

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**  
SEP 19 2016  
SC Court of Appeals

Case No. 2012-CP-43-2030

Appellate Case No.: 2016-000774

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

**APPELLANT’S REPLY IN SUPPORT OF MOTION TO  
DETERMINE AUTOMATIC STAY AND FOR RELEASE OF FUNDS**

Appellant Win Myat submits this reply in support of his Motion to Determine Automatic Stay and for Release of Funds. Respondent takes several curious positions seeking to deny Appellant the use of funds already finally adjudicated as rightfully belonging to the Appellant.

Respondent argues that Appellant predicts himself the victor of his appeal by way of his motion. To the contrary, Appellant’s motion to release the funds is not dependent on the outcome of the appeal. Importantly, Appellant’s motion and the release of funds is warranted regardless of the outcome of this appeal. Appellant has simply appealed the trial court’s application of the \$300,000.00 cap of the Solicitation of Charitable Funds Act to Appellant’s \$2,500,000.00 jury verdict. The Respondent has not cross appealed

any issues. Thus, even if Appellant's appeal is dismissed, he will be entitled to the \$300,000.00 judgment entered by the trial court. The appeal only seeks the judgment be increased to the full amount of the jury's award.<sup>1</sup> There is simply no reason to deny Appellant the use of these funds while this appeal is pending – regardless of the outcome of the appeal, the Appellant will be entitled to the \$300,000.00.

Respondent's argument against the release of funds asserts that the appellate court could find that Respondent's motion for directed verdict or judgment notwithstanding the verdict should have been granted. However, Respondent failed to cross appeal the trial court's April 7, 2016 Order, which denied Respondent's motions for directed verdict and judgment notwithstanding the verdict. Thus, the trial court's denial of these motions has become the law of the case and these arguments are not preserved for review. *See e.g. In re Estate of Ryder*, 394 S.C. 84, 96, 713 S.E.2d 643(Ct. App. 2011) (rev'd on other grounds); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123 (Ct. App. 1999) (holding that a lower court ruling contested by a respondent is the law of the case where the respondent failed to cross-appeal that ruling); *Burris v. Electro Motive Manuf. Co.*, 247 S.C. 579, 583, 148 S.E.2d 687, 688 (1966) (unappealed ruling becomes the law of the case); Rule 203(c), SCACR (proper procedure for filing a cross appeal). Simply put, because Respondent has not cross appealed, its justifications for withholding the funds are based on outcomes that are not possible because they have not been preserved for review.

Respondent further contends that the potential for an award of costs under Rule 222 warrants withholding the \$300,000 from Appellant that he has already been

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<sup>1</sup> This would be accomplished by way of entry of supplemental judgment, if Appellant prevails on his appeal.

adjudicated to be legally entitled. A putative award of costs to Respondent, if Appellant does not succeed with his appeal, is not grounds to withhold these funds from Appellant. Respondent's desire for security for a putative award of *de minimis* costs<sup>2</sup> does not justify withholding these funds from Appellant. No bond should be required since Appellant's entitlement to those funds is not conditioned upon the outcome of the pending appeal. The appeal only involves Appellant's right to receive the \$2,200,000.00 balance of the jury verdict.

Lastly, Respondent contends that Appellant must settle his case to get these funds that have been finally adjudicated as legally due and owed to him. Respondent's new found desire to see this case settled does not justify withholding money due to Appellant by way of the legal judgment he has won. Respondent cites to several cases that favor enforcement of settlements entered into by parties.<sup>3</sup> However, the parties to this appeal have never entered into any settlement agreement and have not had substantive settlement discussions in two years. Further, release of these funds does not serve to stifle settlement discussions regarding the \$2,200,000.00 balance of the jury award sought by this appeal.

For these reasons and for the reasons set forth in his motion, Appellant respectfully requests the Court order release of the deposited funds to Appellant, through his undersigned counsel.

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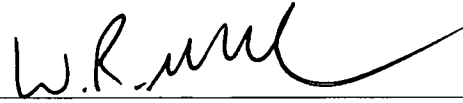
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<sup>2</sup> Rule 222 provides for the award of costs actually incurred such as: filing fees, transcript fees, bond fees, costs to print the record and briefs, and also attorney's fees of \$1,000.00.

<sup>3</sup> Notably, one case cited by Respondent correctly states that "[u]nder the 'law of the case doctrine,' a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order. Hudson ex rel. Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 754 S.E.2d 486 (2014), reh'g denied (Mar. 6, 2014). Similarly, Respondent abandoned any appeal of its motions for directed verdict and jnov when no cross appeal was filed in this case.

September 19, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.R. Padget", with a long, sweeping flourish extending to the right.

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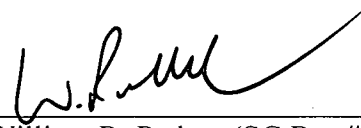
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PROOF OF SERVICE

I certify that I have served the Appellant's Reply in Support of Motion To Determine Automatic Stay and for Release of Funds, by depositing a copy of it in the United States Mail, first-class postage pre-paid on September 19, 2016, addressed to their attorney of record, David C. Holler, Esquire, Post Office Box 580, Sumter, South Carolina 29151.

September 19, 2016



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