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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JAN 07 2019

SC Court of Appeals

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910
Appellate Case No. 2017-001750

Darris Hassell,

Respondent,

V.

The City of Columbia,

Appellant.

**Return to Appellant's Motion to Determine and Enforce
Automatic Stay, or in the alternative, Motion to Lift the Automatic Stay**

The case is before this Court on Plaintiff/Appellant's appeal from a judgment entered on the jury's verdict awarding the Plaintiff damages in the amount of \$200,075, and the denial of the Appellant City's motion for a new trial. After several extensions, the Appellant filed and served its initial brief and designations on January 3, 2019. Meanwhile on December 31, 2018, Counsel for the Respondent received this Court's order of the same date, granting the Appellant's motion to stay proceedings on a post-trial motion pending in the Circuit Court. This was the first notice the Respondent had that the Appellant had even made such a motion. The Respondent has filed a motion asking the Court to reconsider its motion, grant the Respondent's motion for leave to file a return out of time and accept this Return. By this Return, the Respondent seeks to clarify the facts regarding the procedural posture of the matter still pending in the Trial Court and to clarify the law regarding application of the automatic stay to the Plaintiff's post-trial Rule 11 motion.

In the alternative, to the extent that this Court considers that the Rule 11 motion is a matter affected by this appeal subject to the automatic stay, the Respondent moves for the stay to be lifted. In support of this motion, the Respondent submits that the more judicially efficient and just process would be to stay briefing on this appeal, and to remand to allow the Trial Court to rule on Rule 11 motion so that any appeal from the Trial Court's ruling on said motion could be consolidated with this appeal for a full and complete resolution on the related issues in one proceeding, rather than create successive appeals which would delay justice and compensation for the injured Plaintiff.

I. The Clarification of the Procedural History

Upon a jury trial on the merits on the Plaintiff's claims of false arrest, negligent supervision and malicious prosecution, the jury entered a verdict for the Plaintiff on all claims and awarded actual damages in the amount of \$200,075 on May 19, 2017. On May 30, 2017, the Defendant filed a motion for a new trial claiming that the verdict was excessive and complaining about the Plaintiff's closing argument. The Trial Court denied the motion for a Form 4 order filed on June 27, 2017, and the Defendant City of Columbia served a notice of appeal on August 18, 2017. On June 30, 2017, the Defendant filed a post-trial motion under Rule 60(b)(2) on the basis of supposed after-discovered evidence of alleged juror misconduct. The Court of Appeals remanded the case to the trial court to rule on post-trial motion by order August 30, 2017. The Trial Court eventually held a hearing on June 27, 2018, and then denied the Rule 60 motion by written formal order filed July 27, 2018.¹ The Appellant served an amended notice of appeal on July 30, 2018.

¹ On August 1, 2018, Appellant's counsel notified Respondent's counsel that the July 27th Order Denying the City's Motion for a New Trial Based Upon Juror Misconduct had been incorrectly filed because page 9 of the Order had been omitted or was otherwise missing from the filed Order. An Order correcting the omission of page 9 from the July 27th Order was filed on August 22, 2018.

Meanwhile, the Respondent filed a motion for attorney's fees in the trial court on August 16, 2018 based on the facts that the Appellant failed to present any evidence from Appellant's trial counsel in support of the predicate elements for a Rule 60(b)(2) motion as found by the Trial Court in its order of July 27, 2018. On September 17, 2018 the City filed a Return to Respondent's Motion for attorney's fees alleging Respondent failed to consult with Appellant's counsel prior to filing the Motion for Attorney's Fees and Costs. Without waiving any rights or the ability to contest Appellant's allegations of failure to consult, Respondent filed an Amended Motion for Attorney's Fees and sanctions pursuant to SCRCP 11 on September 19, 2018. Thus, to clarify --- Appellant's counsel's assertion that the Motion for Sanctions under Rule 11 was filed nearly "a year" after the judgment is disingenuous because under existing precedent, the Rule 11 motion was not untimely manner. *Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 531, 818 S.E.2d 758, 764 (2018) (HELD: Rule 11 motion is not subject to a 10-day time limit; motion held timely filed even after remittitur issued on appeal). Accordingly, to assert that Respondent's motion was filed "nearly a year" after the original judgment was entered, is immaterial because the Rule 11 motion is founded on the Trial Court's ruling on Rule 60(b)(2) motion that is the subject of this current appeal.

II. Clarification of the Law

The Appellant argues that this Court has "exclusive jurisdiction" over the appeal after the notice of appeal is served pursuant to Rule 205, SCACR, relying upon *PeeDee Healthcare v. The Estate of Thompson*, 424 S.C. 520, 524-525, 818 S.E.2d 758, 760 (2018), and *Holmes v. East Cooper Community Hospital*, 408 S.C. 138, 160-162, 758 S.E.2d 483 495-496 (2014). Respondent submits that the Court's decision in *Holmes* actually supports the proposition that the Trial Court can

Appellant then filed a second amended notice of appeal on August 24, 2018.

still rule on the Rule 11 motion while this appeal proceeds from the order denying the Rule 60(b)(2) motion for a new trial based on juror misconduct.

In *Pee Dee Healthcare*, the defendant filed a motion for sanctions after the remittitur was sent down from the Court of Appeals' ruling on the merits of the action. Although the plaintiff argued that the trial court did not have jurisdiction after the remittitur was issued, the Court held that the Rule 11 motion was timely and affirmed the award of sanctions. In that case, the defendant was forced to proceed through two appeals to achieve full justice.

