THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 23 2017
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 09-ALC-07-0069-CC

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown. . . . . Petitioners,

Of Which Town of Arcadia Lakes is . . . . . Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control. . . . . Respondents,

and

Roper Pond, LLC . . . . . .Respondent/Appellant.

RESPONDENT/APPELLANT'S RETURN TO PETITION FOR REVIEW OF SUPERSEDEAS DECISION

Pursuant to Rules 240 and 241, SCACR, Respondent/Appellant Roper Pond, LLC ("Roper Pond") files this return to Petition for Review of Supersedeas Decision ("Petition"), filed by Appellant/Respondent Town of Arcadia Lakes ("Town") on October 10, 2017. The Town seeks the full Court's review of the October 5, 2017 Order denying its petition for supersedeas to stay the Order for Attorneys' Fees and Costs and for Sanctions pursuant to SCALC Rule 72 issued June 14, 2017 as amended by Order issued August 29, 2017 ("June 14, 2017 Order"), which requires the Town to pay Roper Pond an award of attorneys' fees and costs

in the amount of $205,283.84 by September 11, 2017, and requires the Town to pay the Administrative Law Court ("ALC") sanctions in the amount of $200,000 by September 11, 2017. For the reasons stated herein, Roper Pond requests that the Court deny the Town's Petition.

I. THE TOWN HAS FAILED TO DEMONSTRATE THAT THE ADMINISTRATIVE LAW COURT UNJUSTIFIABLY DENIED ITS MOTION FOR STAY.

Pursuant to Rule 241(d)(4)(C), SCACR, a party seeking a supersedeas from this Court must show that a motion for such relief was filed with the lower court and "was unjustifiably denied or that the relief granted failed to afford the relief which the petitioners requested." Rule 241(d)(4)(C), SCACR. On July 14, 2017, the Town filed a Motion to Stay Order for Attorney's Fees and Costs and for Sanctions ("July 14, 2017 Motion to Stay"). A copy of the July 14, 2017 Motion to Stay is attached hereto as **Exhibit A**. The Town argues that the June 14, 2017 Order should be stayed because:

1) The June 14, 2017 Order award of attorney's fees is not a monetary judgment under *Woodside v. Woodside*, 290 S.C. 366, 350 S.E.2d 407 (Ct. App. 1986), and therefore, is not subject to the exception to the automatic stay under the Rule 241(b)(1), SCACR. (July 14, 2017 Motion to Stay, pp. 3-4).
2) Failure to stay the June 14, 2017 Order would result in an extreme hardship. (July 14, 2017 Motion to Stay, pp. 5-8).
3) The stay is necessary to avoid prejudice and deprive the Town of its due process rights. (July 14, 2017 Motion to Stay, pp. 8-9).

July 14, 2017 Motion to Stay, Exhibit B. On August 8, 2017, the ALC heard arguments on the July 14, 2017 Motion to Stay. On August 22, 2017, the ALC issued an Order Denying Motion to Stay ("August 22, 2017 Order"). A copy of the August 22, 2017 Order is attached hereto as **Exhibit B**. The August 22, 2017 Order included the following rulings on the July 14, 2017 Motion to Stay:

1) "the award of attorneys' fees and costs in its June 14, 2017 Order is a 'money judgment' within the meaning of Rule 241(b)(1), SCACR, such that no automatic stay arose at the filing of Petitioner's notice of appeal." (August 22, 2017 Order, p. 4);
2) "Payment of the attorneys' fees, costs and sanction s by the Petitioner will not deprive the Court of Appeals of jurisdiction over this matter." (August 22, 2017 Order, p. 6);
3) "The petitioner has not shown that the issue here will become moot if the payment of attorneys' fees and costs is made to Roper Pond or the sanctions are paid to the Clerk. In the event the Court of Appeals were to reduce or modify either of these awards, the recipient would simply be required to repay money to Petitioner." (August 22, 2017 Order, p. 6).
4) The petitioner failed to demonstrate that the payment of the award of attorney's fees would impose a significant hardship of the Town. (August 22, 2017 Order, pp. 7-8).
5) The Petitioner provided no evidence to support its claim that Roper Pond could not repay the award if the Court of Appeals reversed the award of attorney's fees. (August 22, 2017 Order, p. 8),
6) The Petitioner failed to show that it would be deprived of due process if the June 14, 2017 Order is not stayed. (August 22, 2017 Order, p. 8).
7) The alternative of depositing fund with the ALC under Rule 67, SCRCP, was denied. (August 22, 2017, pp. 9-10).

August 22, 2017 Order, Exhibit B. Simply stated, the ALC issued a ten-page order which considered the Town's arguments and found that the Town failed to make the requisite showing under Rule 241(c), SCACR. The Town has failed to show that its July 14, 2017 Motion to Stay "was unjustifiably denied or that the relief granted failed to afford the relief which the petitioners requested" as required for supersedeas under Rule 241(d)(4)(C), SCACR.

The ALC properly considered and ruled on the July 14, 2017 Motion to Stay in accordance with Rule 241(c)(2). In ruling on a motion to stay an order on appeal, Rule 241(c)(2), SCACR, provides that the ALC "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. The Town failed to demonstrate that its payment of the award and sanctions under the June 14, 2017 Order would deprive this Court of jurisdiction over the appeal or is necessary to prevent any issue on appeal from becoming moot. Specifically, in the July 14,

2017 Motion to Stay and in the Petition to the Court, the Town failed to point to any authority which states that this Court lacks jurisdiction over money judgments paid pursuant to an order of a lower court. Indeed, pursuant to Rule 241(b)(1), "money judgments as provided in S.C. CODE ANN. § 18-9-130" are not automatically stayed. Section 18-9-130 provides that "[a] notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." S.C. CODE ANN. § 18-9-130(A)(1). Accordingly, the default rule on an appeal of a money judgment is the execution of the judgment is not stayed. If such execution deprived an appellate court of jurisdiction, this would not be the default rule. Since the Town failed to show how payment of the award and sanctions under the June 14, 2017 Order is distinguishable from any other money judgment awarded by a lower court, the ALC properly found that the Town has not demonstrated that denial of the July 14, 2017 Motion to Stay would deprive this Court of jurisdiction of the appeal.

Similarly, the ALC correctly held that payment of the judgment awarded in the June 14, 2017 Order would not render the issue moot. The Town does not identify the circumstances in which payment of the judgment by the Town would prevent the Court from giving effect to a reversal of the June 14, 2017 Order. The ALC correctly held that "[i]n the event the Court of Appeals were to reduce or modify either of these awards, the recipient would simply be required to repay money to Petitioner." (August 22, 2017 Order, p. 6). The ALC properly denied the Town a supersedeas to stay the June 14, 2017 Order because the Town has failed to demonstrate the requisite showing for a supersedeas under Rule 241(c)(2), SCACR. Pursuant to Rule 241(d)(4)(C), SCACR, the Town is required to demonstrate that the July 14, 2017 Motion to Stay filed with the ALC "was unjustifiably denied or that the relief granted failed to afford the

relief which the petitioners requested." Rule 241(d)(4)(C), SCACR. The Town has failed to make this requisite showing for a supersedeas from this Court. Accordingly, the Petition should be denied.

II. THE TOWN HAS FAILED TO CITE TO AUTHORITY TO SUPPORT ITS CLAIM THAT AN AWARD OF ATTORNEY'S FEES IS NOT SUBJECT TO AN EXCEPTION TO THE AUTOMATIC STAY.

In its Petition, the Town argues that the June 14, 2017 Order is not subject to the exception to automatic stay of orders of administrative tribunals under Rule 241(b)(11), SCACR. Pursuant to Rule 241(b)(11), SCACR, an order of the ALC is not automatically stayed on appeal to the Court of Appeals. Rule 241(b)(11), SCACR. Roper Pond has addressed this argument in Respondent/Appellant's Return to Motion for Clarification of Automatic Stay Applicability, filed simultaneously herewith and incorporated by reference herein.

In this Petition, the Town argues that the "fee/sanction award on appeal here would be automatically stayed is it was coming from any other court." (Petition, p. 5). In support of that argument, the Town cites to this Court's decision in a divorce case in *Woodside v. Woodside*, 290 S.C. 366, 350 S.E.2d 407 (Ct. App. 1986). The *Woodside* decision is easily distinguished from the present case. In *Woodside*, the family court awarded the wife attorney's fees, and she argued that the award should be treated as a money judgment, which was an exception to the automatic stay under Supreme Court Rule 41. In ruling that an order for attorneys' fees "[h]istorically . . . has not been treated as a judgment that can executed upon until it has at least been settled on appeal," this Court thus held that "attorney fees awarded in domestic actions are subject to the automatic supersedeas provision of Supreme Court Rule 41, Section 1(A)." *Woodside*, 290 S.C. at 379, 350 S.E.2d at 415 (Ct. App. 1986) (citation omitted). Accordingly, the *Woodside* ruling is specific to the award of attorneys' fees in divorce cases and is not

determinative of the status of the award of attorneys' fees in the June 14, 2017 Order. Moreover, the ruling in *Woodside* no longer governs whether an award of attorneys' fees in a domestic action is stayed.

