

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

85262

H.W. Funderburk, Jr., Administrative Law Judge

RECEIVED

Case No. 16-ALJ-30-0410-CC

NOV 29 2017

SC Court of Appeals

Wayne's Automotive Center, Inc.....Appellant,

v.

South Carolina Department of Public Safety.....Respondent.

**MOTION TO IMPOSE A SUPERSEDEAS TO STAY MATTERS DECIDED IN
SCALC ORDERS**

For the following reasons, Appellant hereby submits its Motion To Impose A
Supersedeas To Stay Matters Decided Matters Decided in South Carolina Administrative
Law Court (SCALC) Orders.

1. Respondent imposed a 120-day suspension of Appellant from its 2016 Wrecker
Rotation List, effective December 12, 2016. Judge Funderburk stayed the suspension
during the pendency of the matters before that Court by Order Granting Motion For
Extension And Order Extending Stay, filed January 17, 2017, following the parties' prior
agreement to stay it through January.¹ In his Final Order, Judge Funderburk reduced the
suspension to a 60-day suspension. The effect of such stay has been to continue to allow
Appellant's name to rotate up to be called for provision of wrecker and towing services in

¹ Appellant initially appealed the suspension to this Court; however, the Court dismissed it
by Order, filed December 12, 2016, in light of the fact the SCALC had not issued a final
order. Therefore, the suspension was in effect for a 4-day period.

South Carolina by Respondent in particular matters, such as the instant case requiring heavy duty (Class C) towing and recovery services by Appellant following an accident involving a tractor and trailer owned by Premier Transportation and filled with dog food and occurring on the I-26 Savannah River Bridge into Georgia early in the morning of February 9, 2016.

2. Appellant is a South Carolina corporation, which--through its Registered Agent, Walter Jeffrey Corbett--operates an automotive service center, including towing and recovery operations, at its facilities located at 1997 Richland Avenue East, Aiken, SC 29801. Mr. Corbett is also currently serving as President of the Towing And Recovery Association Of South Carolina (TRASC). Appellant has been in business for over 30 years, has over 30 employees, and has significant investments in towing and recovery equipment in use and at stake herein.

3. Respondent South Carolina Department of Public Safety (SCDPS) has three Divisions, including the Highway Patrol Division. SCDPS Director Leroy smith is responsible for administration of its Divisions, and Defendant South Carolina Department of Public Safety is located in Richland County at 10311 Wilson Boulevard, in Blythewood, SC 29016.

4. Appellant as Petitioner below argued and the SCALC agreed Respondent had imposed on Petitioner a sanction; and Respondent, therefore, had the burden of proof by a preponderance of the evidence, consistent with SCALC Rule 29 (B), and related authorities.

5. While the instant appeal from the SCALC falls within the exception in SCACR 241 (b) (11) for an appeal to stay the lower court order automatically, the Court should apply

SCACR 241 (c) (2), since such order is necessary “to prevent a contested issue from becoming moot.”

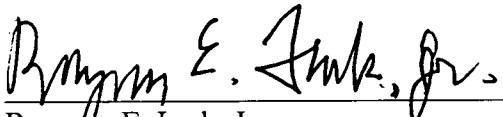
6. This remedy is clearly available under the Court’s Rules, and the Orders challenging by Appellant are clearly appealable. As the Supreme Court has made clear, a writ of supersedeas is only available if there is an appealable order. *State v. Hill*, 314 S.C. 330, 444 S.E. 2d 255 (1994).

7. Appellant’s position is Respondent failed to meet its burden of proof and violated the South Carolina Constitution, its own Regulation, and related statutory and policy provisions by pursuing this matter and imposing a 120-day suspension of Appellant from the Rotation List to commence December 12, 2016, as stayed by Judge Funderburk, absent this Court granting continuation of the stay provided to hold off such suspension during appeal(s).

8. On November 28, 2017, Appellant through its undersigned attorneys advised Respondent through its counsel of record, as listed below, of its intention of filing a Notice of Appeal and this Motion and inquired whether Respondent objected to continuation of the stay in effect through the appellate process. Respondent’s attorneys have not yet responded.