In *Holmes*, the trial court entered an order granting summary judgment to the defendants on the merits from which the plaintiff appealed. Meanwhile, as soon as the trial court granted summary judgment, the defendants had filed a post-trial motion for sanctions under the Frivolous Civil Proceedings Sanctions Act (FCPSA) which was later granted and plaintiff also appealed from that order. The appeals were consolidated, and in the order affirming the trial court, the Court addressed plaintiff's argument that "to allow the circuit court to determine whether a claim is frivolous on a motion for sanctions under the FCPSA while the order dismissing the case is under appeal creates a conflict with the South Carolina Appellate Court Rules, and causes unnecessary litigation." 758 S.E.2d at 495. The Court agreed with the defendants' position that the circuit court acted within its discretion by hearing the defendants' motion for sanctions even after the plaintiff had filed a notice of appeal from the summary judgment order: "[T]he circuit court acted properly and well within its jurisdiction in hearing Respondents' sanctions motion, even though Appellant already had filed a Notice of Appeal in this case." 758 S.E.2d at 496. In so ruling, the Court stated:

[T]his Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion.

This way, all ancillary matters can be timely heard, and appealed, if necessary, in

an efficient and wholesale manner, and not, as Appellant suggests, in a piecemeal fashion

Id. Thus, it rationally follows that the filing of the amended notice of appeal did not deprive the Trial Court of jurisdiction over the Rule 11 motion when it was filed by this Plaintiff/Respondent in a timely manner under the decision in *Pee Dee Healthcare*.

However, to the extent that this Court should determine that the automatic stay does apply, the Plaintiff/Respondent respectfully requests that the Court lift the stay to allow the Trial Court to rule on the Plaintiff's Rule 11 motion just as it already did by making a remand earlier in this appeal to allow consideration of the Defendant's Rule 60(b) motion. As the Supreme Court noted in *Holmes*, it serves judicial efficiency to allow all ancillary matters to be timely heard, and appealed in a consolidate/wholesale manner, rather than in a piecemeal fashion that drags out litigation for years.

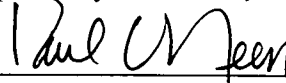
Of note on this point is the time-consuming piecemeal litigation in *Russell v. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003), and *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 9–10, 633 S.E.2d 722, 724 (2006). In a will dispute, the trial court granted summary judgment in favor of the defendants, which order was affirmed as modified on appeal to the Supreme Court. After the remittitur was issued, certain defendants moved to enforce no-contest clauses appearing in the will and revocable trust and sought attorney's fees and costs under Rule 11 and the FCPSA, when the trial court denied the sanctions motions as untimely; eventually the Supreme Court held the sanctions motions were timely and the case was remanded back to the trial court to rule on the sanctions motions. In that case, it took years of litigation and two appeals to resolve that matter.

As currently postured, the same prospect exists. If the Trial Court's order denying the City's Rule 60(b) motion is affirmed at the final resolution of this appeal (including reasonably anticipated petitions for rehearing and certiorari), the underlying basis of the Plaintiff's Rule 11 motion should

be established, but there are other issues that the City could – and no doubt would – raise to challenge the Trial Court’s rulings on the Rule 11 motion in yet another future appeal. Realistically, the Plaintiff could be years delayed in obtaining a final resolution and full compensation on his claims.

Accordingly, for these reasons, the Plaintiff/Respondent asks the Court to reconsider and deny the motion to enforce the automatic stay. In the alternative, the Plaintiff/Respondent respectfully requests that the Court lift the stay to allow the Trial Court to rule, and to hold briefing in this appeal in abeyance until it can be consolidated from any appeal of the order on the Rule 11 motion.

Respectfully submitted,



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Attorney for Respondent

Columbia, South Carolina
January 7, 2019

THE STATE OF SOUTH CAROLINA
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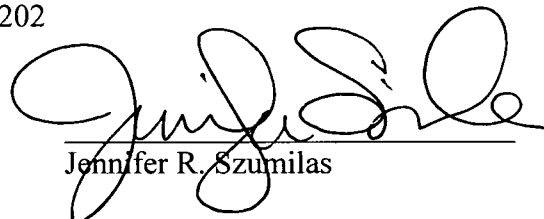
PROOF OF SERVICE

The undersigned hereby certified that on the date indicated below, she served counsel for Appellant with a copy of the *Return to Appellant's Motion to Determine and Enforce Automatic Stay, or in the alternative, Motion to Lift the Automatic Stay and Motion for Reconsideration with Motion for Leave to File a Return Out of Time To Appellant's Motion to Determine and Enforce Automatic Stay* by mailing copies of the same by United States Mail with first Class postage prepaid to the following addresses:

Blake A. Hewitt, Esquire
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202

Teresa A. Knox, Esquire
W. Michael Hemlepp, Jr., Esquire
Office of the City Attorney
PO Box 667
Columbia, SC 29202

January 7, 2019


Jennifer R. Szumilas

Reeves & Lyle

ATTORNEYS AT LAW

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JAN 07 2019

SC Court of Appeals

January 7, 2019

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Darris Hassell v. City of Columbia
Appellate Case No.: 2017-001750

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Return to Appellant's Motion to Determine and Enforce Automatic Stay, or in the alternative, Motion to Lift the Automatic Stay and Motion for Reconsideration with Motion for Leave to File a Return Out of Time To Appellant's Motion to Determine and Enforce Automatic Stay* in connection with the above-referenced matter. Also enclosed is a Proof of Service and check in the amount of . Please return the additional filed copy to me via courier.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or require anything additional. I am,

Very truly yours,



Paul L. Reeves
Attorney at Law

PLR:jrs

Enclosures

Cc: Blake A. Hewitt, Esquire
Teresa A. Knox, Esquire
W. Michael Hemlepp, Esquire