STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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

Appellate Case No. 2017-001554

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 Hutton 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 the Appellant/Respondent,

vs.

South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

REPLY IN SUPPORT OF PETITION FOR REVIEW OF SUPERSEDEAS DECISION

The Town of Arcadia Lakes (the "Town") submits this Reply in support of its Petition for Review of Supersedeas Decision (the "Petition"), responding to the issues raised in the Return of Respondent Roper Pond, LLC ("Roper Pond").

I. Roper Pond's Arguments on Hardship Defy Common Sense.

A municipality that is unexceptedly forced to pay out a lump sum in excess of its yearly revenue and yearly budget, and nearly equivalent to half of the money it has managed to save over the course of its existence, has undoubtedly suffered a substantial hardship. It is self-evident that any person, business, or governmental entity that loses such a large proportion of its total assets will face significant disruption and adversity. A payment of this order is exactly what has been

levied against the Town, yet Roper Pond and the ALC quibble about the impacts on the Town from its immediate forfeiting of $405,283.84. Some additional context for that sum helps to illustrate the contradiction in such position.

In terms of where the figure of $405,283.84 came from, that number originates from the ALC's conclusion that "sanctions to be imposed must be of *significant strength* for the 'discouragement of like conduct in the future.'" (Order of June 14, 2017, attached to Petition as Exhibit B, p. 15 (emphasis added)). As for the ALC's belief that "significant strength" deterrent is required under the circumstances, the basis for that belief is left completely unstated. (See Id.). The ALC did not cite any particular reason to believe that the Town is intransigent, or even that the Town is likely to take unjustified legal action in the future. Rather, the ALC simply expressed the need for "significant strength" in the sanction award. Then, in arriving at a "significant strength" figure, the ALC did not perform a calculation, but rather conjured a number out of whole cloth that he believed would have the desired deterrent effect.[1]

The ALC concluded that forcing the Town to pay 126.6% of its yearly revenue is what it will take to deter the Town from taking unjustified legal action going forward. As noted by the ALC, the Town has a yearly revenue of $320,000, versus the $405,283.84 in fees and sanctions levied. (See Id.). By comparison, applying the same standard to the City of Columbia, a sanction

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[1]The ALC's full methodology for arriving at the sanction figure is contained in the following excerpt:

> The sanctions to be imposed must be of significant strength for the "discouragement of like conduct in the future." I find that given the evidence in the record as a whole, including the financial standing of the Town, that a sanction of Two Hundred Thousand Dollars is proper.

(Petition Exhibit B, p. 15).

in excess of $444 Million would have been necessitated.[2] The ALC and Roper Pond have relied heavily the Town's financial reserves of approximately $1,000,000. (See Id. at 14). Basically, this is the amount the Town has managed to save over the history of its existence. It is the whole of the Town's financial resources, and, as explained by Town Mayor Huguley, these funds are set aside for emergencies and certain planned capital projects, including construction of a town hall and a small park, as well as intersection improvements (Mayor Hugely Affidavit, attached to Petition as Exhibit C, p. 4). Once again, the ALC's conclusion was that over 40% of all the money the Town has managed to save since its founding is what it will take to adequately deter the Town.

The figure levied against the Town, which was arrived at through uncalculated supposition, is of such significance relative to the Town's available resources that the impact will be immediate and immense. Indeed, the ALC's stated purpose was to impose a sanction of such "significant strength" that it would forever change the Town's behavior. It is disingenuous and counterintuitive, then, to argue that such sanction is not a hardship. The ALC's entire point was to impose a hardship. All that the Town is asking is that it not be forced to endure such hardship until this Court has considered whether the ALC erred.

II. The Orders on Appeal Would be Automatically Stayed in any Other Context.

The Town explained in its Petition that the fee/sanction award on appeal in this case would not be due until the end of the appeal, had such award originated in any of the other trial courts of this state. The basis for such proposition is the precedent in Cooper and Woodside, which state that legal principle directly and explain that a fee award does not constitute a judgment under

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[2]The City of Columbia had a revenue of $350,986,487 in the most recently reported fiscal year. <http://columbiasc.gov/depts/financial-reporting/cafr/city_of_columbia_cafr_final.pdf>, p. 16.

South Carolina law. Roper Pond nevertheless persists that "the Town failed to show how payment of the award and sanctions ... is distinguishable from any other money judgment awarded by a lower court."[3] (Return, p. 4). In order to continue equating the fee/sanction award at issue here to a money judgment, Roper Pond inverts the weight and breadth of applicable case law.

