

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

JUN 16 2017

SC Court of Appeals

Appellate Case No. 2016-00969
Civil Action No. 2011-CP-40-6705

Frank J. Cumberland, Jr., Jennifer B. Gardner,
and Michael R. Ugino Appellants,

v.

City of Columbia..... Respondent.

**RESPONDENT'S RETURN TO APPELLANTS' MOTION TO ENFORCE AUTOMATIC
STAY PENDING APPEAL, OR IN THE ALTERNATIVE, TO GRANT STAY PENDING
APPEAL**

On June 8, 2017, Appellants filed with this Court a motion to enforce, under Rule 241(a), SCACR, an automatic stay of further proceedings before the lower court, pending the outcome of their appeal of a circuit court order striking from Appellants' Third Amended Complaint any references to a common fund. In the alternative, Appellants ask this Court to grant a stay pending appeal. Respectfully, Appellants' Motion should be denied.

BACKGROUND/PROCEDURAL HISTORY

In 2011, Plaintiffs/Appellants filed a civil action against the City of Columbia alleging that certain expenditures that the City of Columbia made from the City's Water and Sewer Enterprise

Fund were unlawful under various theories. The Plaintiffs sought class action certification and injunctive relief requiring the City to pay into a common fund monies allegedly misspent since Fiscal Year 2008/2009, to be then returned to the City's Water and Sewer Enterprise Fund in order to pay for capital improvements to the City's water and sewer system ("Utility") that the Plaintiffs believe the City has not adequately funded. The circuit court denied Plaintiffs' request for class certification, dismissed two Plaintiffs – Messrs. Azar and Letts – for lack of standing, and granted summary judgment to the City on all claims. On appeal, the South Carolina Supreme Court upheld the denial of class certification and the dismissal of two Plaintiffs without identification of which of the several grounds affirmance could have rested upon. *Azar v. City of Columbia*, 414 S.C. 307, 317 n. 10, 778 S.E.2d 315, 320 n. 10 (2015). Further, the Court reversed the grant of summary judgment to the City and remanded the case to the circuit court for further proceedings, including trial. *Id.* at 308, 315.

Upon remand, the case was assigned to the Honorable G. Thomas Cooper. On May 6, 2016, Plaintiff Frank J. Cumberland, Jr., filed a Third Amended Complaint which was identical in all substantive respects to the prior Complaint, with the exception of adding two new Plaintiffs. The Third Amended Complaint seemingly ignored the Supreme Court's ruling by continuing to characterize itself as a class action on behalf of all past and current water and sewer customers and continuing to list Mr. Azar and Mr. Letts as Plaintiffs. Plaintiffs also repeated their prayer for a common fund. The City moved to strike all references and allegations concerning the dismissed Plaintiffs, class action certification, and class action status. The City also sought to strike references to a common fund. Judge Cooper ultimately granted the City's motion to strike on October 17, 2016. His order struck all references to the dismissed Plaintiffs (Azar and Letts) from the Third Amended Complaint, and all references and allegations concerning class action status or

relief. Judge Cooper also ordered stricken from the Third Amended Complaint all allegations concerning Appellants' request for a common fund as immaterial because this action is not being brought on behalf of a class and because Appellants' requested injunctive relief - in the form of requiring Respondent to "return" spent monies to the Enterprise Fund - did not "bear resemblance to a common fund." Upon denial of Plaintiffs' motion to reconsider, Plaintiffs filed a Notice of Appeal on December 5, 2016.

In January 2017, Judge Cooper requested a scheduling order from the parties to govern the orderly proceeding of discovery, any dispositive motions, and trial. Plaintiffs' counsel, in an email to Judge Cooper, stated that "the plaintiffs have appealed the [order granting the City's motion to strike] and believe that a scheduling order is premature until the appeal is decided." Counsel for the City responded by stating:

We respectfully disagree with opposing counsel as to the effect of the order on appeal. Rule 205, SCACR, states that an appeal does not prevent the lower court from proceeding with matters not affected by an appeal. A notice of appeal acts to stay matters decided in the order, and the lower court retains jurisdiction over matters not affected by the appeal. Rule 241, SCACR. The City respectfully requests a status conference ... to discuss this issue as well as a scheduling order. Email from Mullen Taylor to Judge Cooper and Opposing Counsel, p. 6 (Jan. 3, 2017) (Attached as Exhibit A).

