

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Amy S. Davis as Personal Representative)
 of the Estate of Utricia Shealy, deceased,)
)
 Plaintiff,)
)
 v.)
)
 Agape Nursing Rehabilitation Center,)
 Inc., Agape Management Services, Inc.,)
 John Doe, Richard Roe Corporation,)
 Jane Doe, and Mary Doe Corporation,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No: 2016-CP-32-00950

ORDER DENYING LEAVE TO
DEPOSIT AND STAY ACCRUAL
OF INTEREST AND EXECUTION

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SC Court of Appeals

This matter came before this court on Defendants’ Motion for Leave to Deposit and Stay the Accrual of Interest and Execution Pending a Ruling on Post-Trial Motions and any Appeal (the “Motions”). In their Motions, Defendants seek leave to deposit the amount of the sum of the judgment and accrued interest with the court and an order recognizing the stay of the accrual of interest and any execution upon the judgment pending the court’s ruling on Defendants’ contemporaneously filed post-trial motions to alter or amend the judgment and for new trial and the final resolution of any appeal that may be initiated in this action by either party.

PROCEDURAL HISTORY

Plaintiff commenced this personal injury action on March 16, 2016, following the purported negligent care and treatment of Utricia Shealy at Defendants’ skilled nursing facility located in West Columbia, South Carolina. In accordance with Rule 68, SCRCP and S.C. Code Ann. § 15-35-400 (2017), Plaintiff filed and served her Amended Offer of Judgment on Defendants on February 1, 2017. Plaintiff’s Offer of Judgment agreed to resolve all claims of the pending action against Defendants for the stated sum. Plaintiff’s Offer of Judgment further advised she

would move the court to award 8% interest computed on the amount of the verdict from the date of the offer if Plaintiff ultimately obtains a verdict at least as favorable as the rejected offer. Defendants did not accept the offer within twenty (20) days and, therefore, rejected the Offer of Judgment¹.

Beginning on October 22, 2018, this matter was tried before a jury in Lexington County, and after five (5) days, the jury rendered a verdict in favor of Plaintiff in the amount of Two Hundred Ninety-Seven Thousand Five Hundred Dollars (\$297,500.00) on October 26, 2018. The court executed the judgment via Form 4 Order on October 26, 2018, which was entered by the Clerk of Court on October 29, 2018.

In addition to the Motions at hand, Defendants filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute, or in the alternative, for a New Trial *Nisi Remittitur* on November 5, 2018. The court has ruled against the Defendants on these post-trial motions, which will facilitate Defendants' ability to perfect an appeal should Defendants so desire.

The issue before this court is whether the court may deny a defendant's request to deposit funds with the court and stop the interest on the judgment from accruing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants argue that Rule 67, SCRPC grants Defendants the right to deposit the amount of the judgment obtained by Plaintiff into the account of the Lexington County Clerk of Court, which purportedly stays the accrual of interest. Defendants assert that because they wish to deposit the entire amount of the judgment, plus all accrued interest as discussed below, then there is no

¹ The court acknowledges that Plaintiff filed a Notice and Motion for Costs and Interest Pursuant to Offer of Judgment. Although a ruling on the aforementioned motion would affect the total award amount at issue, the court will rule on the motion by way of subsequent order due to the differing analysis required.

basis under Rules 62 or 67, SCRCP for the court to deny Defendants' request to deposit these sums. Defendants correctly identify that the pre-judgment interest rate under S.C. Code Ann. § 15-35-400 (2017) is a simple interest rate of eight (8) percent per annum. Therefore, the amount of pre-judgment interest accrued, from February 1, 2017, to October 26, 2018 (a period of 1.73 years), equals \$41,174.00. Additionally, S.C. Code Ann. § 34-31-20(B) (2017) and South Carolina Supreme Court Order 2018-01-04-02 provide that the post-judgment interest rate in the period of January 15, 2018, through January 14, 2019, is eight and one-half (8.5) percent. As a result, the current per diem interest rate on the judgment, beginning on October 27, 2018, equals \$69.28.

