

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 30 2018

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

S.C. SUPREME COURT

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2017 - 000681

Pee Dee Health Care, P.A. Respondent,
v.
Estate of Hugh S. Thompson Petitioner.

RULE 217 MOTION OF PETITIONER

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
pjlaw507@bellsouth.net (Email)

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
JJosey@TurnerPadget.com (Email)

ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Ariail E. King, Esquire
Lewis Babcock, L.L.P.
PO Box 11208,
Columbia, South Carolina 29211

James M. Griffin, Esquire
Griffin Davis Law Firm
P.O. Box 999
Columbia, SC 29202
Attorneys for Respondent

MOTION

As a precaution, the Estate of Thompson hereby moves, pursuant to Rules 217 and 240 of the South Carolina Appellate Court Rules, for leave to argue against the precedent of this Court. This motion is prompted by the Court of Appeals comment suggesting that Petitioner was “mounting, in essence, a direct challenge” to precedent.¹

The Court of Appeals found² the holding of Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722, (2006), prohibitive of the Estate’s claim that its sanctions motion was timely under the Frivolous Civil Proceedings Sanctions Act (the “FCPSA”).³ The Estate believes Russell and Pitman v. Republic Leasing Company, Inc., 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002) are *not* directly controlling here even with regard to the FCPSA because neither involved the jurisdictional window allowed after remittitur. Alternatively, and to the extent the Court determines that the analysis set forth in Russell and Pitman constitute binding precedent, the Estate moves for permission to argue against precedent. Thus, this precautionary motion is made so that the Estate’s oral argument (scheduled for June 14th) can seamlessly mirror the positions already outlined in the Estate’s brief; the Estate is not introducing anything new into the matter.

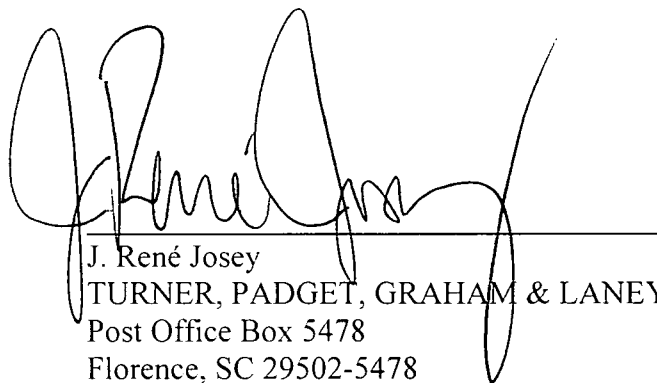
[SIGNATURE PAGE TO FOLLOW]

¹ Notably, oral arguments were never finalized in the Court of Appeals for this sanctions appeal – so no Rule 217 Motion was necessary.

² This finding of the Court of Appeals was, of course, noted in the Estate’s initial Brief to this Court (page 14 footnote 26) and focused upon by Pee Dee Health Care’s Brief in response (page 8).

³ Because Russell expressly noted (footnote 11) the possibility of a different deadline applicable to a Rule 11 sanctions motion, this Rule 217 motion only relates to the FCPSA basis for the Estate’s claim to sanctions.

May 25th, 2018



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2017 - 000681

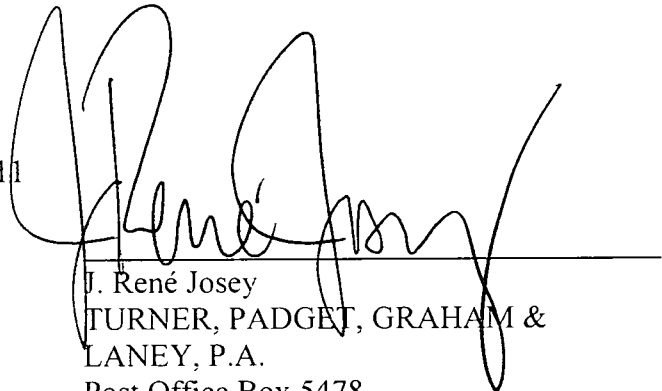
Pee Dee Health Care, P.A.Respondent,
v.
Estate of Hugh S. ThompsonPetitioner.

PROOF OF SERVICE

I certify that I have served the **Motion for Leave** and this **Proof of Service** on Pee Dee Health Care, P.A. by depositing one (1) copy of each in the United States Mail, postage prepaid, on May 25, 2018, addressed to:

James Mixon Griffin
Griffin | Davis
PO Box 999
Columbia, SC 29202

Ariail E. King, Esquire
Lewis Babcock, L.L.P.
PO Box 11208,
Columbia, South Carolina 29211



J. René Josey
TURNER, PADGET, GRAHAM &
LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
JJosey@TurnerPadget.com (Email)
Attorneys for Petitioner
Estate of Hugh S. Thompson