Judge Cooper scheduled a status conference on February 7, 2017 and requested the City's counsel to prepare a draft scheduling order for discussion during the status conference.¹ During the status conference, Judge Cooper agreed that the order on appeal did not stay the circuit court's authority to proceed on the merits of Plaintiffs' causes of action alleging liability on the part of the City. Plaintiffs' counsel appeared to withdraw their position that the Notice of Appeal stayed proceeding to trial. With Judge Cooper's assistance, both parties reached agreement on deadlines within the

¹ Appellants' Motion states that, following remand, they "sought 'common fund' status which the Circuit Court denied." App. Motion, p. 2. The City is unaware of any such request.

scheduling order. Judge Cooper entered the scheduling order on February 7, 2017. Among other things, the scheduling order imposed a deadline of June 1, 2017 for Plaintiffs' identification of expert witnesses. Plaintiffs' counsel failed to identify their expert witness on or before their deadline of June 1, 2017.

In addition, Plaintiffs' counsel agreed to respond by a certain date to the City's Fourth Set of Interrogatories that had gone unanswered for months. However, Plaintiffs nonetheless failed to respond to the City's Fourth Set of Interrogatories by the agreed upon deadline. These Interrogatories are important to the City's defense because they asked Plaintiffs to specifically identify what expenditures they intend to challenge at trial.² A hearing to consider the City's motion to compel was held on June 1, 2017. Ruling from the bench, Judge Cooper granted the City's motion to compel, requiring Plaintiffs to provide complete responses on or before June 19, 2017 (Subsequent Order attached as Exhibit B). Judge Cooper also extended Plaintiffs' deadline to identify an expert witness to July 1, 2017. *Id.* On June 8, 2017, Appellants filed their motion seeking a stay.

ARGUMENT

Appellants' motion for an automatic stay under Rule 241, SCACR, mistakenly asserts that Rule 241, as a general rule, "automatically stays further proceedings in the trial." The Rule actually states that "[a]s 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" Rule 241(a), SCACR. (emphasis added). Rule 241(a) further states that the lower court retains jurisdiction over matters not affected by the appeal. The appellate court assumes exclusive jurisdiction over the appeal, while the lower retains jurisdiction to proceed over matters not

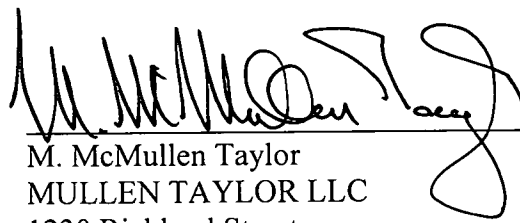
² The City had already responded to extensive discovery requests from the Plaintiffs providing thousands of pages of detailed financial reports concerning the City's Water and Sewer Enterprise Fund.

affected by the appeal. *Id.*; Rule 205, SCACR. The word “affect” is defined as “to produce an effect on” or “to influence in some way.” BLACK’S LAW DICTIONARY, 10th ed. 2014. “[A]nswering the question of whether a matter is 'affected by the appeal' requires a closer examination of the appeal.” *Tillman v. Oakes*, 398 S.C. 245, 256, 728 S.E.2d 45, 51 (Ct. App. 2012).

The appeal at issue concerns an order striking references to a common fund within the Third Amended Complaint as immaterial. The common fund doctrine is a doctrine allowing, in proper circumstances, for the provision of attorney’s fees out of funds belonging to a class or defined group of claimants who possess a traceable ownership interest in the funds. *See Matter of the Estate of Kay*, 418 S.C. 400, 417, 792 S.E.2d 907, 916 (2016); *Crown Cent. Petroleum Corp. v. Elmwood Properties*, 244 S.C. 588, 597, 138 S.E.2d 38, 42 (1964); *Petition of Crum*, 196 S.C. 528, 533, 14 S.E.2d 21, 23 (1941). Whether Plaintiffs’ requested common fund should be struck has no effect on the merits of the case.

The Plaintiffs’ causes of action are: 1) violation of S.C. Code Ann. § 6-1-330/Injunction; 2) breach of contract; 3) unconstitutional collection of a tax; and 4) unconstitutional tax. The existence or nonexistence of a common fund has no bearing on proving the elements of these claims. The pending question of a common fund does not change what factual issues are at stake during trial, nor would it alter the nature of the evidence to be considered at trial. Proceeding to try the merits of this case has no effect or influence on the question of whether a common fund should be established. Further, the Plaintiffs basic remedy – that monies paid by Plaintiffs to the Utility that were allegedly misspent be returned to the Water and Sewer Enterprise Fund – remains within the Complaint. This Court should deny Appellants’ motion for an automatic stay under Rule 241(a) as patently failing to meet the requisites of Rule 241(a).