The South Carolina Supreme Court has held that “[t]he granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) (internal citations omitted). However, the specific issue as to whether the court may refuse to allow a debtor to deposit money with the court and to stay the accrual of interest via Rule 67, SCRCP has yet to be addressed in the appellate courts of South Carolina. Rule 67, SCRCP, in whole, provides:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, **and by leave of court**, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution upon the check of the clerk of court in favor of the party to whom the order of the court directs.

(emphasis added).

Based on the plain reading of Rule 67, SCRCF, the court determines that a defendant is not entitled to an automatic right to deposit judgment funds with the court to avoid the accrual of the post-judgment interest as mandated in S.C. Code Ann. § 34-31-20 (2017). The notes to Rule 67, SCRCF indicate that the rule is “substantially” similar to the federal equivalent of the same rule. A federal district court determined that Rule 67, FRCP “is a matter committed to the sound discretion of the district court.” Cajun Elec. Power Cooperative v. Riley Stoker Corp., 901, F.2d 441, 445 (5th Cir. 1990); see also Roberts v. Peterson, 292 S.C. 149, 151-52, 355 S.E.2d 280, 281 (Ct. App. 1987) (noting that where a state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive to state courts interpreting the state rule) (internal citation omitted). Based on this persuasive authority, the court finds that Rule 67, SCRCF leaves to the discretion of the trial court to determine whether to permit the deposit of the funds and stay the accrual of interest.

The next issue is to determine the factors to be taken into consideration when deciding whether to allow the deposit. Again, South Carolina case law gives little guidance to the court as to the factors to specifically consider in this determination. However, courts in other jurisdictions have considered a number of factors including: (1) whether the judgment debtor would be able to satisfy the judgment at a later date (see Qwest Corp. v. City of Portland, 204 F.R.D. 468 470 (D.Or. 2001)); (2) whether the depositor is likely to succeed on the merits when the motion to deposit is filed (see Precision Shooting Equip. Co. v. Allen, 646 F.2d 313, 320 (7th Cir. 1981)); and (3) whether judgment debtor denies liability to the judgment (see Tarpey v. Crescent Ridge Dairy, Inc., 47 Mass. App. Ct. 380, 393, 713 N.E.2d 975, 984 (1991)). The court finds these factors persuasive and applicable here.

The court also notes that the intent behind Rule 67, SCRPC is to benefit the judgment creditor in ensuring the funds will be available at the conclusion of a lengthy appellate process. Russo v. Sutton, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995). The court in Russo further provided that “[t]he rationale for the rule is that a judgment creditor’s appeal delays his [or her] right to the judgment, and the debtor, therefore, should not be required to pay interest.” Id., at 443, 454 S.E.3d at 896 (internal citation omitted).

In analyzing the first factor, the court has heard no allegation that Defendants would be unable to satisfy the judgment at a later date. Based on Plaintiff’s insistence that the judgment not be deposited, it is clear that Plaintiff is not concerned about Defendants’ ability to pay the judgment, with interest, upon the conclusion of the post-trial and appellate process. In analyzing the second factor, the court determines that the jury verdict and the court’s denial of Defendants’ post-trial motions speak directly to the merits of the case. In analyzing the third factor, it is clear that Defendants not only contest the amount of the jury verdict but also challenged liability itself for the judgment in their post-trial motions. Further, in contrast to the Russo case, Plaintiff did not ask the court for a judgment notwithstanding the verdict, for a new trial, for a new trial *nisi remittitur*, or appeal the judgment or award amount.

Therefore, denying post-judgment interest by depositing the funds with the Clerk of Court and staying the accrual of the funds would be prejudicial to Plaintiff. Plaintiff will not be penalized and denied post-judgment interest while the appellate court considers Defendants’ case on appeal.

CONCLUSION

THEREFORE, based upon the foregoing, Defendants’ Motions are **DENIED**. As a result, Defendants may not deposit the judgment, and the accrual of interest on the judgment shall continue pursuant to South Carolina law.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Amy S Davis Personal Representative , plaintiff, et al VS Agape
Nursing & Rehabilitation Inc , defendant, et al
Case Number: 2016CP3200950
Type: Order/Other

So Ordered

s/Walton J. McLeod, 2765