In 1990, three years after the *Woodside* decision, the General Assembly amended the statute governing family court jurisdiction to add the following provision:

> to hear and determine an action where either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and permanently. In this action the court shall allow a reasonable sum for the claim if it appears well-founded. Suit money, including attorney's fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court. **An award of temporary attorney's fees or suit costs must not be stayed by an appeal of the award.**

Act. No. 548, 1990 S.C. Acts 2398, 2398-99 (emphasis added) (now codified at S.C. CODE ANN. § 63-3-530(A)(38)).[1] As such, the General Assembly clarified that the award of attorney's fees should be treated in the same manner as a money judgment and **not** subject to the automatic stay on appeal. Indeed, Rule 241, SCACR, incorporates this statutory provision governing attorney's fees in a domestic action as an exception to the automatic stay. Rule 241(b)(9), SCACR (identified as an exception to the automatic stay are "[f]amily court orders awarding temporary suit costs or attorney's fees as provided in S.C. CODE ANN. § 63-3-530(A)(2)"). As such, the Town's argument under *Woodside* has no bearing on a determination that the June 14, 2017 Order is subject to exception to the automatic stay in Rule 241(b)(11).

The Town further argues that a post-judgment fee award is stayed under the Supreme Court ruling in *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The fees at issue in *Cooper* were fees of psychiatric expert hired by defendant in connection with a civil commitment proceeding. The Supreme Court held that the order requiring the Attorney General to pay the

[1] The 1990 Act originally codified this provision at S.C. Code Ann. §20-7-420. In 2008, ,the General Assembly created Title 63 and transferred provisions from Chapter 7, Title 20 to Title 63. Act No. 361, 2008 S.C. Acts 3623.

expert fees was not a "money judgment" under the exception to the automatic stay under Rule 225 (now Rule 241), SCACR, because "[e]xpert fees are matters incidental to the case and do not constitute a traditional judgment as contemplated by [S.C. CODE ANN. § 18-9-130]." *Id.* at 399, 536 S.E.2d at 876. In contrast, the Supreme Court noted that "[t]he term 'judgment' used in the statute and rule connotes a final decision of the court that addresses the merits of the cause of action and disposes of the cause as to all." *Id.* (citing *Link v. School Dist. of Pickens*, 302 S.C. 1, 393 S.E.2d 176 (1990)). In this case, the June 14, 2017 Order along with the other orders on appeal in this case fully addresses the merits of the cause of action—i.e., Roper Pond's petition for attorney's fees and sanctions—and "disposes of the cause as to all." Accordingly, the *Cooper* ruling does not support the Town's position that the June 14, 2107 does not fall within an exception to the automatic stay under Rule 241(b), SCACR.

Additionally, the ALC properly relied on the rationale in the South Carolina Supreme Court ruling in *Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004), to find that an award of attorney's fees is money judgment. In *Parker*, the Supreme Court treated an award of attorneys' fees as a judgment to be executed upon like any other money judgment of the trial court. Specifically, the Supreme Court held that an award of attorneys' fees by the lower court was a judgment which was subject to the accrual of post-judgment interest. *Id.* at 153–54, 597 S.E.2d at 799 (2004) ("The awarding of attorney's fees to Win was a judgment against Anne, and she failed to take any action to abate the running of the interest.") "An award of attorney's fees may be considered part of a monetary judgment and draw interest accordingly." *Id.* (citation omitted). Therefore, the ALC properly relied on *Parker* in finding that the award of fees in the June 14, 2017 Order is a money judgment and not subject to an automatic stay upon filing of an appeal. Rule 241(b)(1), SCACR, provides that "money judgments as provided in S.C. CODE ANN. § 18-

9-130" are not automatically stayed. As discussed above, the default rule under S.C. CODE ANN. § 18-9-130 is that filing of a notice of appeal does not stay execution of a money judgment. Therefore, the June 14, 2017 Order is not automatically stayed under Rule 241(b), SCACR. Accordingly, the Town must demonstrate that a supersedeas is required under Rule 241(c)(2), SCACR, and that the ALC unjustifiably denied the Town's motion to stay the June 14, 2017 Order. As discussed, above, the Town has failed to demonstrate that it is entitled to such relief.

III. THE TOWN HAS FAILED TO DEMONSTRATE THAT THE ALC'S DENIAL OF LEAVE TO DEPOSIT THE FUNDS WITH THE ALC PURSUANT TO RULE 67, SCRCP, JEOPARDIZES THIS COURT ABILITY TO EFFECTUATE ITS JURISDICTION.

Contrary to the Town's assertions, the alternative to deposit funds with the ALC under Rule 67, SCRCP, was raised by the Town in the August 8, 2017 hearing on the Motion to Stay. The Town raised the process under Rule 67 as an alternative upon the ALC's denial of the Motion to Stay. Rule 67 provides that a party subject to a money judgment, "upon notice to every other party, **and by leave of court**, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing." Rule 67, SCRCP (emphasis added). The Town asserts that "[a] party seeking to use Rule 67 must on give 'notice to every other party' and secure 'leave of the court.'" (Petition, p. 8). Contrary to this description of the process, the granting or denial of leave under Rule 67 is not a perfunctory or ministerial action of a court. "The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) (citing *Cajun Elec. Power Co-op., Inc. v. Riley Stoker Corp.*, 901 F.2d 441, 445 (5th Cir.1990)). In *Russo v. Sutton*, the Supreme Court held that depositing funds on a judgment with the notation "Case on Appeal-Judgment being

deposited to stay interest" was ineffective to stop the accrual of interest on appeal because the party failed to give notice to the other party and failed to obtain leave of the circuit as required under Rule 67. *Russo v. Sutton*, 317 S.C. 441, 444–45, 454 S.E.2d 895, 895-897 (1995). As such, the ALC's decision on Rule 67 can only be reversed on a finding of abuse of discretion.

The Town argues that the ALC's ruling on Rule 67 deprives the Town of "any mechanism to ensure that the award funds will remain available at the end of the appeal and will be returned to the Town should the Court reverse or reduce the award." (Petition, p. 9). The Town thus asserts that "[f]ailure to impose supersedeas jeopardizes this Court's ability to effectuate its jurisdiction." *Id.* This argument is essentially the same as that made in the July 14, 2017 Motion to Stay. The ALC ruled on that argument:

> The Petitioner has not shown that it cannot be made fully whole in the event an appellate court should reverse or otherwise modify the Court's June 14, 2017 order. While the Petitioner expresses fear that Roper Pond, a privately-owned company in existence within the state for 13 years, "could very likely sell all of its assets, go out of business, or declare bankruptcy before this appeal is heard," the Petitioner has provided no evidence which tends to make this anything more than speculation.

August 22, 2017 Order, Exhibit B, p. 8. In its Petition, the Town offers no additional evidence in support of this argument. Therefore, the Town's argument that a supersedeas is the only means to ensure this Court's ability to effectuate its jurisdiction is without merit. Additionally, as discussed above, the default rule is execution of money judgments are not stayed during an appeal, and the execution of a money judgment does not deprive this Court of jurisdiction.

IV. THE IMMEDIATE PAYMENT OF THE AWARD UNDER THE JUNE 14, 2017 ORDER DOES NOT IMPOSE A SUBSTANTIAL HARDSHIP ON THE TOWN.

The Town argues that the "payment of this sum by the Town of Arcadia Lakes will be significantly disruptive and detrimental to the Town's operation." (Petition, p. 10). However, the Town has failed to demonstrate the disruption and detrimental effect that would result from

such payment. Additionally, the ALC properly found that the Town failed to show the significant hardship that would result from payment of the award and sanction under the June 14, 2017 Order. The ALC found that "[t]he factual findings in the June 14, 2017, order belie the Petitioner's arguments regarding hardship." (August 22, 2017 Order, p. 8). In the Affidavit of Mark W. Hughley ("Mayor's Affidavit") offered in support of the Town's Motion, Mayor Hughley contends that "the Town would be unable to continue the services as currently provided in the event of a large award to the defendants." (Ex. D to Petition, p. 2). As the Court found in the June 14, 2017 Order, the only service which the Town provides its citizen is municipal solid waste collection and disposal at no charge. (June 14, 2017 Order, p. 14). In 2016, the Town had revenues of $320,046 and expended only $128,562 on the waste collection and disposal services. (June 14, 2017 Order, pp. 14-15). As such, payment of the judgment awarded in the June 14, 2017 Order will not prevent the Town from providing the services currently provided to its citizens. Moreover, the payment of the judgment would not directly impact the citizens of the Town because all of the Town revenue is derived from "sales tax, insurance tax, brokers, tax, telecommunications tax, local business license tax, South Carolina Local Government Fund, and utility franchise fees." The Town imposes no tax assessment on its citizens, thus its citizens would not directly fund the payment of the judgment. (June 14, 2017 Order, p. 14).

The ALC properly found that the Town has reserves sufficient to pay the fees and sanctions and that these reserves would be used to satisfy the judgment in the June 14, 2017 Order. (August 22, 2017, p. 8). As stated in the June 14, 2017 Order, the Town has "more than $1 million in unrestricted liquid assets." (June 14, 2017 Order, p. 14). The only service provided to the Town's citizen is free garbage collection and disposal. Based on information previously provided to the Court, the annual revenue of the Town is more than sufficient to pay

for this service. (June 14, 2017 Order, pp. 14-15). Contrary to the Town's assertions, the ALC correctly found that payment of the award and sanctions under the June 14, 2017 Order will not impose a significant hardship on the citizens of the Town.

