,000.

CONCLUSION

Based on the record and the argument presented, the Court denies Tuomey's Motions for Directed Verdict and for Judgment Notwithstanding the Verdict. The Court finds that the Defendant is entitled to protection under the SCFA, which caps tort liability of qualifying charitable organizations at the same liability limits imposed by the South Carolina Tort Claims Act. Thus, the jury verdict of $2,500,000 is reduced to $300,000. Further, the Court denies Plaintiff's Motions to Reconsider allowing Defendant to amend its answer and reopen its case.

AND IT IS SO ORDERED.

_____

Honorable R. Ferrell Cothran, Jr.

April ____, 2016.

Sumter Common Pleas

Case Caption: Win Myat VS Tuomey Healthcare System

Case Number: 2012CP4302030

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2016-04-07 13:32:26 page 18 of 18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 **CP**-43-2030

Win Myat

PLAINTIFF(S)

Tuomey Healthcare System

DEFENDANT(S)

Submitted by: William R. Padget, Esquire	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See Order dated April 7, 2016

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Win Myat	Tuomey Healthcare System	$300,000.00
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
n/a

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

EXHIBIT 2

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

William R. Padget, Equire
P. O. Box 1799
Columbia, SC 29202
ATTORNEY(S) FOR THE PLAINTIFF(S)

David Holler, Esquire
126 N. Main St.
Sumter, SC 29151
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

Sumter Common Pleas

Case Caption: Win Myat VS Tuomey Healthcare System

Case Number: 2012CP4302030

Type: Order/Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2016-04-13 12:10:02 page 5 of 5

STATE OF SOUTH CAROLINA COUNTY OF SUMTER Win Myat, Plaintiff, vs. Tuomey Regional Medical Center, Defendant.	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT Docket No. 2012-CP-43-2030 **NOTICE OF MOTION AND MOTION TO RELEASE FUNDS DEPOSITED IN COURT**

TO: DEFENDANT TUOMEY REGIONAL MEDICAL CENTER AND ITS COUNSEL, DAVID HOLLER, ESQ.

PLEASE TAKE NOTICE that Plaintiff Win Myat, by and through his undersigned attorney, will move before a Judge of the Circuit Court for the Third Judicial Circuit within ten (10) days, or as soon thereafter as this matter can be heard, pursuant to Rule 67 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), for an Order releasing the $300,000.00 previously deposited by Defendant Tuomey to Plaintiff. This motion is based upon the following grounds:

1. This case was tried and a verdict in favor of the Plaintiff for $2,500,000.00 was rendered against Defendant Tuomey in September of 2015.

2. By order dated April 7, 2016, the Court entered an order on all pending post trial motions and capped the jury verdict at $300,000.00 finding that Defendant Tuomey was entitled to the protections of the Solicitation of Charitable Funds Act. Judgment in favor of the Plaintiff against Defendant Tuomey for $300,000.00 was entered on April 13, 2016.

3. On April 14, 2016, Plaintiff filed a notice of appeal of the April 7, 2016 Order and is presently prosecuting his appeal seeking reversal of the trial court's order which capped the

EXHIBIT 3

judgment at $300,000.00. Defendant Tuomey has not filed any cross appeal of the order and the deadline to do so has passed.

4. On May 3, 2016, Defendant Tuomey deposited $300,000.00 with the Sumter Clerk of Court's Office in accordance with Rule 67 of the SCRCP.

5. Therefore, because Defendant Tuomey has filed no cross appeal of the Court's April 7, 2016 Order, Plaintiff's entitlement to the $300,000.00 has been finally adjudicated. The pending appeal seeks solely to determine whether Plaintiff is entitled to the remaining $2,200,000.00 of the jury's verdict.

RELIEF REQUESTED

For the foregoing reasons, Plaintiff respectfully requests the Court to order the release of the deposited $300,000.00 to the Plaintiff, through his counsel. This motion is based upon Rule 67 of the South Carolina Rules of Civil Procedure and the applicable common and statutory laws of the State of South Carolina. The Undersigned counsel certifies that he has consulted Defendant's counsel and attempted to resolve this matter, but that such efforts have, to date, been unsuccessful.

Respectfully submitted,

FINKEL LAW FIRM LLC
Post Office Box 1799 (29202)
1201 Main Street, Suite 1800
Columbia, South Carolina 29201
(803) 765-2935

BY: s/ William R. Padget
William R. Padget (SC Bar No. 72579)
Attorneys for Plaintiff

Columbia, South Carolina
May 27, 2016

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER.	)	DOCKET NO. 2012-CP-43-2030
Win Myat,	)	
	)	**RESPONSE IN OPPOSITION TO PLAINTIFF'S**
-vs-	)	**MOTION TO RELEASE FUNDS**
Tuomey,	)	
	)	

Tuomey submits the following response in opposition to Plaintiff's motion to release funds pursuant to Supreme Court Order on Civil Motions Pilot Program, September 10, 2015.

Tuomey respectfully submits the filing of a notice of appeal divests the circuit court of jurisdiction under Rule 205, *SCACR*. *Wilson v. Walker*, 340 S.C. 531, 532 S.E.2d 19 (Ct. App. 2000)("Generally, serving notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal."); *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997)("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal .... Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal."); *Grosshuesch v. Cramer*, 659 S.E.2d 112 (S.C. 2008)("While an appeal is pending, a lower court cannot act on matters affecting the issue on appeal. Appellate Court Rules 205, 225.").

