

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Appellate Case No.: 2020-000320

RECEIVED

Jan 19 2021

SC Court of Appeals

Associated Receivables Funding, Inc.....Respondent,

v.

Dunlap, Inc.; James Stephen Dunlap, an Individual; Dunlap Industrial Coating Services, Inc.;
Dunlap Industrial Services, Inc.; Classic Industrial Services, Inc.; and Mark Beuerle, an
Individual,..... Defendants,

Of Which, Classic Industrial Services, Inc., is.....Appellant.

**AMENDED PETITION FOR THE IMPOSITION OF SUPERSEDEAS BOND
OR, IN THE ALTERNATIVE, LIFT OF STAY**

COMES NOW, the Respondent Associated Receivables Funding, Inc. (“Respondent”),
pursuant to Rule 241(d)(7), SCACR, and hereby requests that the court either order that Appellant
Classic Industrial Services, Inc. give a supersedeas bond to affect the stay of Respondent’s
proceedings to enforce its judgment against Appellant or, in the alternative, order that the stay of
execution be lifted.

BACKGROUND

On or about January 31, 2020, Respondent obtained a judgment against Appellant in the
amount of Three Hundred Twenty-Three Thousand, Seven Hundred Eighteen and 31/100ths
Dollars (\$323,718.31). On or about February 21, 2020 Appellant properly filed its Notice of
Appeal and commenced this pending action. On or about March 3, 2020, the Honorable Alex

Kinlaw, Jr. Ordered that Respondent could levy on a certain account held by Appellant. A true and correct copy of Judge Kinlaw's March 3, 2020 Order is attached hereto as "**Exhibit A**". That same day, Appellant filed a Motion to Stay the Execution of Judgment. A true and correct copy of Appellant's March 3, 2020 Motion is attached hereto as "**Exhibit B**".

On or about March 5, 2020, the Honorable Alex Kinlaw, Jr. Ordered that Respondent's execution of judgment be stay, but did not require that Appellant give a supersedeas bond. A true and correct copy of Judge Kinlaw's March 5, 2020 Order is attached hereto as "**Exhibit C**". On or about March 9, 2020, Respondent filed a Motion to Alter of Amend seeking the lower court impose a supersedeas bond in accordance with Rule 62(d) SCRPC. A true and correct copy of Respondent's March 9, 2020 Motion is attached hereto as "**Exhibit D**". On or about November 9, 2020, the Honorable Alex Kinlaw, Jr. denied Respondent's motion to impose a supersedeas bond. A true and correct copy of Judge Kinlaw's November 9, 2020 Order is attached hereto as "**Exhibit E**".

GROUND FOR PETITION

Rule 62(d) of the South Carolina Rules of Civil Procedure requires Appellant to give a supersedeas bond for the stay issued by the Honorable Alex Kinlaw, Jr., who was not the presiding judge of the lower court trial from which this appeal was taken, to be effective. *See Rule 62(d)*, SCRPC. Despite this requirement under Rule 62(d), SCRPC, no bond has been required or given. *See Exhibit E: November 9, 2020 Order of the Honorable Alex Kinlaw, Jr.*

Respondent, aggrieved by the decision of the lower court to not require the posting of a supersedeas bond, now petitions this Court for a review of that decision in accordance with Rule 241(d)(7), SCACR and seeks for the Court to condition the stay of Respondent's proceedings to enforce its judgment against Appellant on the filing of a bond by Appellant in an amount the Court

deems appropriate in accordance with Rule 241(c)(3), SCACR. Further, as Appellant is an out of state corporation, Respondent would respectfully ask that the supersedeas bond be set at the amount of the judgment, Three Hundred Twenty-Three Thousand, Seven Hundred Eighteen and 31/100ths Dollars (\$323,718.31).

In the alternative, Respondent seeks a review of the lower court's November 9, 2020 decision and a determination that the stay be lifted for its failure to require that a supersedeas bond be given.

CONCLUSION

For the foregoing reasons, Plaintiff would respectfully request that the Court require a supersedeas bond be given and that the amount of the supersedeas bond be set at the judgment amount of Three Hundred Twenty-Three Thousand, Seven Hundred Eighteen and 31/100ths Dollars (\$323,718.31) or, in the alternative, that the stay of execution be lifted.

