

The South Carolina Court of Appeals

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

v.

City of Columbia, Respondent.

Appellate Case No. 2016-002446

ORDER

Appellants appealed a circuit court order striking any reference to the common fund doctrine from their amended complaint. Appellants have also filed a motion pursuant to Rules 205 and 241, SCACR, asking this court to either enforce the automatic stay or grant a stay pending appeal. In their motion, Appellants assert the trial court has continued to exercise jurisdiction over this case, issuing a scheduling order that, among other things, calls the case to trial in late 2017 or early 2018. Respondent filed a return, arguing the motion should be denied because the circuit court's ruling at issue on appeal does not affect the merits of the underlying case. After careful consideration, Appellants' motion is denied. See Rule 241(a), SCACR ("As 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" (emphasis added)); Rule 205, SCACR ("Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.").¹


FOR THE COURT

¹ Should Appellants prevail at trial, any issues regarding the creation of a common fund or the distribution of related judgment proceeds are stayed pursuant to Rule 241(a), SCACR.

FILED

July 13, 2017

Columbia, South Carolina

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