V. CONCLUSION

For the reasons stated herein, Roper Pond respectfully requests that the Court deny the Town's Petition and require immediate payment of the award and sanctions which were required to be paid by September 11, 2017, pursuant to the June 14, 2017 Order.

Respectfully submitted,

October 10, 2017

W. Thomas Lavender, Jr. (SC Bar No. 3143)
Joan W. Hartley (SC Bar No. 72735)
NEXSEN PRUET, LLC
1230 Main St., Ste. 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorneys for Respondent-Appellant Roper Pond, LLC

Exhibit A

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners, vs. South Carolina Department of Health and Environmental Control and Roper Pond, LLC, Respondents.	Docket No. 09-ALC-07-0069-CC **MOTION TO STAY ORDER FOR ATTORNEYS' FEES AND COSTS AND FOR SANCTIONS**

TO: THE ADMINISTRATIVE LAW COURT, ALL PARTIES AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the Town of Arcadia Lakes ("Town") hereby moves this Court pursuant to SCALC Rule 29(E), SCACR Rule 241, and S.C. Code Ann. § 1-23-380 and § 1-23-600, for an order staying the effectiveness of this Court's Order of June 14, 2017 ("Order"), pending judicial review of this case. That Order awards Roper Pond $205,283.84 in attorneys fees and costs and $200,000 in sanctions, for a total payment due of $405,283.84.[1] The Town moves this Court to stay payment of that sum until the Town's appeal opportunities[2] have been exhausted or concluded, on the grounds that: (1) to do otherwise would result in an immediate significant hardship to the Town, which may very well be irreversible should the

[1]The Order authorizes awards arising through two very different mechanisms: first is the award of attorneys fees and costs pursuant to Section 15-77-300, the State Action Statute; and second is the award of sanctions pursuant to Administrative Law Court Rule 72.

[2]Contemporaneous with the filing of this Motion, the Town is filing its Notice of Appeal in the Court of Appeals.

Town prevail on appeal; and (2) the general rule of SCACR Rule 241(a) provides for an automatic stay, at least in part, of the award of attorneys fees and costs pursuant to S.C. Code Ann. § 15-77-300.

I. APPLICABLE LAW

South Carolina Appellate Court Rule 241 governs the effectiveness of a lower court order on appeal. The general rule is that "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, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision." SCACR Rule 241(a). However, Rule 241(b) also provides exceptions, which are matters not automatically stayed no appeal, and appeals from administrative tribunals as provided are among that list. See SCACR Rule 241(b)(11). Critically, though, judgments awarding attorneys fees and costs pursuant to § 15-77-300, et seq., are not excepted and thus are automatically stayed.[3] Consequently, as will be explained in detail below, the Order of this Court awarding attorneys fees and costs pursuant to the State Action Statute, though arising from an administrative tribunal, is automatically stayed upon service of the notice of appeal, though the portion of the Order addressing ALC Rule 72 may be subject to the exception in SCACR Rule 241(b)

When an exception to the automatic stay applies, an application for a stay must first be

---

[3]SCACR Rule 241(b)(1) excepts "Money judgments as provided in S.C. Code Ann. § 18-9-130." Section 18-9-130 states that "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." However, as discussed below, awards of attorneys fees "are not treated as a judgment that can be executed upon until it has at least been settled on appeal." Woodside v. Woodside, 290 S.C. 366, 378–79, 350 S.E.2d 407, 414–15 (Ct. App. 1986).

made to the lower court or administrative tribunal, absent extraordinary circumstances. SCACR Rule 241(d)(1). While such a stay is available upon motion, the exact standard for staying an administrative order on appeal is not provided in the Administrative Law Court Rules. SCALC Rule 29(E) provides only that "upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms."

The granting of a stay of execution by this Court is discretionary. Thompson v. Watts, 278 S.C. 230, 294 S.E.2d 245 (1982). However, SCACR Rule 241 does provide guidance for the application of this discretion. Rule 241 provides that a stay may issue upon motion of any party, and that in considering whether to issue a stay, the "administrative tribunal . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." SCACR Rule 241(c)(2). In other words, a stay should issue when it is necessary "to preserve the status quo pending the determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." Dean v. S.C. Law Enforcement Division, 2011 WL 7119217 (S.C. Admin. L. Judge Div., Sept. 13, 2011). See also, S.C. Jur. Appeal and Error, §55 (Supp. 2012) ("A supersedeas suspends or stays the jurisdiction of the trial court to execute on an appealed judgment in order to preserve the status quo pending a final disposition of the appeal. . . . In ruling upon a motion to lift the stay or grant a supersedeas, the justice, judge, or court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.").

II. ANALYSIS

A. An Award of Attorneys Fees and Costs is Subject to the Automatic Stay

Provision of SCACR Rule 241(a)

As mentioned above, attorneys fees and costs awards fall under the general rule of SCACR 241(a), which provides that the filing of a notice of an appeal automatically stays the appealed order. As such, the Town requests that the Court reaffirm that the portion of the Order awarding attorneys fees and costs pursuant to § 15-77-300, et seq., is stayed pursuant to Rule 241(a). In the case of Woodside v. Woodside, an award of attorney fees was stayed on appeal because the Court of Appeals ruled that attorneys fees were in the nature of a disbursement, not a money judgment subject to execution, under SCACR 241(b)(1).[4] 290 S.C. 366, 378–79, 350 S.E.2d 407, 414–15 (Ct. App. 1986). As such an attorney fees award cannot be executed upon until it has been settled on appeal. Id. The Court of Appeals agreed with the trial court that:

> [T]he provision for attorney fees was stayed by the appeal. Supreme Court Rule 41, Section 1(A) provides that subject to the exceptions listed in Section 1(B), every appeal taken to the Supreme Court shall automatically operate as a stay of proceedings in the court below. Nothing in Section 1(B) expressly precludes attorney fees from the operation of the general rule stated in Section 1(A). Arguably, however, attorney fees are money judgments and are excepted under provisions of Section 1(B)(1). **Historically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal. Until then, it is more in the nature of a disbursement.**

Id. On this basis, the Town asserts that the exception to the automatic stay rule only applies to the sanctions award under SCALC Rule 72 and that fees and costs awarded pursuant to the State Action Statute are automatically stayed, by virtue of the concurrent filing of a notice of appeal.

---

[4] Woodside references appellate court rules Section 1(A), 1(B) and 1(B)(1), which parallel current Rules 241(a), 241(b) and 241(b)(1), amended in 1990, 2007 and 2009.

B. Failure to Stay the Award Would Result in an Extreme Hardship

In exercising the discretion afforded it by law, a particularly important consideration for this Court is the extreme hardship that would be placed on the Town if the Order is not stayed. Our courts have weighed heavily the implications of such hardships. In Talley v. John-Mansville Sales Corps. the Supreme Court overturned the workers compensation commission's failure to grant a stay when such failure would have put the moving party "between a rock and a hard place" at no fault of his own. Talley v. John-Mansville Sales Corp., 285 S.C. 117, 328 S.E.2d 621 (1985). See also, Riverwoods, LLC v. Cty. of Charleston, 349 S.C. 378, 383, 563 S.E.2d 651, 654 (2002) (citing the hardship on the County and potential for reversal on appeal, the Supreme Court affirmed the trial court's writ of supersedeas staying enforcement of its order); Lake City Coll. Preparatory Acad. v. S.C. Pub. Charter Sch. Dist., No. 2014-002372, 2016 WL 3944731, at *3 (S.C. Ct. App. July 19, 2016) (a party may move before the ALC for imposition of a stay on the grounds that an unusual hardship will result from the execution of the decision).

As discussed in the Affidavit of Mark Hugeley, Mayor of the Town, the Town of Arcadia Lakes is a quiet bedroom community with less than 900 residents. Exhibit 1. Town government is small and has few resources. During its early years, the Town operated from a private residence, due to lack of resources. Now the Town is able to rent a small space for a Town Hall. Id. The Town has one part-time permanent employee, who serves both as the Town clerk and treasurer. Id. There is also a part-time bookkeeper, but there are no other employees and no municipal departments. Id.

The Town operates under a council form of government, and due to a lack of resources, the Mayor and council members are often responsible for tasks ordinarily performed by employees, such as responding to blocked storm drains, obstructed ditches, fox bites, noise complaints and trash collection complaints. Id. The Town has operated frugally for many years with the Mayor earning approximately $245 per month. Id. Compensation for all five (5) members of Town council totaled $22,500 in 2016. A large fee/costs award would destabilize the Town, placing the delicate balance between volunteer and compensated services at risk. Id.

As evidenced by the Town's financial records over the past twelve (12) years, the Town's revenue versus expense is in delicate balance. Id. at Exhibit A, Town Income and Expense Report from 2002-2016. In 2006, 2007, 2008, 2011-2013, the Town generated over $60,000 more in revenue than it had in expenses; however the Town ran a deficit in 2009 and has barely broken even in 2014-2016. Id.

Because of its constrained and limited revenue resources, the Town "does not undertake any type of legal action lightly," according to the Mayor. Id.

As explained by the Town's Mayor:

> because so much is done on a voluntary basis, any reduction or elimination of a paid for service, which would result if the Town had to divert funds to a large fee or sanctions award, will be a blow to Town operations. It is likely the Town would be unable to continue the services as currently provided in event of a large award to the defendants. We are such a small town that any award to the defendant will likely harm the Town, but a large award would be hugely destabilizing.