Respectfully submitted,



Townes B. Johnson, III (SC Bar# 75412)
Townes B. Johnson, III, LLC
P.O. Box 9246
Greenville, South Carolina 29604
PH: (864) 757-4899
Attorney for Respondent

January 18, 2021
Greenville, South Carolina

Exhibit A

EXHIBIT
A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Associated Receivables Funding, Inc.,)	C. A. No. 2018-CP-23-05208
)	
Plaintiff,)	
)	
v.)	MOTION AND ORDER
)	OF LEVY
Dunlap, Inc., James Stephen Dunlap, an)	
Individual, Dunlap Industrial Coating)	
Services, Inc., Dunlap Industrial)	
Services, Inc., Classic Industrial)	
Services, Inc., and Mark Beuerle, an)	
Individual,)	
)	
Defendants.)	
)	

This matter is before me on Motion of Townes B. Johnson III, Attorney for Plaintiff Associated Receivables Funding, Inc. (“Plaintiff”). Plaintiff seeks to levy against a certain bank account of Defendant Classic Industrial Services, Inc. (“Defendant”) to satisfy a Judgment entered against Defendant in favor of Plaintiff in this action on January 31, 2020 in accordance with South Carolina Code Ann. §§ 15-39-410 and 18-9-130.

It appears to the satisfaction of the Court from said Order that Plaintiff remains due and owing by Defendant in the amount of \$323,718.31.

It further appears that Defendant has an account with Bank of America bearing Account No. 8666384373, and, in accordance with South Carolina Code Ann. § 15-39-410, Plaintiff is entitled to levy on Defendant’s account.

IT IS THEREFORE ORDERED that Plaintiff Associated Receivables Funding, Inc. is entitled to levy against Classic Industrial Services account held at Bank of America and bearing Account No. 8666384373 to satisfy said Judgment out of the property of the judgment debtor Classic Industrial Services, Inc.

I SO MOVE:

s/ Townes B. Johnson III
Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO Box 9246
Greenville, South Carolina 29604
PH: (864) 757-4899
tjohnson@sc.legal

Attorneys for Plaintiff

(JUDGE'S SIGNATURE PAGE TO FOLLOW)



Greenville Common Pleas

Case Caption: Associated Receivables Funding Inc vs. Dunlap Inc , defendant, et al

Case Number: 2018CP2305208

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Exhibit B

EXHIBIT
B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Associate Receivables Funding, Inc.,)
)
)
 Plaintiff,)
)
 v.)
)
 Dunlap, Inc., James Stephen Dunlap, an)
 Individual, Dunlap Industrial Coating)
 Services, Inc., Dunlap Industrial)
 Services, Inc., Classic Industrial)
 Services, Inc., and Mark Beuerle, an)
 Individual,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2018-CP-23-05208

**DEFENDANT CLASSIC INDUSTRIAL
 SERVICE'S NOTICE OF MOTION AND
 MOTION TO STAY THE EXECUTION OF
 JUDGMENT**

PLEASE TAKE NOTICE that Defendant, Classic Industrial Services, Inc., (“Classic”), by and through its undersigned counsel, moves pursuant to Rule 62(d) of the South Carolina Rules of Civil, to stay an execution of the judgment entered in this matter on March 3, 2020 at 2:15 pm, ex parte by Judge Alex Kinlaw, Jr..

On July 19, 2016, Plaintiff brought this action seeking One Hundred Eighty-nine Thousand Eight Hundred Twenty-two and 36/100 Dollars (\$189,822.36). On January 31, 2020 this Court entered its Order, awarding judgment against Classic in the amount of Three Hundred Twenty-three Thousand, Seven Hundred Eighteen and 31/100ths Dollars (\$323,718.31) (the “Judgment”). Defendant then filed their Notice of Appeal and Proof of Service on February 21, 2020, Associated Receivables Funding, Inc., Respondent v. Dunlap, Inc., James Stephen Dunlap, an Individual, Dunlap Industrial Coating Services, Inc., Dunlap Industrial Services, Inc., Classic Industrial Services, Inc., and Mark Beuerle, an Individual, of whom Classic Industrial Services, Inc. is Appellant; Appellant Case No. 2020-000320.

S.C. Code Ann. § 18-9-130(A)(1), as amended provides: A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment.” Rule 62(d) of the South Carolina Rules of Civil Procedure, further provides that “[w]hen an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.” Being that an appeal has been filed and is now pending against Plaintiff, it would be in this Court’s discretion to grant a stay of execution in order for the appeal to take place.

