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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

JUL 20 2018

SC Court of Appeals

APPEAL FROM HAMPTON COUNTY AND YORK COUNTY
Court of Common Pleas

Jean Hoefler Toal, Chief Justice of the Supreme Court of South Carolina (Retired),
Acting as Circuit Court Judge

Appellate Case No. 2018-000618

James Coleman Sizemore,
as Personal Representative of the Estate of James Calvin Sizemore, Decedent,
Respondent,

v.

Bowater Paper Mill; E.I. DuPont De Nemours and Company; Foster Wheeler Energy Corporation; Daniel International Corporation; Resolute FP US, Inc.; CBS Corporation; Cleaver Brooks, Inc.; Covil Corporation; Fluor Daniels Services Corporation; Fluor Enterprises, Inc.; General Electric Company; Genuine Parts Company; Georgia-Pacific Consumer Products LP; Honeywell International, Inc.; SCANA Corporation; Riley Power, Inc., and Waste Management of South Carolina, Inc.,
Defendants,

Of which Resolute FP US, Inc. is the Appellant.

AND

Roxanne Falls,
Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,
Respondent,

v.

CBS Corporation; CNA Holdings, Inc.; Celanese Corporation; Cleaver-Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; MP Supply, Inc.; Resolute FP US, Inc.; Union Carbide Corporation; United States Fidelity and Guaranty Company; Uniroyal, Inc.; United Conveyor Corporation,
Defendants,

Of which Resolute FP US, Inc. is the Appellant.

RETURN TO PETITION FOR REHEARING

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Respondents James Calvin Sizemore, as Personal Representative of the Estate of James Calvin Sizemore, Decedent, and Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith, oppose Defendant/Appellant Bowater Paper mill k/n/a Resolute FP US, Inc.'s ("Resolute/Bowater") petition for rehearing. In seeking rehearing, Resolute/Bowater offers no reason for the Court to reconsider and instead simply expresses disagreement with the Court's decision. The Court correctly dismissed the appeal, as a ruling on a motion to stay is not immediately appealable under the well-settled law of this state. The petition for rehearing should therefore be denied.

ARGUMENT

This Court correctly followed *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529 (2006) in holding that the trial court's denial of Resolute/Bowater's motion to stay is not immediately appealable. The interlocutory order in *Edwards* involved the granting of a motion to stay trial pending a resolution from the Federal Communication Commission. *Id.* at 93, 631 S.E.2d at 530.

When the trial court granted the request to stay the matter, the plaintiff appealed. *Id.* In dismissing the plaintiff’s appeal, the Supreme Court specifically held that the order granting the motion to stay “does not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.” *Id.* at 94, 631 S.E.2d at 530.

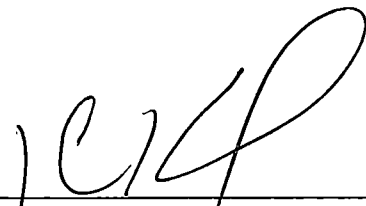
While Resolute/Bowater attempts to distinguish *Edwards* as a case involving the granting of a motion to stay, its argument fails. As the Court noted, *Edwards* expressly overruled *Dill v. Moon*, 14 S.C. 338 (1880), which involved an appeal from the denial of a motion to stay. Resolute/Bowater claims that this case is different because it involves a substantive right, a proposition which it utterly fails to show. Resolute/Bowater retains the right to assert its empty-chair defense. Even if the trial court’s order did involve a substantial right, however, *Edwards* holds that “an order must affect a substantial right *and* prevent a judgment from which an appeal may later be taken in order to be immediately appealed.” *Id.* (emphasis in original). This case does not meet that criteria and is not immediately appealable.

Further, Resolute/Bowater’s motion to stay is moot. There is still no trial date pending in this case. Judge Toal’s trial docket is set for the year and there is no chance this case will be set in 2018. In the meantime, Covil’s appeal is well underway. Covil filed its initial opening brief on July 16, 2018. Thus, Covil’s appeal will almost certainly be resolved before this case is set for trial again.

CONCLUSION

For the reasons set forth herein and in Respondents’ motions to dismiss and reply in support of their motions to dismiss, Respondents respectfully request that this Court deny Resolute/Bowater’s petition for rehearing.

Respectfully submitted,



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Of which Resolute FP US, Inc. is the Appellant.

PROOF OF SERVICE

I herby certify that on the 20th day of July 2017, I served Return to Petition for Rehearing upon counsel for Appellant by mailing same via First Class Mail, postage prepaid, return address marked clearly on the envelope, and addressed as follows:

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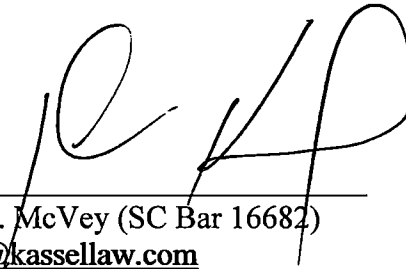
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