Plaintiff predicts himself victor over all possible outcomes in the appellate court. His argument, however, concedes that the appellate court has exclusive jurisdiction over the funds deposited with the court. In his motion, Plaintiff admittedly seeks relief that IS effected by the appeal. Therefore, Rule 205 vests exclusive jurisdiction with the appellate court. Tuomey respectfully submits that if any tribunal is asked to forecast all possible outcomes on appeal, it should be the same tribunal that will decide those matters on appeal.

Notwithstanding jurisdiction, Tuomey submits that all possible outcomes on appeal are not known. Appeals should not be decided prematurely or in a piecemeal manner. Should the Court of Appeals, for example, determine that Plaintiff's appeal should be denied, or that a directed verdict and/or judgment notwithstanding the verdict should have been granted, the deposited funds would not be available for Tuomey to recover its funds or costs and attorneys' fees as may be awarded under Rule 222, *SCACR*. It is inherently unfair for Tuomey to pay funds into the Clerk of Court, and then if Tuomey should prevail on appeal it be awarded a paper judgment (that may or may not be collectable) at the conclusion of the appeal.

Alternatively, Plaintiff should be required to post bond in the event the outcome of the appeal is not as he so boldly predicts. Tuomey, in complying with the permissive directives of Rule 67, *SCRCP*, should not be penalized by Plaintiff's desire.

Tuomey respectfully submits that disbursement of the funds paid into the Clerk of Court will disincentivize settlement and settlement negotiations. Disbursement of the funds will inevitably determine that only a decision from the court of appeals or Supreme Court will end the controversy at hand. Tuomey respectfully submits that any action that discourages parties from resolving their own dispute without court intervention should be avoided. "The courts favor settlements and agreements amongst litigants, and regard as commendable efforts by the parties to settle their differences without the courts' intervention or assistance." *Darden v. Witham*, 258 S.C. 380, 387, 188 S.E.2d 776, 778 (1972); *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 119, 754 S.E.2d 486, 490 (2014)("Our courts have a long standing policy favoring settlements.")

Finally, Tuomey submits that Plaintiff retains a mechanism to obtain the funds paid into the clerk of court immediately: settle the case. Plaintiff holds the keys to getting those funds at his time of choosing. He should be required to relinquish his claims of the trial court's errors before such funds are paid to him.

Tuomey respectfully submits Plaintiff's motion for the release of funds should be denied for the foregoing reasons.

RESPECTFULLY SUBMITTED,

/s David C. Holler
David C. Holler
126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151
803-778-2471
davidholler@leeandmoise.com
ATTORNEY FOR TUOMEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	
)	Docket No. 2012-CP-43-2030
Win Myat,)	
)	
Plaintiff,)	
)	**ORDER DENYING MOTION**
vs.)	**FOR RELEASE OF FUNDS**
)	
Tuomey Regional Medical Center,)	
)	
Defendant.)	
)	

This matter comes before the Court upon motion of the Plaintiff, pursuant to Rule 67 of the South Carolina Rules of Civil Procedure ("SCRCP"), seeking the release of funds previously deposited with the Clerk of Court by Defendant Tuomey Regional Medical Center. This case was tried and a verdict in favor of the Plaintiff for $2,500,000.00 was rendered against Defendant Tuomey in September of 2015. By order dated April 7, 2016, the Court entered an order on all pending post trial motions and capped the jury verdict at $300,000.00, finding that Defendant Tuomey was entitled to the protections of the Solicitation of Charitable Funds Act. Judgment in favor of the Plaintiff against Defendant Tuomey for $300,000.00 was entered on April 13, 2016. On April 14, 2016, Plaintiff filed a notice of appeal of the April 7, 2016 Order and is presently prosecuting his appeal seeking reversal of the trial court's order that capped the judgment at $300,000.00. On May 3, 2016, Defendant Tuomey deposited $300,000.00 with the Sumter Clerk of Court's Office in accordance with Rule 67 of the SCRCP. Plaintiff now seeks release of these funds. However, this court does not have jurisdiction to hear the motion.

Rule 205 of the South Carolina Appellate Court Rules provides in pertinent part:

> Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . . Nothing in these rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR (2016). After the filing of Plaintiff's notice of appeal the release of the funds deposited with the court is now in the exclusive jurisdiction of the appellate court. Since this court lacks jurisdiction to hear the motion, Plaintiff's motion is denied.

IT IS SO ORDERED.

_____
Presiding Judge

Sumter, South Carolina
August_____, 2016

Sumter Common Pleas

Case Caption: Win Myat VS Tuomey Healthcare System

Case Number: 2012CP4302030

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2012-CP-43-2030

Appellate Case No. 2016-000774

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Determine Automatic Stay and For Release of Funds on Tuomey Healthcare System by depositing a copy of it in the United States Mail, first-class postage pre-paid on August 23, 2016, addressed to their attorney of record, David C. Holler, Esquire, Post Office Box 580, Sumter, South Carolina 29151.

August 23, 2016

William R. Padget (SC Bar #72579)
Francis M. Hinson, IV(SC Bar #74917)
FINKEL LAW FIRM LLC
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P.O. Box 1799 (29202)
Columbia, South Carolina 29201
T: 803-765-2935
Attorneys for Appellant