A stay of the execution of the judgment is warranted. Classic is a Delaware Corporation, company which is a going concern in operation and authorized to conduct business in the State of South Carolina since April 11, 1988, with assets to satisfy the judgment if it is ultimately found liable for the debt of Dunlap, Inc., after the final decision of appeal. While Classic moves for this stay without a supersedeas bond, it is prepared to provide one should the Court in its discretion Order one.

This motion is supported by the grounds set forth in this Motion, the grounds set forth in Rule 62(d) of the South Carolina Rules of Civil Procedure, and S.C. Code § 18-9-130, and may be supported further by Affidavits.

SMITH, CURRIE & HANCOCK LLP

s/ Matthew E. Cox
Matthew E. Cox, SC Bar No. 16603
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 724-1320
mecox@smithcurrie.com
Attorney for Defendant

March 3, 2020

Columbia, South Carolina

Exhibit C

EXHIBIT
C

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Associate Receivables Funding, Inc.,)
)
)
Plaintiff,)
)
v.)
)
Dunlap, Inc., James Stephen Dunlap, an)
Individual, Dunlap Industrial Coating)
Services, Inc., Dunlap Industrial)
Services, Inc., Classic Industrial)
Services, Inc., and Mark Beuerle, an)
Individual,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2018-CP-23-05208

ORDER STAYING EXECUTION

ORDER

This matter is before the Court on the Defendant’s Motion for Stay of Execution. For good cause shown, the Motion for Stay of Execution is **GRANTED pending the resolution of the Appeal filed with the South Carolina Court of Appeals, File No. 2020-000320.** Each party shall bear their own costs, if any, incurred prior to the entry of this Order.

It is therefore Ordered that the Stay be granted. This Court further directs in its discretion that Defendant Classic Industrial Services, Inc. (file or not file) with the Clerk of Court a Superseadeas Bond in the amount of:

\$ _____

And it is so Ordered this _____ day of March, 2020.

Presiding Judge



Greenville Common Pleas

Case Caption: Associated Receivables Funding Inc vs. Dunlap Inc , defendant, et al

Case Number: 2018CP2305208

Type: Order/Stay of Execution of Judgment

So Ordered

s/Alex Kinlaw, Jr., #2763

Exhibit D

EXHIBIT
D

has the ability to set the amount of the supersedeas bond at less than the judgment amount. *See e.g. South Carolina Code Ann. § 18-9-130.* A non-presiding judge, therefore, who orders a stay of execution, must impose a supersedeas bond for the judgment amount. *Id. and see Rule 62(d) SCRPC.*

The Order, therefore, erroneously fails to impose a supersedeas bond for the judgment amount and should be amended to set the supersedeas bond at the judgment amount of Three Hundred Twenty-Three Thousand, Seven Hundred Eighteen and 31/100ths Dollars (\$323,718.31).

CONCLUSION

For the foregoing reasons, Plaintiff would respectfully request that the Court amend its March 5, 2020 Order to set the supersedeas bond amount at the judgment amount of Three Hundred Twenty-Three Thousand, Seven Hundred Eighteen and 31/100ths Dollars (\$323,718.31).

Respectfully submitted this 9th day of March 2020.

s/ Townes B. Johnson III
Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO Box 9246
Greenville, South Carolina 29604
PH: (864) 757-4899
tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

Exhibit E

EXHIBIT
E

Associated Receivables Funding Inc
PLAINTIFF(S)

Dunlap Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The Plaintiff's motion to amend the Court's order dated March 5,2020 to require the imposition of a supersedes bond by the Defendants is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/09/2020 .

Classic Industrial Services Inc for Brent Hicks M
Brent Hicks M for Classic Industrial Services Inc
Dunlap Industrial Coating Services Inc
Dunlap Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Associated Receivables Funding Inc vs. Dunlap Inc , defendant, et al

Case Number: 2018CP2305208

Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Appellate Case No.: 2020-000320

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v.

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Dunlap Industrial Services, Inc.; Classic Industrial Services, Inc.; and Mark Beuerle, an
Individual,..... Defendants,

Of Which, Classic Industrial Services, Inc., is.....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Associated Receivables Funding, Inc.'s Amended Petition for the Imposition of Supersedeas Bond or, in the Alternative, Lift of Stay in the above-referenced case has been served on all parties of record by emailing a copy of same this 18th day of January 2021, addressed as follows:

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham
16 Wellington Avenue
Greenville, South Carolina 29609
(e) seb@buckingham.legal
Attorney for Appellant



Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO BOX 9246
GREENVILLE, SC 29604
PH: (864) 757-4899
Attorney for Respondent