Roper Pond's attempt to distinguish Cooper is especially unavailing. Roper Pond acknowledges that the Supreme Court in that case contrasts "judgment," which "connotes a final decision of the court that **addresses the merits of the cause of action** and disposes of the cause as to all," and fees, which "are **matters incidental to the case and do not constitute a traditional judgment** as contemplated by the statute." See Return, p. 7; State v. Cooper; 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000) (emphasis added). Yet, Roper Pond asserts without explanation that, while the expert fees ordered in Cooper were held not to constitute a judgement, the attorneys' fees ordered in this case somehow constitute a judgment on "the merits of the cause of action." See Return, p. 7 (the "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."). On the contrary, the merits in this case are of course related to the stormwater authorizations that were challenged by the petitioners prior to these fee proceedings. Judgement on the merits was finalized prior to the ALC's consideration of the fees and sanctions at issue here. Roper Pond's arguments to the contrary are illogical in light of the post-judgment nature of these proceedings and are directly contradicted by Cooper. Roper Pond does not distinguish Cooper in any way, and the holding of Cooper establishes decisive precedent that fee awards are stayed on appeal and do not fall under the "money judgments"

[3]As covered in the Town's Petition, money judgments are an exception to Rule 241's automatic stay, whereas non-judgment fee awards are automatically stayed.

exception.

Woodside states the exact same legal principle as Cooper, and the Town therefore will not belabor the shortcomings in Roper Pond's attempt to minimize Woodside on the basis that it occurred in a domestic action. It is self evident, though, that the decisive quote from Woodside–that "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"–is stating a ubiquitous principle of law, not some peculiarity of the domestic context. See Woodside v. Woodside, 290 S.C. 366, 378, 350 S.E.2d 407, 414 (Ct. App. 1986). The manner in which that ubiquitous principle of law interacts or intersects with procedures or rules specific to domestic actions is irrelevant, and Roper Pond is correct to that extent. However, the principle of law itself, which is also stated and applied in the entirely different context of Cooper, exists wholly apart from the divorce proceedings in Woodside, and the best Roper Pond can do is attempt to confuse that point.[4]

While legal principles are necessarily laid down within the factual context of a specific case, it does not always follow that the principles are bound to that context. Roper Pond ignores this truism in attempting to apply artificial constraints to the broad legal principle stated in Woodside and Cooper. Those cases resoundingly establish that fee/sanction awards are incidental to a judgment on the merits and are therefore automatically stayed pending appeal. That clear

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[4]Roper Pond's reference to amendments in the family court jurisdictional statute subsequent to Woodside actually provides strong support for the Town's position here. (See Return, p. 6). The General Assembly amended the family court statute to make clear that, within the particular context of domestic actions, an award of fees and costs must not be stayed by appeal. (Id.). This amendment, which is very much context specific, works to overcome the general rule as to the automatic stay of fee awards. However, the fact that the General Assembly has not taken similar action in relation to other types of cases, including this administrative case, underscores the continuing strength of the ubiquitous principle stated in Woodside.

precedent is not changed by a passing statement in the Parker case, to which Roper Pond attempts to assign ultimate significance.

Contrary to the framing Roper Pond attempts to provide, Parker v. Shecut is not a case about whether fee awards constitute "judgments." It is also not a case about whether fee awards are automatically stayed on appeal. In these ways, Parker is decidedly different than Cooper and Woodside and is decidedly less relevant to the issues before the court. The question in Parker was whether post-judgment interest accrued on an attorney's fee award. 359 S.C. 143, 153, 597 S.E.2d 793, 799 (2004) ("Anne argues that the master erred in awarding post-judgment interest on Win's attorney's fees."). More particularly, the issue was whether an attorney's fee award fell within the statutory decree that "[a]ll **money decrees and judgments** of court enrolled or entered shall draw interest according to law." Id.; S.C.Code Ann. § 34-31-20(B) (emphasis added). In holding that a fee award did fit that language, the Supreme Court stated incidentally that "[a]n award of attorney's fees may be considered part of a monetary judgment and draw interest accordingly." 359 S.C. at 153, 597 S.E.2d at 799. In context, such statement is clearly meant to convey only that fee awards accrue interest under this particular statute, not that fee awards are judgments for all purposes under the law. Even the most tortured reading of this statement could not construe it as a reversal of the Supreme Court's unequivocal holding in Cooper, within the particular context of Rule 241's automatic stay.

Contrary to the ALC's holding in denying the Town a stay, this appeal does not fall under the "money judgments" exception to the automatic stay. Similar fee/sanction awards that have come before this Court have undoubtedly been stayed, as reflected in Cooper and Woodside. *If* this appeal is different by virtue of it arising from the Administrative Law Court, such difference

defies the logical and intended operation of Rule 241, and supersedeas is warranted.