In the alternative, Appellants move for a stay on some other basis not identified within their motion. Appellants offer no rule or test for such a stay, nor any justification under law or equity. A motion taken solely for the purpose of delay is certainly not an appropriate basis. *See* Rule 269, SCACR. The absence of any stated basis for Appellants' motion to stay gives credence to the proposition that Appellants have indeed brought this motion solely for purposes of delay, especially in light of the above-stated procedural history. This Court should reject Appellants' motion for a stay for lack of any legitimate basis.



M. McMullen Taylor
MULLEN TAYLOR LLC
1230 Richland Street
Columbia, South Carolina 29201
Phone: 803-254-1344
Email: mmt@MullenTaylorLLC.com

Peter M. Balthazor
RILEY POPE & LANEY LLC
Post Office Box 11412
Columbia, South Carolina 29211
Phone: 803-799-9993
Email: peteb@rplfirm.com

Counsel for Respondents

Columbia, South Carolina
June 16, 2016

EXHIBIT A

Mullen Taylor

From: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>
Sent: Friday, January 27, 2017 9:54 AM
To: Gene Connell
Cc: Mullen Taylor; Pete Balthazor; Dixon Lee; Barbara Smith; Cooper, G. Thomas
Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

Counsel,

Judge Cooper would like to know if this Status Conference can be held on February 7 in Columbia. Please advise of your availability.

Thank you,

George James
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1121 Broad Street, Room 313
P.O. Box 1557
Camden, SC 29021
Phone: (803) 425-7182

-----Original Message-----

From: Gene Connell [mailto:gconnell@classactlaw.net]
Sent: Thursday, January 26, 2017 4:05 PM
To: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>
Cc: Mullen Taylor <mmt@mullentaylorllc.com>; Pete Balthazor <peteb@rplfirm.com>; Dixon Lee <dlee@mclarenandlee.com>; Barbara Smith <BSmith@classactlaw.net>
Subject: Re: Cumberland v. City of Columbia; 2011-CP-40-6705

I know I am causing all the problems and I apologize. I am just jammed up between different courts and their requirements next week. I could finish two hearings I have on Thursday by 12 and be in Columbia that afternoon- would this work ? I could also be there Friday. Again I am sorry I know I am the problem everything got piled up in January and February. Thanks Gene Connell

Sent from my iPhone

> On Jan 26, 2017, at 3:46 PM, Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org> wrote:
>
> Counsel,
> Judge Cooper cannot do Wednesday. Judge Cooper could do the day before which would be Monday January 30 at 10:30. Will that work for everyone?
>
> Thank you,
>
> George James
> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>
>> On Jan 26, 2017, at 7:26 AM, Gene Connell <gconnell@classactlaw.net> wrote:

>>
>> I am sorry for the late response I had a trial that lasted three days this week and only got out last night. I have a construction mediation next week with 6 attorneys at the time you have requested. Could we move the meeting until the next day? The mediation has been scheduled for a long time. I realize this doesn't take priority over this hearing. Thanks for your consideration. Gene Connell

>>
>> Sent from my iPhone

>>
>>> On Jan 25, 2017, at 9:28 AM, Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org> wrote:
>>>

>>> Ms. Taylor,

>>>
>>> Judge Cooper would like for you draft both a motion to compel discovery responses and a scheduling order as two separate orders.

>>>
>>> Thank you,

>>>
>>> George James
>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.
>>> Circuit Court of South Carolina, Fifth Circuit
>>> 1121 Broad Street, Room 313
>>> P.O. Box 1557
>>> Camden, SC 29021
>>> Phone: (803) 425-7182

>>>
>>>
>>>

>>> -----Original Message-----

>>> From: Mullen Taylor [mailto:mmt@mullentaylorllc.com]
>>> Sent: Tuesday, January 24, 2017 4:09 PM
>>> To: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; 'Pete Balthazor' <peteb@rplfirm.com>
>>> Cc: 'Dixon Lee' <dlee@mclarenandlee.com>; 'Gene Connell' <gconnell@classactlaw.net>
>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>
>>> Mr. James,
>>>
>>> Is Judge Cooper looking for an order concerning the pending motions to compel discovery responses, or a scheduling order governing the discovery phase of this case?

>>>
>>> Thank you for the clarification.

