

IN THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

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

RECEIVED

SEP 14 2016

SC Court of Appeals

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

**RESPONDENT’S RETURN TO APPELLANT’S
MOTION TO DETERMINE AUTOMATIC STAY**

Tuomey submits the following return in opposition to Plaintiff’s motion to determine automatic stay and release of funds. Rule 240(e), *South Carolina Appellate Court Rules*.

Tuomey respectfully submits this Court, not the circuit court, has jurisdiction under Rule 205, *SCACR. Wilson v. Walker*, 340 S.C. 531, 532 S.E.2d 19 (Ct. App. 2000); *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997); *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.”).

Prior to filing his appellate brief, Plaintiff predicts himself victor over all possible outcomes in this court. Tuomey respectfully submits it should have an opportunity to address the issues raised in Plaintiff's brief, fully review the record on appeal, and respond accordingly.

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 this court, 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 an 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 any time of his 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,

A handwritten signature in black ink, appearing to read "David C. Holler", written over a horizontal line.

David C. Holler
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Sumter, South Carolina 29151
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ATTORNEY FOR TUOMEY

September 12, 2016

IN THE STATE OF SOUTH CAROLINA
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APPEAL FROM SUMTER COUNTY
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R. Ferrell Cothran, Jr., Circuit Court Judge

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Win Myat.....Appellant,

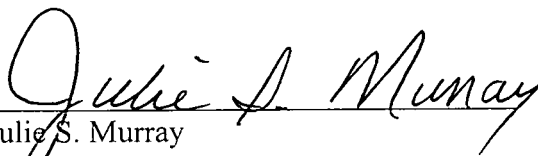
v.

Tuomey Healthcare System.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of the Sumter County law firm of Lee, Erter, Wilson, Holler & Smith, LLC, attorneys for the Respondent, do hereby certify that I have this 12th day of September, 2016, served one copy of the foregoing **Respondent's Return to Appellant's Motion to Determine Automatic Stay** by personally depositing the same in the U. S. Postal Service addressed to:

William R. Padget
Finkel Law Firm, LLC
PO Box 1799
Columbia, SC 29202


Julie S. Murray

Lee, Erter, Wilson, Holler & Smith, L.L.C.

Jack W. Erter, Jr.
Harry C. Wilson, Jr. †
David C. Holler* ‡
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September 12, 2016

Email Address: davidholler@leeandmoise.com

Honorable Jenny Abbot Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SEP 14 2016

SC Court of Appeals

RE: Win Myat v. Tuomey Healthcare System
Appellate Case #: 2016-000774

Dear Ms. Kitchings:

Enclosed please find an original and six copies of Respondent's Return to Appellant's Motion to Determine Automatic Stay along with a Certificate of Service.

By copy of this letter to the Appellant's counsel, William Padget, I am serving him with a copy of the same.

Please accept this with my kindest regards.

Yours very truly,

LEE, ERTER, WILSON,
HOLLER & SMITH, LLC



David C. Holler

DCH:jsm
enclosures

cc: William R. Padget, Esquire