Solely because of the Town's frugality, over the past thirty years it has been able to slowly build up a small reserve to fund capital projects. Id.

While the Town has multiple sources of revenue, it lacks the one source of revenue that most governments rely heavily upon: property tax. Under state law, a property tax is not a viable option for the Town to raise revenue. Id. And the Town's available sources of revenue are "often adversely affected by decisions of the General Assembly to appropriate less than obligated. This condition makes the revenue stream somewhat less stable for local governments without a property tax –like Arcadia Lakes." Id. The Mayor explains that "[i]nstead of raising revenue, the Town must cut services if to fund an award. A probable scenario would see a partial cost of garbage and yard trash collection, possibly one half, passed on to residents. Possibly, other Town services will be eliminated as well." Id.

Due to its small size and relatively limited resources, this Court's award under appeal is likely to have unintended consequences for people residing within the Town limits and beyond. Town Council frugally managed Town operations for several decades to enable the creation of reserve accounts, but these reserves are essentially savings accounts with two distinct purposes: emergencies and capital projects. Id. One of the most important capital projects for which the Town has been planning is "constructing and owning its own brick and mortar structure" for a Town Hall, as opposed to renting a small space. Id. Mayor Huguely explains that "loss of the reserve is a loss of funds over thirty years in the making, setting the Town back to its financial position in the 1990s and preventing any capital improvements for decades to come." Id.

In sum, The Town's financial situation is such that its ability to raise alternate forms of revenue is constrained, requiring it to rely on a very "hands-on," volunteer approach to Town services and management. As a result, the Town has had to frugally manage its resources for over

thirty (30) years in order to build even a small reserve that would allow it to effectuate much-needed capital improvement projects described in the Affidavit of Mark Huguley. Id. A sanctions award could not be covered by the Town's meager annual revenues, as is apparent upon reviewing the Town's financial reports over the past fourteen (14) years. Id., Exhibit A, Town Income and Expense Report from 2002-2016. Instead, a significant award must come from the small reserve, which, if significantly depleted would have a debilitating impact on the Town's ability to address its residents and the surrounding community's needs and to carry out much-needed, and long-planned improvements.

C. Stay Is Necessary to Protect the Town's Assets and Avoid Substantial Prejudice

The Administrative Procedures Act provides that a "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C.Code Ann. § 1-23-380. The remainder of that provision makes clear that "judicial review" occurs in South Carolina's Appellate Courts. See S.C.Code Ann. § 1-23-380(1). Judicial review is a cornerstone of our due process rights, and the requirements of procedural due process are deemed to apply in a contested case or hearing which affects an individual's property or liberty interest. Those rights generally includes adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and **the right to meaningful judicial review**. Sloan v. S. Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 484-85, 636 S.E.2d 598, 615 (2006) (emphasis added); S.C. Constitution, art. 1, §22. Due Process guarantees notice, an opportunity to be heard in a meaningful way, and

judicial review. See Stono River Envtl. Protection Ass'n v. S.C. DHEC, 305 S.C. 90, 406 S.E.2d 340 (1991). While due process is a flexible concept, a fundamental requirement is the opportunity to be heard at a meaningful time and manner. S.C. Nat'l Bank v. Cent. Carolina Livestock Market, Inc., 289 S. C. 309, 313, 345 S. E. 2d 485, 488 (1986). The general rule for a "meaningful" hearing is that it should occur before a person's rights are affected. See, e.g., Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

In this case, the Town faces the prospect of paying $405,000 – nearly half of its emergency reserve funds – prior to obtaining meaningful judicial review in the Court of Appeals. The payment of approximately $405,000 would be a significant hardship and infringement upon the Town's due process rights by depriving them of property prior to judicial review, which should occur before the Town is deprived of limited funds.

In addition, Roper Pond is a privately-held Limited Liability Company operating in the State of South Carolina for a mere thirteen (13) years. Upon information and belief it was created solely for the purposes of developing the apartment complex at issue in the underlying appeal. As such, Roper Pond could very likely sell all of its assets, go out of business, or declare bankruptcy before this appeal is heard, leaving the Town with no way to recover should this Court's Orders be reversed on appeal.

D. Stay Would Not Unduly Prejudice Roper Pond

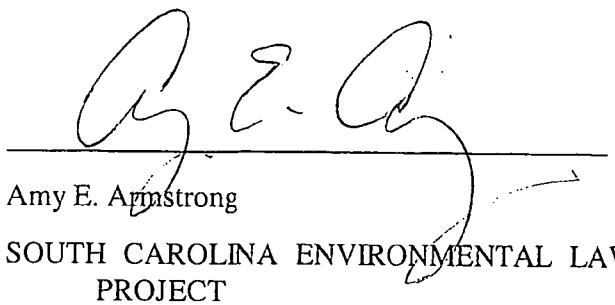
As Roper Pond could have had no expectation that it would be able to recover attorneys fees, costs or sanctions, it cannot be prejudiced by the inability to immediately receive an administratively-approved award of same.

On the converse, the Town originated in 1959 and has been operating as a municipality ever since, including adopting a Code of Ordinances which is published by the Municipal Association of South Carolina. See http://www.arcadialakes.net/about/town-history/ While the Town is still very small with less than 900 residents, it nonetheless has stable long-term sources of revenue, including local option sales taxes, business license taxes, utility franchise fees and the S.C. Local Government Fund. Should the appellate courts affirm this Court's Order, the Town would still have access to these same revenue streams and could render payment at that time.

III. CONCLUSION

For all the reasons stated therein, the Town seeks to pause the substantial, and potentially crippling, award due under the Court's Order, until such time as the Town has an opportunity to pursue reversal or reduction of that award on appeal. Such relief is particularly appropriate given the uncommon nature of the award against the Town and the unusual posture of this case, which places an even higher value than normal on the outcome of the appeal.

Respectfully submitted,



Amy E. Armstrong

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorney for the Petitioner

Georgetown, South Carolina

July 14, 2017

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners, vs. South Carolina Department of Health and Environmental Control, and Roper Pond, LLC, Respondents.	Docket No. 09-ALC-07-0069-CC **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served copies of the Town of Arcadia Lakes' Motion to Stay Order for Attorneys Fees, Costs and Sanctions upon counsel for the Respondents by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

W. Thomas Lavender, Esquire
Joan W. Hartley, Esquire
Nexsen Pruet
Post Office Drawer 2426
Columbia, SC 29202

Stephen P. Hightower, Esquire
DHEC Office of Counsel
2600 Bull Street
Columbia, SC 29201

Amy E. Armstrong
Attorney for the Town of Arcadia Lakes

Georgetown, South Carolina

July 14, 2017

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Town of Arcadia Lake, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners, vs. South Carolina Department of Health and Environmental Control and Roper Pond, LLC Respondents.	DOCKET NO. 09-ALJ-07-0069-CC **AFFIDAVIT OF MARK W. HUGULEY**

I am the Mayor of the Town of Arcadia Lakes. Arcadia Lakes is a small town with about 900 residents. It is a bedroom community with limited retail business in two areas zoned light commercial. Town government is small and has few resources. Initially operating from a private residence, space is currently rented for a town hall. The Town has one part-time permanent employee, who serves both as the Town clerk and treasurer. There is also a part-time bookkeeper, but there are no other employees and no municipal departments. See Exhibit A, Town Income and Expense Report from 2002-2016, attached.

The Town's governing body is established as a "council" form of municipal government. Because the Town is small, the responsibility for many tasks, ordinarily performed by employees, falls to the mayor or Council members. Therefore, the Council members and I stay busy with Town business, although many residents may believe Council simply meets once per month to decide questions before the body. Usually, this line of reasoning includes having the Council make decisions which are delegated to others for implementation. However, there are not many to whom tasks can be delegated. So it might be a matter of doing it yourself, if it is to get done.

As mayor, I respond to blocked storm drains, obstructed ditches, fox bites, noise complaints and trash collection complaints. I write correspondence and sign checks. Council members hear the same complaints as the mayor, and unlike some legislative bodies we work together for the betterment of the Town. Pulling together and being frugal allowed the Town, founded in 1959, to operate successfully. These services might be described as provided by elected volunteers. (For

Exhibit 1

example, as mayor I normally net about $245 per month.) See Exhibit A. A big award risks the balance between voluntary and compensated Town services.

However, there are other services provided by the Town through contracts. The Town maintains a contract to provide regular garbage and yard debris collection at no cost to residents. We employ, as needed, someone to help keep streets clean, although the SCDOT primarily maintains the roads and streets. The Town pays for street lights and limited "extra-duty" service from sheriff's deputies. See Exhibit A.

We have no police force of our own and feel certain we are too small for such. Our municipal code has no criminal penalties. We attempt to settle disputes without formal action. With such as a backdrop, I note the Town does not undertake any type of legal action lightly. I can recall only one occasion where the Town used a "cease and desist" order to compel compliance with its ordinances. Voluntary compliance is the norm. But even without formal legal action, the Town must engage its Town Attorney to explain and encourage compliance by some. As a result, attorney fees for routine Town business are a regular expense. See Exhibit A.

Commensurate services cannot be obtained elsewhere for an amount similar to that paid by the Town. As stated, we are frugal. Since we already do much on a voluntary basis, any reduction or elimination of a paid for service, which would result if the Town had to divert funds to a large fee or sanctions award, will be a blow to Town operations. It is likely the Town would be unable to continue the services as currently provided in event of a large award to the defendants. We are such a small town that any award to the defendant will likely harm the Town, but a large award would be hugely destabilizing.