>>>
>>> Mullen Taylor

>>>
>>> -----Original Message-----

>>> From: Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]
>>> Sent: Tuesday, January 24, 2017 3:36 PM
>>> To: Pete Balthazor <peteb@rplfirm.com>
>>> Cc: Dixon Lee <dlee@mclarenandlee.com>; Mullen Taylor <mmt@mullentaylorllc.com>; Gene Connell <gconnell@classactlaw.net>

>>> Subject: Re: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Counsel,

>>> To clarify, the proposed order that Ms. Taylor will be drafting will be a discovery order.

>>>

>>> Thank you,

>>> George James

>>> Law Clerk to The Honorable G. Thomas Cooper, Jr.

>>>

>>> On Jan 24, 2017, at 2:49 PM, Cooper, G. Thomas Law Clerk (George C. James,

>>> III) <GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>> wrote:

>>>

>>> Counsel,

>>> Mr. Balthazor and Ms. Taylor have already indicated that they can attend a status conference on January 31 in Columbia. If Mr. Connell and Mr. Lee could please indicate whether or not they can be available, Judge Cooper

>>> would like to have this status conference. Additionally, Judge

>>> Cooper requests that Ms. Taylor please prepare a proposed order to bring to the status conference next Tuesday for his review.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1121 Broad Street, Room 313

>>> P.O. Box 1557

>>> Camden, SC 29021

>>> Phone: (803) 425-7182

>>>

>>>

>>>

>>>

>>> From: Pete Balthazor [mailto:peteb@rplfirm.com]

>>> Sent: Thursday, January 19, 2017 1:39 PM

>>> To: Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>>

>>> Cc: 'Dixon Lee' <dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>;

>>> Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> 'Gene Connell' <gconnell@classactlaw.net<mailto:gconnell@classactlaw.net>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> I am also available on January 31.

>>>

>>> Thank you.

>>>

>>> Sincerely, Pete

>>>

>>> Peter M. Balthazor

>>> Attorney and Counselor at Law

>>> Riley Pope & Laney, LLC

>>> Post Office Box 11412 (29211)

>>> 2838 Devine Street

>>> Columbia, SC 29205

>>> (o) 803.799.9993

>>> (f) 803.239.1414

>>>

>>>

>>> From: Mullen Taylor [mailto:mmt@mullentaylorllc.com]

>>> Sent: Thursday, January 19, 2017 11:25 AM

>>> To: 'Cooper, G. Thomas Law Clerk (George C. James, III)'; 'Gene Connell'

>>> Cc: Pete Balthazor; 'Cooper, G. Thomas'; 'Dixon Lee'

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Mr. James,

>>>

>>> I am available at any time on Jan. 31.

>>>

>>> Thank you.

>>>

>>> Mullen Taylor

>>>

>>> From: Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]

>>> Sent: Thursday, January 19, 2017 10:41 AM

>>> To: Gene Connell <gconnell@classactlaw.net<mailto:gconnell@classactlaw.net>>

>>> Cc: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> Pete Balthazor <peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G.

>>> Thomas <GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>; Dixon Lee

<dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Counsel,

>>> If the parties are available, Judge Cooper would like to hold a status conference for this case to take place on January 31 in his chambers at the Richland County Courthouse.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1121 Broad Street, Room 313

>>> P.O. Box 1557

>>> Camden, SC 29021

>>> Phone: (803) 425-7182

>>>

>>>

>>>

>>>

>>> From: Gene Connell [mailto:gconnell@classactlaw.net]

>>> Sent: Wednesday, January 11, 2017 9:51 AM

>>> To: Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>>

>>> Cc: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> Pete Balthazor <peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G.

>>> Thomas <GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>; Dixon Lee
<dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: Re: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Thanks- I have a heavy trial schedule in January and February. It is always better at the end of the week. I will try to make anything work. I realize I am the only one not in Columbia and apologize for any problem I am causing.

