

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

John D. McLeod, Administrative Law Judge

OCT 23 2017

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

SC Court of Appeals

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 MOTION FOR
CLARIFICATION OF AUTOMATIC STAY APPLICABILITY**

Pursuant to Rule 240, SCACR, Respondent/Appellant Roper Pond, LLC (“Roper Pond”) files this Return to Motion for Clarification of Automatic Stay Applicability (“Motion”), filed by Appellant/Respondent Town of Arcadia Lakes (“Town”) on October 10, 2017. The Motion seeks a ruling on the applicability of an exception to the automatic stay under Rule 241. Specifically, the Town seeks clarification on the application of Rule 241(b)(11) to 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, the Motion should be denied.

I. THE MOTION SHOULD DENIED BECAUSE THIS COURT HAS ALREADY RULED ON THE MATTER ON WHICH THE TOWN SEEKS CLARIFICATION.

This Court has already ruled on the applicability of the exception to the automatic stay under Rule 241(b)(11) to matters on appeal in this case. On September 12, 2017, the Town filed a Petition for Writ of Supersedeas to stay the June 14, 2017 Order. On October 5, 2017, this Court issued an Order denying the petition for supersedeas and citing Rule 241(b)(11): “See Rule 241(b)(11), SCACR (providing orders in appeals from administrative tribunals are not stayed by the service of the notice of appeal).” (Order dated October 5, 2017, p. 1). Therefore, to the extent that the Town seeks clarification on the applicability of Rule 241 to matters on appeal, the October 5, 2017 Order of this Court directly and unambiguously addressed the applicability of the exception to the automatic stay under Rule 241(b)(11), and any relief from that ruling should be presented to the Court in a petition pursuant to Rule 241(d)(7), SCACR. Indeed, the Town has filed a petition pursuant to Rule 241(d)(7) which asserts that that Rule 241(b)(11) is not applicable to the June 14, 2017 Order. Accordingly, this Motion should be denied.

II. EVEN IF THIS MOTION WERE PROPER, THE COURT CORRECTLY RULED THAT THE JUNE 14, 2017 ORDER IS SUBJECT TO THE EXCEPTION TO THE AUTOMATIC STAY UNDER RULE 241(b)(11).

While the Town acknowledges that the exception to the automatic stay in Rule

241(b)(11), SCACR, applies to decisions of an administrative tribunal, the Town argues that Rule 241(b)(11) does not apply to the June 14, 2017 Order. 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. The Town argues that an award of attorneys' fees is stayed on appeal under 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 be 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 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,

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.

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.

In its Motion, the Town further argues that the exception to the automatic stay in Rule 241(b)(11) only applies appeals as provided S.C. CODE ANN. §§ 1-23-380(A)(2) and 1-23-600(G)(5), and therefore, is inapplicable to the June 14, 2017 Order. (Motion, p. 5). Both of the provisions cited in Rule 241(b)(11) address the applicability of the automatic stay to decision of the ALC. While Section 1-23-380(A)(2) addresses the applicability of the automatic stay on appeal to specific types of the decisions of the ALC, Section 1-23-600(H)(5)

(formerly (G)(5)) provides that final decisions of the ALC are not stayed “except by order of the Administrative Law Court or the court of appeals.” S.C. CODE ANN. §1-23-600(H)(5). Accordingly, a decision of the ALC which is not specifically addressed in Section 1-23-380(A)(2) is not automatically stayed on appeal. Section 1-23-280(A)(2) addresses applicability of the automatic stay for enforcement actions, fines and penalties against a licensee, and suspension or revocation certain permits and licenses. S.C. CODE ANN. § 1-23-380(A)(2). The June 14, 2017 Order is not a decision on any of the actions addressed Section 1-23-280(A)(2). Therefore, the general rule under Section 1-23-600(H)(2) and the June 14, 2017 Order is “not be stayed except by order of the Administrative Law Court or the court of appeals.”