While the Town has several sources of revenue, it lacks the single source many local governments most heavily rely upon: Property tax. Instead, its sources include: Local Option Sales Tax, Insurance Tax, Brokers Tax, Telecommunications Tax, Local Business License Tax, SC Local Government Fund, and Utility Franchise Fees. As can be seen in the Town's income and expense report, those revenue sources have just barely generated enough income to pay the Town's expenses for the past two years. See Exhibit A.

Notwithstanding prior commitments made to local governments, several of the sources listed are often adversely affected by decisions of the General Assembly to appropriate less than obligated. This condition makes the revenue stream somewhat less stable for local governments without a property tax –like Arcadia Lakes and approximately 50 other municipalities. As disagreeable as some find property tax, it is relatively stable. With an annual budget for 2017, including grant funds, of only $324,222. Not currently having a property tax creates a big financial challenge in raising revenue to pay a large award, if ordered by the Court. The operating budget is insufficient to otherwise cover any award. See Exhibit A.

Unfortunately, the current requirements of state law mean the Town cannot establish a property tax. The practical effect of Act 388 and other laws so restrict local government control over its tax authority that local finances suffer. Instead of raising revenue, the Town must cut services in order to address an emergency fee and sanction award. A probable scenario would see a partial cost of garbage and yard trash collection, possibly one half, passed on to residents. Possibly,

other Town services will be eliminated as the Town must maintain reserve funds for on hand for emergencies. For every dollar raised in establishing a property tax, there must be a dollar offset in monies derived from the local option sales tax. This is because the purpose of the local option sales tax is to provide relief from property tax. Thus, the Town could generate $1.00 from a property tax and owe $1.00 to taxpayer relief. This would mean the Town nets $0.00 but still created a new tax burden. There is no efficacy in such a model.

Municipalities with an established property tax receive the amount greater than the one per cent local option tax. But for Arcadia Lakes to establish a property tax that produces net revenue it requires a millage rate sufficient to accommodate the local option off set and an additional amount. Difficult under any circumstances, but nearly impossible in Arcadia Lakes, which has a small property tax base and a number of properties subject to a special purpose district tax funding the construction of a dam lost to the great flood of 2015.

Instead of raising revenue, the Town must cut services if to fund an award. A probable scenario would see a partial cost of garbage and yard trash collection, possibly one half, passed on to residents. Possibly, other Town services will be eliminated as well.

Last year the Town began beautification projects that have uplifted and enhanced Town appearances. These improvements will stop. An attractive appearance of the Town must certainly benefit both those who reside in the Town as well as properties adjacent to the Town. In other words, an adverse financial impact on the Town's beautification initiatives will see incidental impact on neighboring properties. Communities are not limited by municipal boundaries alone. Indeed, the name of the apartment complex constructed at the site of Roper Pond is "Arcadia's Edge," a clear reference to the Town. To the extent the Town provides or facilitates services for its residents there also is limited benefit to others in the larger community.

There is a cost borne by Town residents by having the denser population of an apartment complex in our community. For example, I live on N. Trenholm. My home is only a short distance from the apartment complex. I am sensitive to any increase in traffic, noise and trash. Without impugning the character of the apartment residents or the quality of the complex, I believe increased populations bring more problems, which have associated costs. Where Roper Pond formerly had a small "watershed", it now has paved surfaces draining to Cary Lake in the Town.

This is a condition that incrementally occurred over the years since Cary Lake was first constructed. At that time, the large area draining to Cary Lake was less developed with far fewer impervious surfaces. But as roads and parking lots were paved, water that used to be absorbed into the ground became storm water runoff added to the water held back by the Cary Lake Dam. This changed the nature and quality of Cary Lake, which is the single most recognized feature in Arcadia Lakes, without consultation with or consent of residents.

Irrespective of volume or other measures unknown to me, this represents storm water runoff introduced into the Cary Lake reservoir and the Gill's Creek Watershed that did not previously exist. The Town shares responsibility for National Pollutant Discharge Elimination System

(NPDES) permitted storm water. There is certainly some cost to the Cary Lake property owners and the Town.

Although these costs are hard to calculate, they are very real. This much is certain, a large award will harm the Town and it will not recover easily. But a large award is likely to have unintended consequences for people residing beyond the Town limits in the surrounding area. Council frugally managed Town operations for several decades to enable the creation of reserve accounts. Essentially, these are savings accounts and have two distinct purposes --emergencies and capital projects.

Beginning in the 1990s, Council began setting aside funds for a Town Hall using the local government investment fund maintained by the state Treasurer. As of March 31, 2017 there was approximately $715,000. There is also approximately $231,000 in a money market account held in a local commercial bank. At the time the savings effort began, Council met in the home of the Town clerk.

Slowly moving toward its own Town Hall, Council transitioned to rented space. This is seen as an intermediate step before constructing and owning its own brick and mortar structure. Other capital projects targeted by Council include enhancing major intersections with brick-like crosswalks and landscaping of rights of way. Working with the Council of Governments, a charrette was developed depicting improvements to major intersections in Arcadia Lakes. It is believed aesthetic improvements will also have a calming effect on traffic, something hugely important to both public safety and the quality of life. See Exhibit B.

The last capital project is a small park. The Town currently has no parks or publically owned space save one small lot. Research has determined parks to be among the most desirable features of any community for young people. Council believes diversity in age is a sign of a healthy community and wants to promote improvements that will attract people from all age ranges. These are the aspirations of our small Town, but without our reserves none will become reality. Arcadia Lakes does not have a tax base to support capital improvement bonds and has no means to finance capital projects except through savings. In sum, loss of the reserve is a loss of funds over thirty years in the making, setting the Town back to its financial position in the 1990s and preventing any capital improvements for decades to come.

FURTHER THE AFFIANT SAYETH NOT.

/Mark W. Huguley

Mark W. Huguley

SWORN to before me this
18th day of April, 2017.

Gregory White (SEAL)
Notary Public for South Carolina

My commission expires: My Commission Expires November 20, 2025

Exhibit A

10-562	PROJ. BEAUTIFIC., SIGNS	808	20,537	1,247	987	2,043	5,430	1,560	4,620	4,627	843	11,610	17,221
10-564	GARBAGE SVC/RECYCLING	42,122	47,081	100,787	106,133	112,805	112,748	59,420	69,216	31,291	123,000	124,845	128,562
10-565	WASTE MGMT. FEES (LANDFILL)	-	-	-	-	-	-	-	3,767	3,784	3,444	3,240	3,379
10-566	STREET LIGHTS	8,955	9,364	8,945	5,457	-	515	-	-	-	-	-	-
10-568	TELEPHONE - OFFICE & MOBILE	1,443	1,381	1,656	864	1,602	1,058	564	1,031	1,548	1,619	1,582	1,706
10-569	TELEPHONE - MOBILE	-	-	545	744	-	-	-	-	-	-	-	-
10-570	OFFICE UTILITIES	-	-	-	-	-	-	-	-	-	-	-	-
10-575	TOWN STORAGE	-	-	-	-	-	-	-	-	-	-	-	-
10-578	NPDES	-	-	-	-	-	-	-	-	-	-	-	-
10-581	TOWN HALL EXPENSES	1,920	1,921	1,920	1,920	5,256	13,102	14,028	450	747	1,170	1,968	2,110
10-582	RENT	-	-	-	-	-	-	-	12,000	12,000	12,000	12,000	12,000
10-583	UTILITIES	-	-	-	-	-	-	-	1,902	872	2,346	1,716	925
10-584	SECURITY	-	-	-	-	-	-	-	443	601	600	521	555
10-586	OFFICE CLEANING	-	-	-	-	-	-	-	120	60	-	-	-
10-591	PART-TIME BOOKKEEPER'S BONUS	-	-	-	-	-	-	-	300	300	-	250	-
10-610	LAW ENFORCEMENT (PT)	-	-	-	-	-	-	-	-	9,120	13,580	10,340	10,660
10-990	CAPITAL OUTLAY (TFR TO CAP ASSETS)	1,450	-	-	-	1,391	-	-	-	-	-	-	-
10-999	TRANSFER	-	-	-	-	-	-	-	-	-	-	-	-
20-505	HT EXPENSES	18,640	14,608	10,981	25,144	31,316	-	-	-	-	-	-	-
20-510	HT ANNUAL PICNIC	-	-	-	-	-	3,404	3,340	3,828	3,121	3,834	3,923	3,324
20-543	HT CONTINGENCY & MISC.	-	-	-	-	-	10	67	-	-	22	110	24
20-556	HT STREET MAINT./LITTER PICKUP	-	-	-	-	-	2,159	4,228	3,465	2,765	2,733	-	-
20-560	HT OFFICE SUPPLIES/PSTG./PRTG.	-	-	-	-	-	341	-	24	22	215	25	-
20-562	HT PROJ. BEAUTIFIC., SIGNS	-	-	-	-	-	-	-	4,216	120	3,220	3,309	3,982
20-566	HT STREET LIGHTS	-	-	-	-	-	13,953	15,226	13,708	14,051	16,656	17,855	17,342
30-501	DEPRECIATION	859	794	794	386	571	485	485	432	278	93	-	-
30-990	TRANSFER FROM OTHER FUNDS	-	-	-	-	(1,391)	-	-	-	-	-	-	-
	TOTAL EXPENSES	135,899	155,037	192,178	220,401	260,663	244,220	171,382	204,564	178,443	279,319	291,271	308,903
	REVENUES OVER EXPENDITURES	50,818	111,681	97,338	63,992	(169)	17,631	85,624	77,800	106,307	19,622	11,305	11,143