WHEREFORE, Appellant respectfully moves this Honorable Court to grant its Motion and provide continuation of the stay during appeal to avoid contested issues from becoming moot.

AUSTIN & ROGERS, P.A.

By: 
Raymond E. Lark, Jr.
508 Hampton Street, Suite 300
P.O. Box 15907

Columbia, South Carolina 29211
Phone: (803) 256-4000
Fax: (803) 252-3679

Attorneys for Appellant

November 29, 2017

Other Counsel of Record:

alindemann@dml-law.com
Andrew F. Lindemann
Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, SC 29202-8568

marcusgore@scdps.gov
Marcus Gore, General Counsel
South Carolina Department of Public Safety
10311 Wilson Boulevard
P.O. Box 1993
Blythewood, SC 29016

Attorneys for Respondent South Carolina Department Of Public Safety

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Case No. 16-ALJ-30-0410-CC

RECEIVED

NOV 29 2017

SC Court of Appeals

Wayne's Automotive Center, Inc.....Appellant,

v.

South Carolina Department of Public Safety.....Respondent.

PROOF OF SERVICE

I, Raymon E. Lark, Jr., attorney for Appellant herein, hereby certify I have served on Respondent through its counsel via hand delivery and email and co-counsel via email Appellant's Motion To Impose A Supersedeas To Stay Matters Decided In SCALC Orders today, November 29th, as follows:

alindemann@dml-law.com
Andrew F. Lindemann
Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, SC 29202-8568

marcusgore@scdps.gov
Marcus Gore, General Counsel
South Carolina Department of Public Safety
10311 Wilson Boulevard
P.O. Box 1993
Blythewood, SC 29016

Attorneys for Respondent South Carolina Department Of Public Safety


Raymon E. Lark, Jr.

November 29, 2017

Austin & Rogers, P.A.

ATTORNEYS AND COUNSELORS AT LAW

WILLIAM FREDERICK AUSTIN
(1930-2016)

TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
W. MICHAEL DUNCAN*

COLUMBIA OFFICE
CONGAREE BUILDING
508 HAMPTON STREET, SUITE 300
POST OFFICE BOX 11716 (29211)
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 256-4000
FACSIMILE: (803) 252-3679
WWW.AUSTINROGERSPA.COM

OF COUNSEL:
JEFFERSON D. GRIFFITH, III

* ALSO ADMITTED IN N.C.

November 29, 2017

RECEIVED

NOV 29 2017

SC Court of Appeals

VIA HAND-DELIVERY

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

Re: *Wayne's Automotive Center, Inc., Appellant, v. South Carolina Department Of Public Safety, Respondent* With: (1) Notice Of Appeal, Proof Of Service, And \$100 Filing Fee And (2) Motion To Impose A Supersedeas To Stay Matters Decided In SCALC Orders, Proof Of Service, And \$25 Filing Fee, Our File No. 16145

Dear Ms. Kitchings:

Enclosed for filing, please find the original of Appellant's Notice Of Appeal, including a filed copy of each of the two Orders on appeal, Proof Of Service, and \$100 filing fee.

In addition, please find the original and 6 copies of Appellant's Motion To Impose A Supersedeas To Stay Matters Decided In SCALC Orders, a separate Proof Of Service, and \$25 filing fee.

Please accept these documents for filing and acknowledge receipt of the same by file-stamping the extra copies enclosed and returning them to our courier. If you have any questions or need additional information, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely,

AUSTIN & ROGERS, P.A.



Raymond E. Lark, Jr.

Attorneys for Appellant

Enclosures

cc: SCDPS Attorney Andrew F. Lindemann, Esquire, (w/all Encl Via Hand Delivery)
SCDPS Attorney Marcus K. Gore, Esquire, (w/all Encl Via Email)
The Honorable Jana Shealy, SCALC Clerk Of Court (w/Notice of Appeal Encl Via Hand Delivery)