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Dec 13 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA
CUSTOM CONVERTING, LLC, Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA
CUSTOM CONVERTING, LLC, Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH
WATER SYSTEMS, INC.,Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA
COMEAU-SHIRLEY are the.....Appellants

and

DAVID WILSON is the.....Respondent.

**INITIAL REPLY BRIEF OF APPELLANT
CAROLINA CUSTOM CONVERTING, LLC**

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STATEMENT OF PROCEDURAL HISTORY

For clarity, CCC provides the following sequence of events. The Supreme Court's Modified Opinion was entered by the Greenville County Clerk of Court on June 26, 2020. Prior to its entry, on June 22, 2020, Mr. Gandis (as the LLC Manager of CCC) sent Mr. Wilson a letter offering to redeem Mr. Wilson's distributional interest pursuant to the Modified Opinion. (June 22, 2020, Letter to David Wilson). The letter sought a structured buy-out that involved a lump sum, followed by a payment plan. (*Id.*) Mr. Wilson did not respond to the June 22, 2020, letter.

On July 13, 2020, CCC filed a Motion for a Remand Status Conference and Ruling Regarding the Time to Complete Purchase of Distributional Interest. (Motion for Remand Status Conference). A hearing on the motion was not scheduled until September 21, 2020. (Transcript Sept. 21, 2020). Prior to the hearing, on September 2, 2020, Mr. Wilson filed a Motion to Lift Stay and To Execute on Supersedeas Bond.

Following the September 21, 2020, hearing, the court issued an order denying CCC's request to implement a structured buy-out of Wilson's distributional interest. CCC then filed a timely Rule 59(e), SCRCP Motion to Reconsider or Amend. The court denied CCC's Rule 59(e) Motion, and CCC filed a timely Notice of Appeal of the order. During this time, CCC instructed the bond company to issue the full payment amount to Mr. Wilson, and Mr. Wilson was paid the full amount of his distributional interest on or about November 1, 2020.¹

¹ The passing reference in Mr. Wilson's Initial Appeal Brief regarding the timeliness of the bond is lacking in context. The Buy-Out Order was entered on January 9, 2015, and the Bond Order on July 24, 2015. Following issuance of the Bond Order, Gandis and Shirley asked this Court to overrule the bond requirement by arguing that the order was not a money judgment. The supersedeas bond was obtained and filed after appellate litigation related to the same concluded.

ARGUMENTS

1. THE ARGUMENT OF WHETHER POSTING OF A BOND STAYS POST-JUDGMENT INTEREST HAS BEEN PRESERVED FOR APPELLATE REVIEW

The posting of a supersedeas bond stays the enforcement of a judgment and the accrual of any post-judgment interest. This argument has been preserved for appellate review. The South Carolina Supreme Court has recognized “the long-established preservation requirement that the [Appellant] generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422 (2000). Appellants raised this argument and Judge Simmons ruled upon it by entering the order dated June 17, 2020. (June 17, 2020 Order).² Accordingly, whether posting a supersedeas bond stays post-judgment interest was raised and ruled upon by the trial court. As a result, this issue has been preserved for appellate review.

Mr. Wilson’s attempt to convert this issue into a timeliness issue is a red herring. Appellants CCC, Gandis, and Andrea Comeau-Shirley filed a timely Rule 59(e), SCRCP Motion to Judge Simmons’ Order dated May 4, 2021. The lower court ruled on that motion in the June 17, 2020, Order. The argument that posting a supersedeas bond stays post-judgment interest was an additional argument advanced in support of Appellants’ timely 59(e) Motion, hence the filing of the *Supplemental* Rule 59(e) Motion submitted by Gandis and Shirley. In addition, CCC’s position that posting a supersedeas bond stays post-judgment interest is an argument that supports the single

² In the June 17, 2021, Order, Judge Simmons stated, “[t]he substance of the argument is that by posting an appeal bond, interest on a judgment no longer accrues. An appeal bond suspends enforcement of a judgment but does not, in the court’s opinion, *suspend accruing of statutory interest.*” (emphasis added).

issue of whether the lower court erred in awarding post-judgment interest. Appellants have appealed that ruling, and the issue has been preserved for appellate review.³

Wilson's reliance on the *Stevens v. Wilkinson of S.C., Inc.* case is misplaced because, unlike the present case, that case involved an issue that was not ruled upon by the lower court. The court in *Stevens* found that the Court of Appeals erred in considering an issue that was raised in a party's Rule 59(e) Motion, but that the circuit court did not rule on. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567 (2014).

Mr. Wilson's argument that post-judgment interest is mandatory is also incorrect. In *Sears v. Fowler*, the Supreme Court stated that: "Despite the mandatory tenor of the statutory language, the statute does not automatically apply in every case." 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987) (citing an example of an exception to the post-judgment interest statute).