Exhibit A

Town of Arcadia Lakes
Revenues & Expenses
2005 - 2016

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
10-405	STATE AID	23,577	24,058	26,174	28,361	25,161	22,034	17,375	29,777	32,324	27,086	18,028	18,969
10-410	INTEREST INCOME	10,451	18,122	22,142	15,705	5,526	3,784	2,868	2,593	2,265	1,696	2,809	5,812
10-415	BUILDING PERMITS & BUSINESS LICEN	26,262	23,577	24,680	17,080	14,057	17,653	14,097	13,101	17,664	18,756	21,597	23,006
10-420	LOCAL OPTION SALES TAX REVENUE	40,753	90,789	92,433	98,085	85,675	85,478	91,524	88,759	82,720	97,402	103,563	113,676
10-425	FRANCHISE FEES	33,341	42,571	46,099	48,363	50,249	52,777	54,764	61,752	63,850	63,590	65,723	65,985
10-426	MASC INSURANCE REVENUE	30,014	43,419	47,343	51,023	17,827	48,153	47,386	63,344	59,362	59,792	53,568	59,870
10-427	MASC TELECOMM REVENUE	8,640	5,872	6,753	-	39,880	3,425	4,890	77	3,134	4,312	6,012	17
10-428	MASC BROKERS REVENUE	-	-	-	-	-	-	-	-	-	-	4	-
10-440	GRANT - PALMETTO PRIDE												2,208
10-495	MISCELLANEOUS INCOME	460	405	799	1,672	251	5,060	557	-	-	105	-	50
20-405	HT REVENUES	13,220	17,906	23,093	24,105	21,867	23,488	23,545	22,961	23,431	26,202	31,271	30,453
	TOTAL REVENUES	186,717	266,718	289,516	284,394	260,494	261,851	257,006	282,364	284,750	298,940	302,576	320,046
10-505	ADVERTISING	64	160	147	-	-	-	356	30	18	153	60	957
10-510	ANNUAL PICNIC	809	952	613	904	878	703	35	35	35	-	-	-
10-515	ASSOCIATION DUES	335	405	335	330	300	655	460	400	525	300	425	25
10-520	AUDIT & LEGAL (PROF. FEES)	10,875	6,460	8,435	11,638	4,838	13,775	9,150	-	-	-	-	-
10-521	AUDIT/LEGAL (AUDIT/ACCTG)	-	-	-	-	-	-	-	6,250	9,678	6,250	7,700	9,750
10-522	AUDIT/LEGAL (LEGAL)	-	-	-	-	-	-	-	8,495	6,171	12,096	7,405	12,064
10-525	AUTOMOBILE EXPENSE	600	600	600	2,000	2,000	2,000	2,000	2,800	2,800	2,800	2,800	2,800
10-530	BUILDING INSPECTIONS	3,700	5,100	4,300	2,890	1,300	1,725	1,620	1,270	1,570	2,740	3,780	4,590
10-535	CAPITAL EQUIPMENT REPAIR	57	175	219	1,065	594	806	521	957	1,192	1,885	676	130
10-539	CLERK'S BONUS	-	-	-	-	600	600	600	300	300	750	750	1,117
10-540	CLERK'S SALARY	16,000	16,200	18,400	18,600	18,000	19,800	20,625	20,818	20,800	20,800	21,500	1,200
10-541	COUNCIL COMPENSATION	9,900	10,200	10,050	10,064	9,900	13,200	14,209	14,491	15,000	15,200	18,200	22,500
10-542	COMPUTER (RoadRunner Expenses)	786	959	966	1,050	1,387	470	959	1,713	1,033	1,162	1,091	15,327
10-543	CONTINGENCY, MISC., & LEGAL	927	1,264	2,089	10,052	42,786	13,453	10,508	3	3,870	6,504	570	1,094
10-544	PART TIME BOOKKEEPER, ETC	-	-	-	-	2,505	2,603	3,323	6,010	7,140	8,812	10,008	4,636
10-545	DONATIONS	-	-	-	-	-	-	-	-	-	-	-	10,377
10-546	ELECTION	600	-	400	-	-	-	600	-	852	-	720	-
10-548	PAYROLL TAXES	1,802	2,019	2,176	2,158	2,135	2,640	2,568	2,648	2,785	2,938	3,637	4,195
10-550	INSURANCE	5,443	6,119	10,136	9,398	8,825	13,193	665	8,354	8,355	5,269	8,128	8,123
10-552	MAGISTRATE	300	-	-	-	-	-	-	-	-	-	-	-
10-554	SEMINARS, MTGS., PLNG.	4,138	4,493	3,079	5,210	4,951	710	125	6,661	6,721	725	765	270
10-556	STREET MAINT./ LITTER PICKUP	1,669	2,298	1,070	572	625	925	-	-	-	-	4,151	2,993
10-558	MEMORIALS & GIFTS	157	-	124	75	329	196	68	-	350	-	339	197
10-560	OFFICE SUPPLIES/POSTAGE/PRTG.	1,540	1,946	2,163	2,760	5,117	3,563	4,072	3,806	3,941	5,560	5,274	4,767

Exhibit B

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus and L. Marcus, and Steven Brown, Petitioners, vs. South Carolina Department of Health and Environmental Control and Roper Pond, LLC Respondents.	Docket No. 09-ALJ-07-0069-CC **ORDER DENYING MOTION TO STAY**

This matter comes before the Administrative Law Court (ALC or Court) pursuant to a Motion to Stay Order for Attorney's Fees and Costs and for Sanctions (Motion) filed by the Town of Arcadia Lakes (Petitioner or Town) on July 14, 2017. The Petitioner has appealed orders issued by this Court dated January 25, 2016, March 17, 2017, and June 14, 2017, to the South Carolina Court of Appeals. The Court's June 14, 2017, order required the Petitioner to pay $205,283.84 in attorneys' fees and costs to the Respondent, Roper Pond, LLC (Respondent or Roper) pursuant to S.C. Code Ann. § 15-77-300 and the sum of $200,000 in sanctions under SCALC Rule 72 to the Clerk of Court of the Administrative Law Court (Clerk), for a total payment of $405,283.84, on or before August 15, 2017. Petitioner's Motion seeks to stay the obligation for the payment of money until its appeal has been decided. On August 1, 2017, the Respondent filed its response to the Motion objecting to the relief sought by the Petitioner.[1]

The Court convened a hearing on August 8, 2017, to hear arguments on the Motion. The Petitioner was represented by Michael Corley, Esquire, and Respondent was represented by Joan

[1] Roper Pond has filed a cross appeal challenging the March 15, 2017, March 24, 2017, and June 14, 2017, orders issued by the Court. Roper Pond does not, however, join in Petitioner's Motion.

Hartley, Esquire. Given that the issues raised in the Petitioner's Motion did not affect it, the Department of Health and Environmental Control waived its appearance. On August 14, 2017, this Court issued an order holding the August 15, 2017, payment deadline "in abeyance until further notice." This order constitutes such notice.

A. Automatic Stay Under Rule 241, SCACR

The Petitioner argues that Rule 241, SCACR, automatically stayed its obligation to pay attorneys' fees and costs as of the time it filed its notice of appeal.[2] While the Petitioner recognizes Rule 241's exceptions to the automatic stay, it contends they do not apply in the instant situation. As a general rule, Rule 241(a) provides, "[t]he 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, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." Rule 241(b), however, carves out numerous exceptions to Rule 241(a)'s automatic stay based on statutes, court rules and case law. The pertinent exceptions here fall under Rule 241(b)(1) and (b)(11).

1. Rule 241(b)(11), SCACR, exception.

The exception listed in Rule 241(b)(11), SCACR, precludes the automatic stay under Rule 241(a), SCACR. Subsection (b)(11) excludes from Rule 241(a)'s automatic stay "[a]ppeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5)." The current version of S.C. Code Ann.§ 1-23-600(G)(5) - § 1-23-600(H)(5) - provides that a "final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals."[3] Because the Court's June 14, 2017, order constitutes a "final order in a contested case", its effect is not automatically stayed under Rule 241(a) by the filing of Petitioner's notice of appeal.

Nevertheless, the Petitioner seems to argue that Rule 241(b)(11) does not apply because the ALC order here is not a "typical" ALC order. While ALC orders requiring the payment of

---

[2] Although the Petitioner seeks to stay the payment of the $200,000 in sanctions to the Clerk, it acknowledges that this award is not automatically stayed under Rule 241(a), SCACR, because it falls into one of the exceptions under Rule 241(b), SCACR.