>>> Thanks

>>>

>>>

>>>

>>> Sent from my iPhone

>>>

>>> On Jan 11, 2017, at 9:41 AM, Cooper, G. Thomas Law Clerk (George C. James,

>>> III) <GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>> wrote:

>>> Counsel,

>>> With Mr. Connell unable to make it tomorrow, we will have to try to schedule this status conference for another time. I will discuss our upcoming schedule with Judge Cooper, and I will get back to you soon.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1121 Broad Street, Room 313

>>> P.O. Box 1557

>>> Camden, SC 29021

>>> Phone: (803) 425-7182

>>>

>>>

>>>

>>>

>>> From: Gene Connell [mailto:gconnell@classactlaw.net]

>>> Sent: Tuesday, January 10, 2017 4:11 PM

>>> To: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>

>>> Cc: Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>>; Pete Balthazor

<peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G. Thomas

<GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>; Dixon Lee

<dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: Re: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> I would like to schedule another day for the conference. I am currently out of town and have depositions which are set that day which have been cancelled several times due to court appearances. Thanks, gene Connell

>>>

>>> Sent from my iPhone

>>>

>>> On Jan 10, 2017, at 9:40 AM, Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>> wrote:

>>> Mr. James,

>>>

>>> I haven't been able to confer with my co-counsel due to him being out of town until tomorrow, but I am available this Thursday at 11:00 if that works for opposing counsel.

>>>

>>> Thank you.

>>>

>>> Mullen Taylor

>>>

>>> From: Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]

>>> Sent: Monday, January 9, 2017 4:05 PM

>>> To: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> 'Gene Connell' <gconnell@classactlaw.net<mailto:gconnell@classactlaw.net>>;

>>> 'Pete Balthazor' <peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G.

>>> Thomas <GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>

>>> Cc: 'Dixon Lee' <dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Counsel,

>>> If the parties can be available, Judge Cooper would like to have a status conference for this case on Thursday, January 12, at 11:00 in his chambers at the Richland County Courthouse.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1121 Broad Street, Room 313

>>> P.O. Box 1557

>>> Camden, SC 29021

>>> Phone: (803) 425-7182

>>>

>>>

>>>

>>>

>>> From: Mullen Taylor [mailto:mmt@mullentaylorllc.com]

>>> Sent: Tuesday, January 03, 2017 5:01 PM

>>> To: Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>>; 'Gene Connell'

>>> <gconnell@classactlaw.net<mailto:gconnell@classactlaw.net>>; 'Pete Balthazor'

<peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G. Thomas

<GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>

>>> Cc: 'Dixon Lee' <dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Mr. James,

>>>

>>> First, our apologies for our delayed reply due to the holidays.

>>>

>>> We respectfully disagree with opposing counsel as to the effect of the order on appeal. Rule 205, SCACR, states that an appeal does not prevent the lower court from proceeding with matters not affected by an appeal. A notice of appeal acts to stay matters decided in the order, and the lower court retains jurisdiction over matters not affected by the appeal. Rule 241, SCACR. The City respectfully requests a status conference with Judge Cooper and opposing counsel to discuss this issue as well as a scheduling order.

>>>

>>> Thank you.

>>>

>>> Sincerely,

>>>

>>> Mullen Taylor

>>>

>>> From: Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]

>>> Sent: Friday, December 30, 2016 9:37 AM

>>> To: Gene Connell

>>> <gconnell@classactlaw.net<mailto:gconnell@classactlaw.net>>; Pete Balthazor

<peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G. Thomas

<GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>

>>> Cc: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> Dixon Lee <dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Counsel,

>>> We were unaware of the appeal and will await appellate court action before any further scheduling.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1701 Main St., Room 320

>>> P.O. Box 192

>>> Columbia, SC 29201

>>> Phone: (803) 576-1783

>>> Fax: (803) 576-1741

>>>

>>>

>>>

>>> From: Gene Connell [mailto:gconnell@classactlaw.net]

>>> Sent: Thursday, December 29, 2016 4:29 PM

>>> To: Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org<mailto:GCooperLC@sccourts.org>>; Pete Balthazor

<peteb@rplfirm.com<mailto:peteb@rplfirm.com>>; Cooper, G. Thomas

<GCooperJ@sccourts.org<mailto:GCooperJ@sccourts.org>>

>>> Cc: Mullen Taylor <mmt@mullentaylorllc.com<mailto:mmt@mullentaylorllc.com>>;

>>> Dixon Lee <dlee@mclarenandlee.com<mailto:dlee@mclarenandlee.com>>

>>> Subject: RE: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Mr. James-The plaintiffs have appealed the most recent Order and believe that a scheduling order is premature until the appeal is decided. Please Advise if you still feel such an Order is necessary. Thanks, Gene Connell

>>>

>>> From: Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]

>>> Sent: Thursday, December 29, 2016 1:46 PM

>>> To: Pete Balthazor; Cooper, G. Thomas

>>> Cc: Mullen Taylor; Gene Connell; Dixon Lee

>>> Subject: Cumberland v. City of Columbia; 2011-CP-40-6705

>>>

>>> Counsel,

>>> As the judge assigned to the above captioned case, Judge Cooper would like to have a proposed scheduling order for his review within the next 30 days.