Mr. Wilson's argument that posting a supersedeas bond pursuant to Rule 241, SCACR, and §18-9-130 cannot suspend the accrual of post-judgment interest under §34-31-20 is likewise incorrect. It is undisputed that depositing the amount of a judgment into Court stays post-judgment interest. *Sears*, 293 S.C. at 44 n.1, 358 S.E.2d at 575 n.1. Under the argument advanced by Mr. Wilson's interpretation of §34-31-20, this rule of law cannot exist. It does. As a result, Mr. Wilson's argument should be rejected.

³ "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). These requirements have all been met in the present case.

2. **CALHOUN DOES NOT APPLY WHEN THE JUDGMENT DEBTOR HAS CHANGED DURING THE COURSE OF AN APPEAL**

The Supreme Court's decision in *Calhoun* does not answer the question before the Court. The specific issue that the Court addressed in *Calhoun* applied to the distinctly different situation where the judgment debtor remains the same, but the judgment amount is altered. Here, a new judgment was issued because the judgment debtor changed while the judgment amount remained the same. It is undisputed that the Court in *Calhoun* did not address the fundamental question at issue on this appeal: *what is the date that post-judgment interest accrues from when a new judgment names a new judgment debtor?* The *Calhoun* decision did not create a "bright-line" test applicable to the circumstances of this case because it did not answer the question to be determined by this Court. *See Calhoun v. Calhoun*, 339 S.C. 96, 99, 529 S.E.2d 14, 3 (2000).

Mr. Wilson incorrectly claims that under the Modified Opinion, "CCC had been in possession of \$347,863.23 belonging to Wilson since at least January 9, 2015." (Respondent's Brief, at 9). Similarly, Mr. Wilson wrongly concludes that after posting a supersedeas bond, "Appellants keep possession of its funds and have use of those funds during the entirety of the appeal." (Respondent's Brief, at 6). That is simply not how the process works. To obtain the supersedeas bond, Mr. Gandis had to pledge collateral to cover the full amount of the bond. Mr. Wilson cites no authority for his opinion regarding a supersedeas bond, and he cannot because the argument has no basis in fact or law.

In an effort to make his "use of capital" argument appear convincing, Mr. Wilson cites two cases for the general proposition that post-judgment interest exists to penalize the judgment debtor for his use of the judgment creditor's money. (Respondent's Brief, at 9). First, those two cases do not address the added factual feature of a supersedeas bond. Second, and just as important, the argument only highlights CCC's position that it should not be penalized for not paying a judgment

it never had an obligation to pay. The lower court imposed a \$208,930.15 penalty on CCC in post-judgment interest even though CCC did not have a judgment against it while the post-judgment interest accrued.

3. THE LOWER COURT ERRED IN REVERSE PIERCING THE CORPORATE VEIL BY REQUIRING CCC TO PAY POST-JUDGMENT INTEREST FOR AN ORDER THAT HAD BEEN ENFORCED AGAINST INDIVIDUALS

Ordering CCC to pay post-judgment interest that had accrued before entry of the Supreme Court's judgment making CCC liable for the buy-out was an improper exercise of reverse veil piercing. Mr. Wilson's argument that individual members control CCC or that corporate money would be going directly into certain individuals' pockets is unavailing. The South Carolina Uniform Limited Liability Company Act expressly recognizes that a limited liability company is a corporate entity distinct from its owners and/or members. S.C. Code Ann. § 33-44-201 (stating the law is that "a limited liability company is a legal entity distinct from its members"). Mr. Wilson offers no argument in response to the fact that the lower court order caused a reverse piercing of the corporate veil because he cannot. The lower court's post-judgment order was in error. CCC should not be obligated to pay post-judgment interest on a six-figure payment it had no obligation to pay while the interest accrued.

CONCLUSION

For all the reasons stated herein, Appellant CCC respectfully requests that this Court find that Wilson is not entitled to post-judgment interest.

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Dated: December 13, 2021

Respectfully submitted,

s/ Burl F. Williams

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December 13, 2021

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

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Dec 13 2021

SC Court of Appeals

Re: *David Wilson, et al. v. John Gandis, et al., C/A No. 2012-CP-23-02887,
Of Whom Carolina Custom Converting, LLC, John Gandis, and Andrea Comeau-
Shirley are the Appellants and David Wilson is the Respondent*

Appellate Case No. 2020-001587

Dear Ms. Kitchings:

Pursuant to Rules, 208 & 209, SCACR, enclosed please find Appellant Carolina Custom Converting, LLC's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal.

Please contact my office with any questions.

Sincerely,


Burl F. Williams

CC:

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