[3] Section 1-23-600(H)(5) is applicable to contested case hearings involving "decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State." S.C. Code Ann. § 1-23-600(H)(1). The Department of Health and Environmental Control is governed by such a board. S.C. Code Ann. § 44-1-20.

attorneys' fees and costs and SCALC Rule 72, sanctions may be rare, it cannot be argued that this Court is without the authority to decide these matters. Moreover, the language of § 1-23-600(H)(5) does not contain any qualification based on the uniqueness, novelty or typicality of the issue before the ALC. Instead, the statutory language is plain and straightforward – an ALC final decision in a contested case may only be stayed by the issuing administrative law court or the court of appeals. Id.[4]

2. Rule 241(b)(1), SCACR, exception

Rule 241(b)(1) creates an exception to the automatic stay for "[m]oney judgments as provided in S.C. Code Ann. § 18-9-130." The Petitioner argues that this exception does not apply because the Court's costs and attornes' fee award is not a money judgment under Woodside v. Woodside, 290 S.C. 366, 350 S.E.2d 407 (Ct. App. 1986). In Woodside, the Court of Appeals ruled that an award of attorneys' fees in a family law case was stayed by the filing of an appeal:

> [S]upreme Court Rule 41, Section 1(A) provides that subject to the exceptions listed in Section 1(B), every appeal taken to the Supreme Court shall automatically operate as a stay of proceedings in the court below. Nothing in Section 1(B) expressly precludes attorney fees from the operation of the general rule stated in Section 1(A). Arguably, however, attorney fees are money judgments and are excepted under provisions of Section 1(B)(1). Historically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal. Until then, it is more in the nature of a disbursement.
>
> Attorney fees in divorce actions ordinarily mean the money necessary to enable a spouse to carry on or defend the matrimonial action, and are awarded to insure the spouse an efficient preparation of the case and a fair and impartial trial. *Keena v. Keena,* 245 So.2d 665 (Fla.App.1971). Under our divorce statute, attorney fees are termed "suit money". Section 20-3-120. Moreover, Section 20-3-125 provides that enforcement shall be by petition to the family court to enforce payment of such fees, which enforcement is ordinarily by contempt. We hold that attorney fees awarded in domestic actions are subject to the automatic supersedeas provision of Supreme Court Rule 41, Section 1(A).

[4] See also, S.C. Code Ann. § 1-23-610(A)(2) which provides in pertinent part: "[e]xcept as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision...Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms."

290 S.C. at 378-79, 350 S.E.2d at 414-15 (emphasis added). When asked whether Woodside's holding should be limited to domestic relations cases, the Petitioner points to the court's observation that "[h]istorically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal", to assert that the payment of attorneys' fees traditionally have been stayed upon filing an appeal in South Carolina. Id.

Respondent counters by citing Parker v. Shecut, 359 S.C. 143, 597 S.E.2d 793 (2004), for the proposition that an award of attorney's fees is to be "treated like any other money judgment of the trial court." Specifically, the Court in Parker allowed post-judgement interest to accrue on a judgement awarding attorneys' fees:

> S.C. Code Ann. § 34-31-20(B) (1976 as amended) provides that "[a]ll money decrees and judgments of court enrolled or entered shall draw interest according to law." A party need not plead for such interest; it is due as a matter of course. Calhoun v. Calhoun, 339 S.C. 96, 102, 529 S.E.2d 14, 17 (2000). An award of attorney's fees may be considered part of a monetary judgment and draw interest accordingly. Christy v. Christy, 317 S.C. 145, 152, 452 S.E.2d 1, 5 (Ct.App.1994).

359 S.C. at 153, 597 S.E.2d at 799 (emphasis added).

The Court believes that the rationale in Parker should control here. Although Woodside might otherwise seem to be more directly on point, the Court of Appeals limited its reach to family law cases. See Woodside, 290 S.C. at 379, 597 S.E.2d at 415 (holding that attorney fees awarded in domestic actions are subject to the automatic supersedeas provision of Supreme Court Rule 41, Section 1(A).) Further, other than its citation to Woodside itself, the Petitioner offers no authority for Woodside's proposition that "[h]istorically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal." Parker is a more recent decision where the Supreme Court undercuts Woodside with its pronouncement that "attorney's fees may be considered part of a money judgment and draw interest accordingly." 359 S.C. at 153, 597 S.E.2d at 799. Accordingly, the Court finds that the award of attorneys' fees and costs in its June 14, 2017, order is a "money judgment" within the meaning of Rule 241(b)(1), SCACR, such that no automatic stay arose at the filing of Petitioner's notice of appeal.[5]

[5] The applicability of Parker is not without some difficulty, however. In Parker, the issue was limited solely to whether the award of attorneys' fees – the payment of which was effectively stayed until the parties' house could be sold to generate funds – was subject to the accrual of post-judgment interest. The Court in

B. Supersedeas Under Rule 241(c), SCACR

Having thus determined that the automatic stay under Rule 241(a) does not apply, the Court must evaluate the Petitioner's request for a stay of its obligations to pay costs and attorneys' fees to Roper and sanctions to the Court pending the outcome of its appeal. Neither S.C. Code Ann. § 1-23-600(H)(5) nor § 18-19-130 – the statute addressing the effect of notice of appeals on "money judgements" – give any standards for the Court to use in evaluating whether to grant a stay.[6] Nevertheless, the Court believes that Rule 241(c), SCACR, provides the appropriate guidance when considering whether to stay a final ALC decision.[7] Rule 241(c), Supersedeas or Lifting of Automatic Stay, provides in pertinent part:

> 1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.
>
> (2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

Parker did not specifically address whether the payment of fees was stayed by the filing of an appeal. In Christy v. Christy, 317 S.C. 145, 152, 452 S.E.2d 1, 5 (Ct. App.1994), the case cited by the Supreme Court for the proposition that attorney's fee awards are subject to interest, there is no indication that the attorney's fees at issue were paid during the appeal. Christy, like Woodside, was a family court case. Nevertheless, whether Rule 241(b)(1), SCACR applies or not, the exception in Rule 241(b)(11), SCACR, is applicable.

[6] In pertinent part, § 18-19-130, reads:" (A)(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." Similarly, §1-23-600(H)(6) provides that "[n]othing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or rule of court."

[7] SCALC Rule 68 makes the South Carolina Rules of Civil Procedure and the South Rules of Appellate Procedure applicable "in the discretion of the presiding administrative law court judge...to resolve questions not addressed by these rules."

(emphasis added).

Petitioner's Motion must therefore be evaluated as a motion for supersedeas. Rule 241(c)(2), SCACR, sets forth two bases for consideration of Petitioner's request: 1) whether supersedeas is necessary to preserve jurisdiction of the appeal or 2) whether supersedeas is necessary to prevent a contested issue from becoming moot. The Court finds that neither of the two conditions for granting supersedeas under Rule 241(c), SCACR, exist here. This is not a case where supersedeas is necessary to preserve appellate jurisdiction. Payment of the attorneys' fees, costs and sanctions by the Petitioner will not deprive the Court of Appeals of jurisdiction over this matter.

Similarly, the Petitioner's payment of these monies will not cause the issues under appeal to become moot. In Berry v. Ianuario, 281 S.C. 21, 314 S.E.2d 308 (1983), the Supreme Court granted a father's petition for supersedeas while he appealed a family court decision terminating his parental rights over his child and allowing for the adoption of the child by a stepparent. The family court order was not immediately stayed by the notice of appeal. Id. However, the Court granted the writ because allowing the relief in the family court order – termination of parental rights and adoption -- would render the case moot. Id. The Petitioner has not shown that the issue here will become moot if the payment of attorneys' fees and costs is made to Roper Pond or the sanctions are paid to the Clerk. In the event the Court of Appeals were to reduce or modify either of these awards, the recipient would simply be required to repay money to Petitioner.

C. Other Grounds for Relief.

Although the Court believes that the only grounds for granting supersedeas in this matter are set out in Rule 241(c), SCACR,[8] the Petitioner has set forth additional reasons that it believes justify the proposed action. Most notably, the Petitioner argues that payment of the funds will create "an immediate significant hardship to the Town" as it will deplete its reserves. (Mot., p. 1). In his supporting affidavit, the Town's Mayor suggests the Town will be forced to curtail services provided to its residents. (Ex.1 to Mot., p. 6). The Court has considered these arguments and finds them to be unavailing. The Court evaluated this same hardship/ability to pay argument in its June

[8] "In determining whether an order should be issued pursuant to Rule 241(c), SCACR, the lower court, administrative tribunal, appellate judge, justice or appellate court must consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. Toal, et al, Appellate Practice in South Carolina, 3rd ed.) (2016) (emphasis added).

