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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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SEP 06 2018

The Honorable S. Phillip Lenski, Administrative Law Judge

SC Court of Appeals

Case No. 18-ALJ-17-0216-CC

WKSC, LLC d/b/a Savannah's Gentlemen's Club & Steakhouse, Petitioner,

v.

South Carolina Department of Revenue, Respondent.

**MOTION TO STAY PROCEEDINGS
BEFORE ADMINISTRATIVE LAW COURT**

The Honorable Chip Huggins of the South Carolina House of Representatives District 85 (Lexington County) ("Appellant"), through their undersigned counsel, hereby respectfully moves this Honorable Court for an Order staying the pending hearing before the Administrative Law Court scheduled for September 11, 2018, as well as its judgment, entered on September 5, 2018, while the Appellant appeals the Administrative Law Court's denial of Appellant's Motion to Intervene. On August 29, 2018, the undersigned counsel filed a Notice of Appearance on behalf of Appellant before the Administrative Law Court. (See Exhibit A: Notice of Appearance). The next day, on August 30, 2018, Appellant filed a Motion to Intervene. (See Exhibit B: Motion to Intervene). On September 4, 2018, the Administrative Law Court held a telephone

conference with all counsel for existing parties and Appellant regarding Appellant's Motion to Intervene. On the same day, the parties and Appellant received notice that the Administrative Law Court intended to deny the Motion to Intervene. (See Exhibit C: email from Erika S. Easler). On September 5, 2018, the parties and Appellant received a filed copy of the Order denying Appellant's Motion to Intervene. (See Exhibit D: Order denying Motion to Intervene). On September 6, 2018, Appellant filed a Notice of Appeal regarding the Administrative Law Court's Order denying Appellant's Motion to Intervene. (See Exhibit E: Notice of Appeal). As a result of the Notice of Appeal, Appellant has filed this Motion to Stay the pending proceedings scheduled for September 11, 2018 (See Exhibit F: Notice of Hearing). Pursuant to ambiguity found under S.C. Code Ann. § 1-23-600(H)(5)¹, Appellant has filed a Motion to Stay before this Court and the South Carolina Administrative Law Court, to ensure that Appellant has filed its Motion to Stay before the proper jurisdictional court.

Appellant argues that such Motion to Stay is proper pursuant to Rule 241, SCACR, which provides that "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." With that being said, Rule 241(b), SCACR, provides exceptions to the aforementioned general rule that service of a notice of appeal serves to automatically stay decisions from the lower court. As it specifically relates to this action, Rule 241(b)(11), SCACR, provides that "[t]he exceptions to the general rule are found in statutes, court rules, and case law. Where specific

¹ South Carolina Code Section 1-23-600(H)(5) states that "[a] final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the Court of Appeals."

conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is...[a]ppeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).” S.C. Code Ann. § 1-23-380(A)(2) addresses “[j]udicial review upon exhaustion of administrative remedies” and appears to concern agency decisions. Appellants asserts that this exception does not apply to the facts of this matter considering Appellant is not requesting for the Court to stay the Department Determination of the Department of Revenue² but is requesting for this Court to stay the pending hearing before the Administrative Law Court which is scheduled to be conducted on September 11, 2018. Further, § 1-23-600 (G)(5)³ illustrates which judicial body has jurisdiction to grant a stay before the Administrative Law Court. Therefore, Appellant asserts that the general rule of Rule 241, SCACR, would be the default rule if no exception is found. Accordingly, Appellant asserts that its Motion to Stay should be granted considering Rule 241, SCACR, provides that a “notice of appeal in a civil matter acts to automatically stay matters”.

Notwithstanding the aforementioned, Appellant asserts that it would be extremely prejudiced if the hearing before the Administrative Law Court would continue to proceed on September 11, 2018 without Appellant participating as a Party Protestant in the litigation and the rights afforded to an official party to the litigation before the Administrative Law Court. The subject matter of the Notice of Appeal deals exclusively with the denial of the Motion to

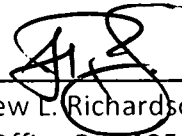
² Appellants asserts that the Department would be *agency* referenced in the exception under § 1-23-600 (G)(5)).

³ Rule 241 provides that § 1-23-600 (G)(5) is the statute that grants the authority to stay a proceeding to either the Administrative Law Court or the Court of Appeals. Upon further review, it appears that the proper statute is § 1-23-600 (H)(5).

Intervene. Thus, Appellant asserts that it is imperative that an appellate review of its right to intervene should be adjudicated prior to the hearing on the subject matter of the litigation before the Administrative Law Court. If the hearing proceeds on September 11, 2018, Appellant would be required to participate in the litigation solely as a Protestant and without the rights Appellant asserts it should be afforded.

For the reasons stated herein, Appellant respectfully requests for this Honorable Court to grant Appellant's Motion to Stay the Proceeding scheduled before the Administrative Law Court on September 11, 2018 until Appellant's appeal of the Order denying Appellant's Motion to Intervene is concluded.

McANGUS, GOUDELOCK & COURIE, L.L.C.



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ATTORNEY FOR APPELLANT

September 6, 2018

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PROOF OF SERVICE

I certify that I have served the Motion to Stay on the Administrative Law Court and all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on the 6th day of September, 2018 addressed as follows:

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Kenneth E. Allen, Esquire
1201 Main Street, Suite 1980
Columbia, South Carolina 29201

Jason P. Luther, Esquire
Patrick A. McCabe, Esquire
South Carolina Department of Revenue
Post Office Box 12265
Columbia, South Carolina 29211-9979

September 6, 2018

Mollie Roche

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Legal Assistant to Andrew L. Richardson, Jr.