>>>

>>> Thank you,

>>>

>>> George James

>>> Law Clerk to the Honorable G. Thomas Cooper, Jr.

>>> Circuit Court of South Carolina, Fifth Circuit

>>> 1701 Main St., Room 320

>>> P.O. Box 192

>>> Columbia, SC 29201

>>> Phone: (803) 576-1783

>>> Fax: (803) 576-1741

>>>

>>>

>>> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

>>>

EXHIBIT B

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-40-6705

Frank J. Cumberland, Jr., et al

City of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

2017 JUN -8 AM 9:18
 RICHLAND COUNTY
 FILED

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:

DEFENDANT CITY OF COLUMBIA'S MOTION TO COMPEL IS GRANTED. PLAINTIFF IS TO COMPLY WITH DEFENDANT'S REQUESTS ON OR BEFORE JUNE 19, 2017.

PLAINTIFF'S DEADLINE TO IDENTIFY EXPERT WITNESSES IS EXTENDED TO NO LATER THAN JULY 1, 2017. EXPERT WITNESSES NOT DISCLOSED BY THIS DATE SHALL NOT BE CALLED FOR TRIAL.

PLAINTIFF FRANK CUMBERLAND'S MOTION TO COMPEL IS CONTINUED.

This order ends does not end the case.

Additional Information
for the Clerk :

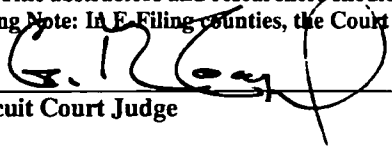
INFORMATION FOR THE JUDGMENT INDEX

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)
		\$
		\$
		\$

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

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.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Circuit Court Judge

2126

Judge Code

6/1/17

Date

For Clerk of Court Office Use Only

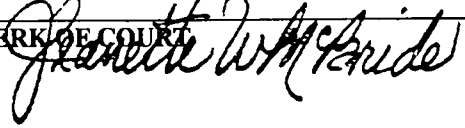
This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of June 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Gene McCain Connell, Jr.; Charles D Lee, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

Peter M. Balthazor; M. McMullen Taylor

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT


Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable G. Thomas Cooper, Circuit Court Judge

RECEIVED

JUN 16 2017

SC Court of Appeals

Appellate Case No. 2016-00969

FRANK J. CUMBERLAND, JR., JENNIFER B. GARDNER,
AND MICHAEL R. UGINO,.....APPELLANTS,

v.

CITY OF COLUMBIA,RESPONDENT.

CERTIFICATE OF SERVICE

I certify that Respondent City of Columbia has served upon Appellants' counsel Respondent's **Return to Appellants' Motion to Enforce Automatic Stay Pending Appeal or, in the Alternative, to Grant Stay Pending Appeal** by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 2017, addressed to counsel of record, as follows:

C. Dixon Lee, III, Esq.
MCLAREN & LEE
1508 Laurel Street
Post Office Box 11809
Columbia, South Carolina 29211

Gene M. Connell, Jr., Esq.
KELAHER, CONNELL & CONNOR, P.C.
The Courtyard
1500 U.S. Highway 17 North, Suite 209
Surfside Beach, South Carolina 29587



M. McMullen Taylor
MULLEN TAYLOR LLC
1230 Richland Street
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(803) 254-1344
mmt@MullenTaylorLLC.com



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1230 Richland Street (29201)

Phone 803-254-1344
Fax 803-253-6084
mmt@MullenTaylorLLC.com

June 16, 2017

RECEIVED

JUN 16 2017

SC Court of Appeals

VIA HAND DELIVERY

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

RE: *Frank J. Cumberland, Jr., Jennifer B. Gardner, and Michael R. Ugino, Appellants,*
v. City of Columbia, Respondent
Appellate Case No. 2016--002446

Dear Ms. Kitchings:

Please accept for filing the enclosed original and seven copies of *Respondent's Return to Appellants' Motion to Enforce Automatic Stay Pending Appeal or, in the Alternative, to Grant Stay Pending Appeal* in the above-captioned case, along with a certificate of service. Please return one file-stamped copy to me. By copy of this letter, opposing counsel are hereby served.

If you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor

cc: C. Dixon Lee, III, Esq.
Gene M. Connell, Jr., Esq.
Peter M. Balthazor, Esq.