The Town further argues that S.C. CODE ANN. §§ 1-23-380(A)(2) and 1-23-600(H)(5) on apply to a “final decision” of the ALC and that the June 14, 2016 Order is not a “final decision” which is subject to the exception to the automatic stay. (Motion, p. 5). This argument is without merit as neither Rule 241(b)(11), SCACR, nor the statutory provision referenced therein exclude an award of attorney’s fees from the operation of the exception to the automatic stay. Additional, this Court’s January 12, 2017 Order supports the position that the June 14, 2017 is a final decision of the ALC. The January 12, 2017 Order granted Roper Pond’s motion to dismiss the Town’s appeal of the following earlier orders on Roper Pond’s petition for attorney’s fees and sanctions: Order Granting Motion to Strike issued January 25, 2016, and Order on Respondents’ Petitioner for Attorneys’ Fees and Costs and for Sanctions issued on September 1, 2016. The January 12, 2017 Order dismissing the appeal included the following citation: *See* S.C. CODE ANN. § 1-23-610 (Supp. 2016) (limiting this Court’s review to final decisions of the Administrative Law Court). (Order filed January 12, 2017, p. 1). As

such, there is no question that the June 14, 2017 Order is a final decision of the ALC.

Finally, the Town argues that the exception to the automatic stay in Rule 241(b)(11), SCACR, is not applicable to the June 14, 2017 Order because a monetary award “is highly unusual territory for the ALC.” (Motion, p. 6). This argument disregards the nature of the “monetary award” by the ALC. The June 14, 2017 Order awards attorney’s fees under S.C. CODE ANN. § 15-77-300 and imposes sanctions under Rule 72, SCRPALC. The ALC clearly has authority for award attorneys’ fees and impose sanctions. *See Video Gaming Consultants, Inc. v. South Carolina Dep’t of Revenue*, 358 S.C. 647, 651-52, 595 S.E.2d 890, 892 (Ct. App. 2004) (reviewing an award of attorneys’ fees pursuant to S.C. CODE ANN. § 15-77-300 for fees associated with appeal originating in the Administrative Law Court upon a finding the Department of Revenue acted with substantial justification); Rule 72, SCRPALC (authorizing sanctions when “a contested case, appeal, motion, or defense is frivolous or taken solely for purposes of delay”). Moreover, the award of attorney’s fees and sanctions by the ALC is no more “unusual” than such actions by any other court. “In South Carolina, the authority to award attorney’s fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney’s fees.” *Harris–Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176, 557 S.E.2d 708, 710 (Ct. App. 2001) (citing *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997)). Similarly, there is no authority for a sanction imposition “in the absence of an applicable statute, rule, or contempt finding.” *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994). Accordingly, whether in the ALC or any other courts, the award of attorney’s fees and sanctions is limited. As such, the Town’s argument that the award of attorney’s fees and sanctions by the ALC is “highly unusual” is without merit.

The Town has failed to state a valid basis for excluding the June 14, 2017 Order from the exception to the automatic stay of orders of the ALC pursuant to Rule 241(b)(11). The Motion should therefore be denied.

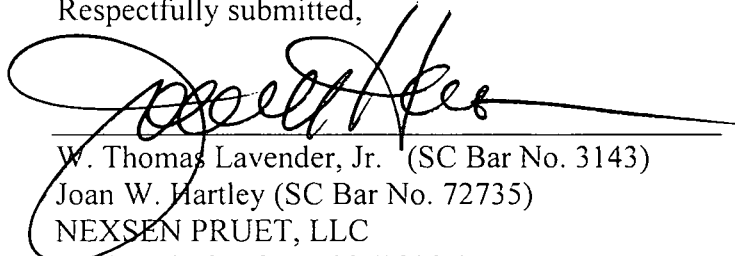
III. EVEN IF THE JUNE 14, 2017 WERE NOT SUBJECT TO THE EXCEPTION TO THE AUTOMATIC STAY UNDER RULE 241(b)(11), SCACR, THE JUNE 14, 2017 ORDER IS A MONEY JUDGMENT SUBJECT TO THE EXCEPTION IN RULE 241(b)(1).

Even if Rule 241(b)(11) were not applicable, the June 14, 2017 Order would not be subject to the automatic stay under Rule 241(b)(1), which provides that “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 under S.C. CODE ANN. § 18-9-130 is that filing of a notice of appeal does not stay execution of a money judgment. As discussed above, the South Carolina Supreme Court has treated an award of attorneys’ fees as a judgment to be executed upon like any other money judgment of the trial court. Specifically, in *Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004), 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 award of attorneys’ fees and sanctions in the June 14, 2017 is a money judgment against the Town and is an exception to the automatic stay under Rule 241(b)(1), SCACR.

IV. CONCLUSION

For the reasons stated herein, Roper Pond respectfully requests that the Court deny the Town's Motion and require immediate payment of the award and sanctions pursuant to the June 14, 2017 Order.

Respectfully submitted,



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