



No. 2010-0011, submitted on the record on November 9, 2010, and is presently under advisement by the panel.

Pursuant to this Court’s Internal Operating Procedures, this Court may, on motion of a party or *sua sponte*, summarily affirm, reverse, or vacate a decision of the Superior Court without full briefing by the parties if it appears that the appeal presents no substantial question. *See* V.I.S.C.T. I.O.P. 9.4. Numerous courts—including the United States Supreme Court—have held, under long established precedent, that while a trial court may possess jurisdiction to grant a supersedeas bond, it lacks any authority to release or otherwise modify the supersedeas bond after a notice of appeal has been filed, and that any order by a trial court purporting to alter the supersedeas bond requirement while the case is pending in an appellate court is null and void for lack of subject matter jurisdiction. *See, e.g., Draper v. Davis*, 102 U.S. 370, 26 L.Ed. 121 (1880); *In re Federal Facilities Realty Trust*, 227 F.2d 651, 654-55 (7th Cir. 1955) (collecting cases); *Lackey v. Whitehall Corp.*, Civ. A. No. 85-2639-S, 1989 WL 59053, at \*1 (D. Kan. 1989) (“[T]his court lacks jurisdiction to alter the stay or supersedeas bond. After we approved defendant’s supersedeas bond, all matters in this case were outside this court’s jurisdiction and solely within the jurisdiction of the Tenth Circuit Court of Appeals.”). Importantly, while Supreme Court Rule 8(b) authorizes the Superior Court to approve a supersedeas bond, neither Rule 8(b) nor any other provision in this Court’s Rules of Appellate Procedure authorize the Superior Court to take any other action with respect to a supersedeas bond after the bond has been approved. *See Federal Facilities Realty Trust*, 227 F.2d at 655 (“When the supersedeas becomes effective, the appellant obtains thereby a valuable right to have the status quo preserved until his appeal is heard and decided . . . . [T]he trial court’s reserved power is exhausted when the court approves a supersedeas bond and the stay becomes effective. A different interpretation

would have the effect of leaving a litigant's rights in a supersedeas ever subject to the jurisdiction of the trial judge until the appeal is finally decided.”).

In her response, Golden states that, on June 14, 2011, the Clerk of the Supreme Court issued a mandate confirming this Court's June 23, 2009 dismissal of a prior appeal brought by Simpson, which had been docketed as S.Ct. Civ. No. 2007-0138.<sup>1</sup> Apparently, Golden—and the Superior Court—interpreted the June 14, 2011 mandate in S.Ct. Civ. No. 2007-0138 as a dismissal of Simpson's appeal in S.Ct. Civ. No. 2010-0011. However, the June 14, 2011 mandate expressly bears the case number S.Ct. Civ. No. 2007-0138, and is accompanied with a copy of the June 23, 2009 Order in that case, which had been entered more than six months before the Superior Court entered its January 27, 2010 Judgment and Simpson filed the notice of appeal docketed as S.Ct. Civ. No. 2010-0011. Moreover, this Court takes judicial notice of the fact that the dockets for all of its pending cases are publicly available electronically on its website, and that the docket for S.Ct. Civ. No. 2010-0011—which may be accessed at <http://public.visupremecourt.org/public/caseView.do?csIID=210>—identifies that appeal's present status as “Under Advisement by Panel” and further indicates that no final judgment has yet been entered.

Here, it is clear that neither the Superior Court nor Golden made any effort to ascertain the actual status of S.Ct. Civ. No. 2010-0011, and apparently ignored the fact that the June 14, 2011 mandate bore a completely different case number and was accompanied by an order entered before S.Ct. Civ. No. 2010-0011 had even been initiated. Under these circumstances, the

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<sup>1</sup> Pursuant to Supreme Court Rule 32(a), “[t]he mandate of the Supreme Court shall issue twenty-one days after the entry of judgment unless the time is shortened or enlarged by order.” It is not clear why the Clerk of the Supreme Court waited more than two years to issue the mandate in S.Ct. Civ. No. 2007-0138. However, the Clerk of the Supreme Court is advised that, pursuant to Rule 32(a), the mandate must be issued *exactly* twenty-one days after entry of judgment unless the time is shortened or extended by court order or is automatically tolled by the filing of a timely petition for rehearing.

Superior Court clearly lacked jurisdiction to enter its July 25, 2011 and August 8, 2011 Orders or to otherwise modify the supersedeas bond Golden posted to stay the execution of the January 27, 2010 Judgment that is the subject of the appeal in S.Ct. Civ. No. 2010-0011. Consequently, this Court is satisfied that this appeal represents no substantial question and is one of the rare cases in which summary action without full briefing is warranted. Accordingly, it is hereby

**ORDERED** that the Superior Court's July 25, 2011 and August 8, 2011 Orders are **VACATED** for lack of subject matter jurisdiction; and it is further

**ORDERED** that the parties and the Superior Court are **ADVISED** that, so long as the appeal in S.Ct. Civ. No. 2010-0011 remains pending in the Supreme Court, the Superior Court lacks jurisdiction to modify the supersedeas bond requirement set in its March 10, 2010 Order; and it is further

**ORDERED** that Appellant's August 31, 2011 and September 16, 2011 motions are **DENIED AS MOOT**; and it is further

**ORDERED** that copies of this Order be served on the parties.

**SO ORDERED** this 19th day of September, 2011.

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**