

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, III, Master-In-Equity

Appellate Case No. 2016-002102

RECEIVED

JAN 26 2017

SC Court of Appeals

Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms
of South Carolina Inc., and Outback Farms, Ltd., Respondents/Appellants,

v.

Becky J. Gonshorowski, The South Carolina Department of Transportation,
and Aiken County South Carolina, a body politic and political subdivision of
the State of South Carolina, Respondents,

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenors Appellants/Respondents.

**RETURN TO APPELLANTS/RESPONDENTS' SUPPLEMENT
TO MOTION FOR SANCTIONS AND TO ORDER
THE RETURN TO THE STATUS QUO ANTE**

Respondents/Appellants Canadian River Farms, Ltd., Colt Farms, Inc., B C
Farms, Inc. n/k/a B C Farms of South Carolina Inc., and Outback Farms, Ltd
(collectively, "the Farms") hereby respond to the "Supplement to Motion for Sanctions
and to Order the Return to the Status Quo Ante" filed by Appellants/Respondents
Carolyn Barrett, Robert Barrett, and Save Windsor SC (collectively, "Proposed
Intervenors").

The supplemental material should be disregarded because the material says nothing about whether the Farms have violated the automatic stay rule. Instead, the material shows that Proposed Intervenors are using this case to litigate issues that are not before this Court and that relate to Proposed Intervenors' objection to the farming operation as a whole.

For these reasons and those set forth more fully below, Proposed Intervenors' motion for sanctions should be denied.

ARGUMENT

The supplemental material should be disregarded and the motion for sanctions denied for the following reasons:

1. First and foremost, nothing in the supplemental materials suggests or demonstrates that the automatic stay has been violated. The material relates to events that allegedly occurred because the roads were *left open*. The material says nothing about whether the roads were improperly *closed* in violation of the automatic stay rule. Accordingly, the arguments made in the supplement and the supporting affidavits are irrelevant to whether the automatic stay rule has been violated.

2. Second, the Farms did not create the hole or fill it with water for purposes of making the road impassable. The area described in the supplemental materials is simply a low-lying portion of the road that naturally fills with water following heavy rain. *See* Affidavit of Brandon Woody, attached hereto as **Exhibit A**. The Farms did not create the hole, did not cause it to rain, and certainly did not do anything designed to harm motorists or their vehicles. *Id.*

3. The affiants do not (and cannot) cite any evidence to support the theory that the Farms deliberately created the hole to make the road impassible. The affidavits do not contain any firsthand knowledge regarding how or when the hole appeared. Moreover, the affidavits are filled with hearsay, speculation, and false accusations. The best evidence is from a tow truck operator (Herring) who says that he “*felt* this was a deliberate act by the farm to keep people from traveling this road.” Other than a “feeling,” Herring does not have any basis to support his statement.

4. Incidentally, Lewis Hatcher, Sean Cheadle, and John Herring of Wayne’s Automotive Wrecker Service are not parties to the case and are not Proposed Intervenors. They are third parties who lack standing to make any assertions in this case, much less to contend that the automatic stay rule has been violated.

5. It is also undisputed that the Farms are not responsible for maintaining the roads. Even if the Farms were responsible for maintaining the roads, the failure to properly maintain the roads or to warn of standing water is irrelevant to the question of whether the automatic stay rule has been violated.

6. Additionally, the briefing period for the motion for sanctions has ended. Proposed Intervenors filed the motion on December 8, 2016. The Farms filed a return on December 21, 2016. The deadline to file a reply brief was January 3, 2017. Proposed Intervenors chose not to file a reply. Because the briefing period has ended and a decision by this Court is pending, the supplemental material should be rejected.

7. Finally, the supplemental material illustrates that Proposed Intervenors are trying to make this case about something it is not, and in doing so, are abusing the process of the courts. The issue in this case is whether the master-in-equity properly

denied the motion to intervene. It is not whether the Farms should have been permitted to clear trees for the purpose of planting crops or the consequences of using chicken manure as fertilizer. Proposed Intervenors should not be permitted to use this case to raise issues that are not before this Court and that are designed to harass and intimidate the Farms.

