



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.” S.C. 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).

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, SCRCP, the court determines whether a defendant may deposit judgment funds with the court. The notes to Rule 67, SCRCP 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, this court finds that Rule 67, SCRCP leaves to the discretion of the trial court to determine whether to permit the deposit of the funds.

The next issue is to determine factors for considering whether to allow the deposit in the court. Again, South Carolina case law gives little guidance to the court as to any factors to specifically consider in this determination. However, courts in other jurisdictions have considered such 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)); and (2) 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).

In analyzing the first factor, the court has heard no allegation that Defendant would be unable to satisfy the judgment at a later date. Based on Plaintiff's objection and argument that the judgment not be deposited, it is clear that Plaintiff is not concerned about Defendant's ability to pay the judgment upon the conclusion of the appellate process. In analyzing the second factor, it is clear that Defendant not only contested the amount of damages put forth at trial, but also challenged whether it was legally liable for the Plaintiff's injury and resulting damages.

Therefore, denying the accrual of post-judgment interest by depositing the funds with the Court would be inappropriate under the circumstances of this specific case. Plaintiff will not be denied post-judgment interest while the appellate court considers Defendant's case on appeal.

### **CONCLUSION**

**THEREFORE**, based upon the foregoing, Defendant's Motion is **DENIED**.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

**Case Caption:** Diane Connell VS Lexington County Health Services District Inc ,  
defendant, et al  
**Case Number:** 2018CP3201750  
**Type:** Order/Deposit Money

It Is So Ordered

s/ Walton J. McLeod