III. Rule 67 Denial Highlights Distinction from Money Judgments.

The primary argument in Roper Pond's Return seems to be that, since money judgments aren't automatically stayed on appeal, it is not an aberration that the Town be forced to pay fees and sanctions before having an opportunity to appeal that award. The previous section examines South Carolina's legal distinction between a judgment on the merits of the case and a fee/sanction award incidental thereto. Of equal importance though, is the significant practical distinction between the payment options available to the Town and those available to an appellant of a typical money judgment.

Operating hand-in-glove with Rule 241's exclusion of money judgments from the automatic stay rule is SCRCP Rule 67's allowance for depositing money judgments with the trial court to be held during appeal. Indeed, so strong is South Carolina law's endorsement of the Rule 67 process that money awards deposited under that Rule do not incur interest during the pendency of appeal, whereas even awards that are stayed for consideration on appeal incur interest. See, e.g., Russo v. Sutton, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) ("a judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest."). South Carolina law strongly encourages use of Rule 67, and that option is not denied to parties appealing a money judgment, barring truly extraordinary circumstances.

The Rule 67 case relied upon by Roper Pond in its Return is a perfect illustration of this point. Roper Pond cites Russo v. Sutton as an example that it is not unheard of for a trial court to deny access to Rule 67, but what the case actually demonstrates is the divergency of the ALC's Rule 67 denial here. In Russo, so casual was the judgment debtor (Sutton) as to his use of Rule 67

that he simply unilaterally passed the funds to the trial court clerk without even asking the judge for permission or notifying the opposing party, as the terms of the Rule require. Id. at 444-45, 454 S.E.2d at 897. Even under such circumstances, though, Sutton's funds were allowed to rest with the trial court through the appeal. Id. The Supreme Court in Russo did not hold that Sutton could not deposit with the court, but rather that his deposit would accrue interest because he did not comply with the plain terms of Rule 67. Id. at 445, 454 S.E.2d at 897. Even Sutton was not forced to turn over the monetary award to his opponent during the appeal of that award, as the Town has been ordered to do. It is telling that this case is the best example Roper Pond could find of a party being denied the ability to deposit funds with the court pending appeal.

The Town's Petition explains the ALC's unsolicited and baseless denial of the Town's right to deposit the fee/sanction award, the consequence of which is that the only alternative to supersedeas is immediate full payment directly to Roper Pond. If Roper Pond is intent on comparing the award on appeal here to a money judgment, then the Court also must give significant weight to the fact that the Town cannot make use of the protection that Rule 67 provides to money judgments on appeal.

Conclusion

For the reasons stated here and in the Petition, the Town requests an order superseding the previous denial of supersedeas imposing a stay of matters decided in the Order for Attorneys' Fees and Costs and for Sanctions Pursuant to SCALC Rule 72, which is on appeal from the ALC.

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Georgetown, South Carolina

October 27, 2017

South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

October 27, 2017

a 501c3
non-profit organization

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RE: Town of Arcadia Lakes, et al. v. Roper Pond, LLC, et al.
Appellate Case No. 2017-001554

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven (7) copies of the Town of Arcadia Lakes Reply on Petition for Supersedeas Review and Reply on Motion for Clarification, along with my certificate of service.

Please return clocked-in copies of each in the enclosed, postage-paid envelop. Thank you for your assistance.

Yours very truly,

Amy Armstrong

cc: Stephen Hightower, Esq.
Joan Hartley, Esq.
Tommy Lavender, Esq.

Greene, Diane

From: Kitchings, Jenny
Sent: Monday, October 30, 2017 8:35 AM
To: Greene, Diane
Cc: Carter, Elizabeth A.; Howard, Patricia; Crater, Kate
Subject: FW: Appellate Case No. 2017-001554
Attachments: Replies to Supersedeas and Clarification Motions.pdf

-----Original Message-----
From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Friday, October 27, 2017 4:29 PM
To: Kitchings, Jenny <jkitchings@sccourts.org>
Cc: J Hartley <jhartley@nexsenpruet.com>; Tommy Lavender <TLavender@nexsenpruet.com>; Stephen Hightower <hightosp@dhec.sc.gov>; Michael Corley <michael@scelp.org>; Terry Richardson <trichardson@rpwb.com>; Janet Delaney <janet@scelp.org>
Subject: Appellate Case No. 2017-001554

Dear Ms. Kitchings,

I am attaching electronic copies of the Town of Arcadia Lakes' replies to the Petition for Supersedeas Review and Motion for Clarification in the above-referenced matter.

Thank you,
Amy

--
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