8. Both the motion for sanctions and the supplemental filing are frivolous in nature and should be denied. As explained previously, Proposed Intervenors do not have a procedural basis for filing the motion for sanctions, and the latest filing demonstrates that the motion has nothing to do with whether the Farms have violated the automatic stay rule and everything to do with Proposed Intervenors' disdain for the Farms and their farming operation.

CONCLUSION

For the reasons set forth above, as well as the reasons set forth in the Farms' return to the motion for sanctions, the motion for sanctions should be denied. The Farms have not violated the automatic stay under Rule 241, SCACR.

Additionally, Proposed Intervenors are improperly using this Court to harm the reputation of the Farms and to litigate issues that were not raised or ruled upon in the case below. The Farms should not have to continue defending such frivolous claims and motions, which arguably warrant sanctions against Proposed Intervenors pursuant to Rule 269, SCACR.

Respectfully submitted,



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Attorneys for Respondents/Appellants

Columbia, South Carolina
January 26, 2017

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, III, Master-In-Equity

Appellate Case No. 2016-002102

Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms
of South Carolina Inc., and Outback Farms, Ltd., Respondents/Appellants,

v.

Becky J. Gonshorowski, The South Carolina Department of Transportation,
and Aiken County South Carolina, a body politic and political subdivision of
the State of South Carolina, Respondents,

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenors Appellants/Respondents.

AFFIDAVIT

Personally appeared before me Brandon Woody who first being duly sworn,
deposes and says as follows:

1. My name is Brandon Woody. I am over the age of eighteen (18) years,
and I submit this affidavit based upon my personal knowledge.

2. I am an owner of Canadian River Farms, Ltd., B C Farms, Inc. n/k/a B C
Farms of South Carolina Inc., and Outback Farms, Ltd. (together with Colt Farms, Inc.,
“the Farms”) and have the authority to speak on behalf of the Farms for purposes of this
litigation.

3. I submit this affidavit in response to the affidavits of Carolyn Barrett, Lewis Hatcher, Sean Cheadle, and John Herring filed in support of "Appellants/Respondents' Supplement to Motion for Sanctions and to Order the Return to the Status Quo Ante" (the "Supplement").

4. To begin, the Farms did not create a large hole or deep pit along Oak Ridge Club Road in an effort to make the road impassable. The Farms have not done anything to alter or damage the road in any way, and certainly have not done anything designed to endanger the lives of motorists or to damage their vehicles.

5. The "deep pit" referenced in the Supplement is actually a large puddle that naturally forms at a low-lying portion of Oak Ridge Club Road. This puddle is approximately twenty feet long and spans the width of the road. The puddle varies in depth depending on the amount of rainfall, but is typically 12 – 18 inches deep at its deepest part.

6. This puddle forms after heavy rainfalls, such as the 6-inch rain event that occurred in the last three days of December 2016. After large rainfalls, some drivers will go "mudding" through the puddle, repeatedly driving their vehicles through the puddle, causing the puddle to deepen over time.

7. The "spikes" and "metal protrusions" referenced in the Supplement are temporary fence posts installed on either side of the puddle to prohibit vehicles from driving through the fields to get around the standing water. The Farms have previously had vehicles drive through the fields in an attempt to avoid the puddle, which causes substantial damage to the planting areas, particularly when the fields are very wet and soft following heavy rain. These posts were not installed for the purpose of damaging

vehicles as the affiants contend, but rather to protect the Farms' property from further damage.

8. Indeed, the main reason the Farms sought to permanently close the roads was because they were concerned about the safety of motorists and wanted to prevent damage to the Farms' property. The roads are dirt roads that run through a working farm. There are risks inherent in traveling down a dirt road through a working farm, particularly after a major rain event, which do not exist on paved roads. The dangers associated with traveling on these dirt roads, such as driving through standing water, could be avoided if these roads were closed and the motorists used the paved roads.

9. Although the Farms own the roads, the Farms are not responsible for their maintenance.

10. I am not aware of any damage being caused to any vehicles because of traveling these roads. I have not personally witnessed any vehicles that have become stuck in the mud or standing water on Oak Ridge Club Road. I have never spoken to anyone about their vehicle becoming stuck in the mud or otherwise damaged.