14, 2017, order. Part of the calculus in issuing the order on sanctions, which by necessity, considered the award of attorneys' fees and costs, was the Petitioner's ability to pay. In this regard, the following excerpt from the June 14, 2017, order is instructive here:

> In support of that argument, Roper Pond provided a copy of the Town's Basic Financial Statements and Supplementary Information for the year ending December 31, 2014 ("2014 Financial Statement"). (Exhibit 1, Affidavit of Joan W. Hartley dated April 3,2017). While this was the only Financial Statement available on the Town's website, Roper Pond also provided the October 6, 2016, Council Meeting Minutes which included information on Town Council's review of the 2015 financials and stated that "Mayor Hugley said there had been three exceptional good years in terms of surplus." (Exhibit 2, Affidavit of Joan W. Hartley dated April 3, 2017). The 2014 Financial Statement indicates that the Town has an unrestricted net assets in the amount of $1,059,203 and $1,093,433 in "Cash and Cash Equivalents." (2014 Financial Statement, pp.7 and 9). Additionally, the 2014 Financial Statement identifies Roper Pond's Third Amended Petition in this case as a contingent liability, concluding that "[t]he amount of costs or damages, if any, that may result from the settlement of this case, cannot presently be determined." (2014 Financial Statement, p. 20). Roper Pond argues that the amount of sanctions to be ordered should be determined based on the fact that the Town has more than $1 million in unrestricted liquid assets.
>
> The Town argues that only nominal sanctions are warranted because the Town has a small population of approximately 900 citizens and a substantial award of sanction would have a debilitating impact on the Town. The Town rents a small space for Town Hall and has one part-time employee who serves as both the Town clerk and treasure. The Town also has a part-time bookkeeper, but no other employees and no municipal department. The reserves established by the Town are to be used for emergencies and capital projects, including a planned construction of a Town Hall. The Town argues that a significant sanction would come from this reserve which would have a debilitating impact of the Town's ability to address its residents and the surrounding community's needs and to carry out planned improvements.
>
> The Town acknowledges that its citizens do not pay taxes to the Town. The Town's sources of revenue are sales tax, insurance tax, brokers tax, telecommunications tax. Local business license tax, South Carolina Local Government Fund, and utility franchise fees. Therefore, any sanctions ordered would not be paid by the citizens of the Town. Moreover, the sanctions will not affect the services

> provided by the Town to its citizen. The only traditional municipal service which the Town provides its citizens is municipal solid waste collection and disposal at no charge. In 2016, the Town's revenue totaled $320,046 and it expended $129,562 on the waste services provided to its citizens. Accordingly, any sanctions ordered against the Town will not impact services provided to its citizens.

June 14, 2017 Order, pp. 13 – 15.

The factual findings in the June 14, 2017, order belie the Petitioner's arguments regarding hardship. The Petitioner has presented nothing which suggests that these findings are without support. Petitioner also asserts that this Court ought to issue the supersedeas to maintain the status quo. (Mot., p. 3).[9] The Petitioner has not shown, however, the need for the maintenance of its version of the status quo. (The Respondent asserts that the status quo here is actually the requirement that the attorneys' fees and costs award be paid). The Petitioner has not shown that it cannot be made fully whole in the event an appellate court should reverse or otherwise modify the Court's June 14, 2017, order. While the Petitioner expresses fear that Roper Pond, a privately-owned company in existence within the state for 13 years, "could very likely sell all of its assets, go out of business, or declare bankruptcy before this appeal is heard," the Petitioner has provided no evidence which tends to make this anything more than speculation. (Mot., p. 9).

Finally, the Petitioner argues that requiring it to pay attorneys' fees, costs and sanctions prior to its appeal being decided will deprive it of the "right to meaningful review." (Mot., p. 8). By virtue of its timely notice of appeal, the Petitioner will have a full and fair opportunity to brief and argue its challenges to the Court's orders before the Court of Appeals. Petitioner has not shown that enforcing the requirement to pay the ordered attorneys' fees, costs and sanctions will adversely affect its ability to do so.

The Petitioner began its oral argument in support of the Motion by offering a set of practical alternatives to staying payment of the attorneys' fees, costs and sanctions – depositing the challenged monies with the Court until the appeal is decided or simply allowing the Town to retain and invest the funds during the pendency of the appeal subject to the accrual of interest under S.C.

---

[9] See Dean v. South Carolina law Enforcement Division,10-ALJ-20-0302-CC, 2011 WL 7119217, at *2 (Sept. 13, 2011) ("The purpose of a supersedeas is to stay proceedings in order to preserve the status quo pending the determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.").

Code Ann. § 34-31-20(B).[10] The Respondent continued to object to the entry of an order for supersedeas, and, while objecting to the proffered alternatives, indicated that depositing the funds with the Court until the appeal was resolved was preferable to allowing the Town to hold the funds.

Because money judgments already accrue post-judgment interest under § 34-31-20(B), the Court believes it must grant supersedeas to allow the Town to hold the funds pending the outcome of the appeal. As discussed earlier, the grounds for supersedeas under Rule 241(c), SCACR, have not been met here.

Nevertheless, the Court believes that the deposit of funds with the Court pending appeal is an alternative to supersedeas. The Petitioner cites Russo v. Sutton, 317 S.C. 441, 454 S.E.2d 895 (1995), in support of this suggested alternative. In Russo, our Supreme Court recognized that "a judgement debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest." Id., 317 S.C. at 444, 454 S.E.2d at 896. Under the facts of Russo, however, the Court ruled that the accrual of interest did not stop because of the debtor's failure to comply with the notice provisions of Rule 67, SCRCP, which require the deposit of funds with the court "upon notice to every other party and by leave of court." Id., 317 S.C. at 444-45, 454 S.E.2d at 897. In Small v. Pioneer Machinery, 330 S.C. 62, 496 S.E.2d 884 (Ct. App. 1998), the Court of Appeals outlined the procedure for deposit of funds under Rule 67, SCRCP:

> A judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest on the judgment. Russo v. Sutton, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995). The deposit also benefits the judgment creditor in that it ensures the availability of funds to satisfy the judgment. Id. Respondents complied with the plain language of Rule 67 by giving notice to the other party and obtaining leave of the circuit court before depositing the funds with the clerk of court. Id. at 444, 454 S.E.2d at 897. We find no error.

Id., 330 S.C. at 65, 496 S.E.2d at 885–86. The only motion timely filed with the Court is the Petitioner's Motion to Stay Order for Attorneys' Fees and Costs and for Sanctions. The Petitioner did not move to alternatively deposit the funds into the Court within its written Motion. While the alternative of depositing funds was proffered during the August 8, 2017, hearing, the Court is reluctant to treat this as a timely motion for relief under Rule 67, SCRCP, because the Respondent did not have an adequate opportunity to respond. Although the Respondent suggested that the deposit of funds under Rule 67 would be an acceptable alternative to allowing the Town to retain

[10] The Petitioner expressed a clear preference for holding the funds and investing them.

and invest the funds, the Respondent stopped short of consenting to the proposed action. Accordingly, the Petitioner's alternative of depositing the attorneys' fees, costs and sanctions with the Court is also denied.

Based on the foregoing, the Petitioner's Motion to Stay Order for Attorneys' Fees and Costs and for Sanctions is denied. The Petitioner must comply with its obligations to pay attorneys' fees and costs to Roper Pond and sanctions to the Clerk as set forth in the June 14, 2017, order on or before August 29, 2017.

IT IS HEREBY ORDERED that the Petitioner's Motion to Stay is **DENIED**.

IT IS FURTHER ORDERED that the Petitioner Town of Arcadia Lakes must pay the attorneys' fees and costs ordered payable to Roper Pond, LLC, in the Court's June 14, 2017, order and must pay the sanctions to the Clerk of the Administrative Law Court on or before August 29, 2017, as set out in that order.

AND IT IS SO ORDERED.

August 22, 2017
Columbia, S.C.

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Anthony R. Goldman

August 22, 2017
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 23 2017
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Case No. 09-ALC-07-0069-CC

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown. . . . . Petitioners,

v.

South Carolina Department of Health and Environmental Control and
Roper Pond, LLC . . . . . .
Respondents,

Of Whom

Town of Arcadia Lakes is . . . . . Appellant-Respondent,
and

South Carolina Department of Health and Environmental Control. . . . . Respondent,
and

Roper Pond, LLC is . . . . . .Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the **Respondent/Appellant's Return to Petition for Writ of Supersedeas Decision** and the **Respondent/Appellant's Return to Motion for Clarification of Automatic Stay Applicability** on counsel of record for South Carolina Environmental Law Project and South Carolina Department of Health and Environmental Control by depositing a copy of it in the United States Mail, postage prepaid, on October 20, 2017, addressed to:

Stephen P. Hightower, Esquire
Office of General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201

Amy E. Armstrong, Esquire
South Carolina Environmental Law
Post Office Box 1380
Pawleys Island, SC 29585
430 Highmarket Street
Georgetown, SC 29440

Terry E. Richardson, Jr., Esquire
Richardson Patrick Westbrook & Brickman,
LLC
Post Office Box 1368
Barnwell, SC 29812

October 20, 2017

W. Thomas Lavender, Jr. (SC Bar No. 3143)
Joan W. Hartley (SC Bar No. 72735)
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, South Carolina 29202
Tel: 803.771.8900
Fax: 803.727.1471

Attorneys for Respondent-Appellant Roper Pond, LLC

NEXSEN|PRUET

Joan W. Hartley
Special Counsel
Admitted in SC, NC

October 20, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Town of Arcadia Lakes, et al. v. South Carolina Department of Health and Environmental Control and Roper Pond, LLC*
Docket No. 09-ALC-07-0069-CC
Appellate Case No. 2017-001554

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of **Respondent/Appellant's Return to Petition for Review of Supersedeas Decision**, and **Respondent/Appellant's Return to Motion for Clarification of Automatic Stay Applicability**. Please return a clocked copy of each to us via the enclosed envelope.

We appreciate your assistance in this matter.

Best regards,

Joan W. Hartley

cc: Amy E. Armstrong, Esquire
Stephen P. Hightower, Esquire
Terry E. Richardson, Jr., Esquire

1441 Main Street
Suite 1500 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2129
F 803.253.8277
E JHartley@nexsenpruet.com
Nexsen Pruet Adams Kleemeier, LLC
Attorneys and Counselors at Law