11. I did not have any conversations or interactions with any of the affiants or others whose cars were allegedly stuck, nor am I aware of any conversations between motorists and employees of the Farms.

12. The Farms used the process outlined by statute to permanently close the roads. The Farms provided notice of the hearing and interested people were given the opportunity to be heard.

13. Although several people attended the hearing, only three testified, none of whom owned property abutting the portions of the road sought to be closed.

14. Approximately one month after the master-in-equity issued his order closing the roads, a group of people formed an entity called "Save Windsor SC" and sought to intervene in the case after-the-fact.

15. Upon information and belief, Proposed Intervenors are using this case to raise new issues that are unrelated to the closure of the roads. Proposed Intervenors object to the use of this property as farmland and are upset that the property was cleared to plant crops. They also appear to be upset about water drainage and other issues that are not part of this case.

16. Proposed Intervenors have sought and obtained extensive media coverage on this case, raising issues that go far beyond the legal issues in this case.


17. Upon information and belief, are using this case for the improper purpose of causing the Farms financial harm and damaging the Farms' reputation in the community.

18. To date, the Farms have incurred thousands of dollars in legal fees and costs defending the motion to intervene, the motion for sanctions, and the appeal. This is particularly unjust given the frivolous nature of the most recent submission of materials and the ill-intent exhibited by Proposed Intervenors through the filings.

19. Because the supplemental material provided to the Court has nothing to do with the question of whether the Farms have violated the automatic stay rule, and because the Farms have not violated the automatic stay rule, the Farms respectfully request that the Court disregard the material and deny the motion for sanctions.

[signature on next page]

FURTHER AFFIANT SAYETH NOT.


Brandon Woody

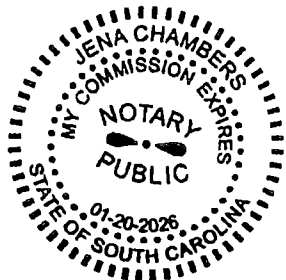
SWORN to and subscribed before me

this 26 day of January, 2017

Jana Chambers (L.S.)

Notary Public for South Carolina

My Commission Expires: 1-20-20



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of South Carolina Inc., and Outback Farms, Ltd., Respondents/Appellants,

v.

Becky J. Gonshorowski, The South Carolina Department of Transportation, and
Aiken County South Carolina, a body politic and political subdivision of the State of
South Carolina, Respondents,

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenor.....Appellants-Respondents.

PROOF OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Respondents/Appellants, certify that I have served all counsel of record in this action with a copy of the Return to Appellants/Respondents' Supplement to Motion for Sanctions and to Order the Return to the Status Quo Ante by placing a copy of same by U.S. Mail and electronic mail, on January 26, 2017, to:

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
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A handwritten signature in cursive script, appearing to read 'T. Cundari', written over a horizontal line.

Tina M. Cundari



**SOWELL GRAY
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TINA M. CUNDARI

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January 26, 2017

By Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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JAN 26 2017

SC Court of Appeals

Re: Canadian River Farms Ltd. et al. v. Becky J. Gonshorowski et al.
Appellate Case No. 2016-002102
Civil Action No. 2016-CP-02-00511
Our File No. 6928/1500

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are the original and seven copies of a Return to Appellants/Respondents' Supplement to Motion for Sanctions and to Order the Return to the Status Quo, along with a Proof of Service. Please file the original and return a filed copy to me through our courier.

By copy of this letter and as evidenced by the Proof of Service, I am serving all counsel of record with a copy of same.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Tina Cundari

TMC:cls
Enclosures

cc: Ms. Becky J. Gonshorowski (by U.S. mail)
Linda C. McDonald, Esq. (by U.S. mail and email)
Natalie Jean Moore, Esq. (by U.S. mail and email)
James M. Holly, Esq. (by U.S. mail and email)
Bradford M. Owensby, Esq. (by U.S. mail and email)
James D. Mosteller, III, Esq. (by U.S. mail and email)