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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CASE NO. 19-0743

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NORTHSTAR ENERGY CORPORATION,

Defendant Below, Petitioner

(On Appeal From Harrison )  
(County Circuit Court )  
(Business Court Division )  
(Civil Action No. 15-C-405-3)  
(Honorable Paul T. Farrell )

RILEY NATURAL GAS COMPANY,

Plaintiff Below, Respondent

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PETITIONER'S REPLY BRIEF

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Stephen L. Thompson, Esquire  
W. Va. State Bar No. 3751  
Barth & Thompson  
Post Office Box 129  
Charleston, WV 25321  
E-mail: [sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com)  
Telephone: (304) 342-7111  
Facsimile: (304) 342-6215

COUNSEL FOR PETITIONER

Dated: January 21, 2020

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF  
WEST VIRGINIA:**

**COMES NOW** the Petitioner and for its Argument in Reply to those set forth in the *Brief of the Respondent* would say and assert unto the Court as follows<sup>1</sup>:

**I. STATEMENT OF THE CASE**

**A. STATEMENT OF THE RELEVANT FACTS**

Petitioner believes that Respondents “Factual Background” fails to set forth the underlying facts which relate to the issues on appeal.

The matters relating to the financial condition of the Petitioner as proffered by Respondent is not a matter which is supported by any evidence, and is speculative, at best. As such the Respondent’s “Factual Background” must be disregarded by this Court. The Court should refer to the “Statement of the Relevant Facts” appearing in Petitioner’s Brief.

**II. SUMMARY OF THE ARGUMENT**

The July 16, 2019, *Order* of the Circuit Court requiring the Petitioner to post an appeal bond in the full amount of the judgment of \$5,538,351.37 (hereinafter the “*Bond Order*”) was entered *after* the Petitioner filed its *Notice of Appeal* to this Court as Case Number 19-0535. Petitioner believes the Circuit Court was without jurisdiction to enter the *Bond Order*.

The entry of the *Bond Order*, if this Court were to enforce its provisions, violates the Petitioner’s rights to Due Process, and was an abuse of discretion by the Circuit Court. The terms of the *Bond Order* evidence a misunderstanding by the Circuit Court of both the

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<sup>1</sup> The Petitioner is filing this *Reply Brief* only to reply to Parts IA., the Statement Of The Relevant Facts, Part II, Summary Of The argument, Part III, Statement Regarding Oral Argument and Part IV, Argument, of the *Brief of the Respondent*, Part B, C, and D.

underlying facts and the legal principles involved and this Court must decide this appeal and that pending in Case Number 19-0535 upon their merits.

### **III. STATEMENT REGARDING ORAL ARGUMENT**

This matter should be heard by this Court in conjunction with argument on Case Number 19-0535 because of the Due Process and Equal Protection issues which are presented by this Appeal.

### **IV. ARGUMENT**

#### **A. The Governing Standard Of Review On Appeal.**

The Petitioner accepts "Respondent's Statement of the Standard of Review".

#### **B. The Terms Of The *Bond Order* Impair Petitioner's Due Process Rights.**

Respondent is simply wrong to contend that Petitioner's right to appeal is not affected by the Order requiring it to post bond.

Although Respondent contends otherwise, the principles enunciated in *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) should govern this Court's decision. The Circuit Court's Order requiring the Petitioner to post a bond in the amount of \$5,538,351.37 fits squarely within the United States Supreme Court's framework that finds such limitations upon resort to the courts for relief to be violative of Due Process. *Id.*, 401 U.S. at 380. That *Boddie* was a domestic relations case does not alter the governing principles whereby restrictions conditioning access to the courts are impairments to a litigant's Due Process rights.

In the instant case, that restriction was the trial court's conditioning of the Petitioner's right to appeal upon the posting of an appeal bond in an excessive amount. Petitioner's fundamental right to appeal what it believes to be an erroneous summary judgment order

rendered against it is impaired by the *Bond Order* should this Court choose to enforce its draconian provisions.

Respondent contends that this Court failed to address the lack of an appeal bond in *Rosier v. Rosier*, 162 W.Va. 902, 253 S.E.2d 553 (1979). Petitioner believes Respondent has missed the point.

The significance of this Court's reviewing and rendering its decision in *Rosier* means that the financial inability of a party to post an appeal bond, just as Petitioner is unable to do, did not prevent this Court from considering the matter on its merits. *Id.*, 162 W.Va. at 904, 253 S.E.2d at 554.

Respondent's assertion that an appeal bond is a means of preserving the status quo, and protects the winning party from possible loss, could just as easily be achieved by the simple docketing of a judgment lien. Moreover, such docketing would not jeopardize the appeal rights of the losing party.

There can be no doubt that, in our justice system, any provisions which restrict, limit or condition a party's rights to appeal an adverse decision cannot be allowed. Such rights are no less fundamental in the context of general civil litigation than is the access to the domestic relations court discussed in *Boddie* and *Rosier*, *supra*.

This Court must reverse the *Bond Order* and proceed to decide the matters in Case Number 19-0535 which is pending between these parties.

**C. The Entry Of the *Bond Order* Was an Abuse of Discretion.**

The Circuit Court's entry of the *Bond Order* which conditioned Petitioner's right to appeal the adverse decision and money judgment rendered against it was an abuse of discretion, and demonstrated the trial court's confusion on the issues.

Taking the contentions in the Respondent's *Brief* as true makes the trial court's entry of the *Bond Order* into even more of an error.

The Respondent's Brief makes it clear that **Respondent** sought a stay as a means of seeking a bond from the Petitioner when the Petitioner itself did not do so, and Respondent did not seek a stay. App. 01-05.

The rule relied upon by the Circuit Court, West Virginia Rule of Civil Procedure 62(i), applies to those situations where a stay of execution or enforcement of the judgment has been sought. Yet, the Petitioner did not seek any such stay, and the Circuit Court's reliance upon this rule is simply misplaced.

Moreover, such proceedings raise questions as to why the Respondent – as the prevailing party receiving a money judgment – would be seeking a stay against it being allowed to enforce its own judgment.

The only possible answer is that Respondent wanted an appeal bond from Petitioner. Why the Respondent did not simply seek an appeal bond under the provisions of West Virginia Code §58-5-14(b) is unclear.

Given the size of the bond required, the actions of the Circuit Court in entering the *Bond Order* constitutes an abuse of discretion, must be reversed by this Court, and this Court should proceed to decide the issues pending before the Court in Case Number 19-0535.

**D. The Entry of the *Bond Order* Exceeded the Circuit Court's Jurisdiction.**

Respondent's argument that Petitioner is mistaken in its contention that the Circuit Court exceeded its jurisdiction when entering the *Bond Order* is, itself, wrong.

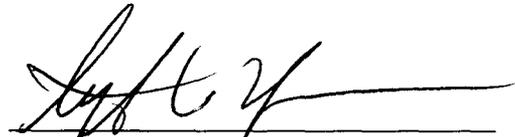
Respondent has not either distinguished, or provided this Court contrary authority, to those cases cited by the Petitioner in its initial *Brief*. Although Respondent argues otherwise, this Court must accept those cases as the governing authority on Petitioner's argument.

Therefore, this Court should reverse the terms of the *Bond Order* and proceed to decide the issues pending in Case Number 19-0535.

#### V. CONCLUSION

This Court should reverse the terms of the *Bond Order* and remand the same to the Circuit Court following the decision in Case Number 19-0535.

NORTHSTAR ENERGY CORPORATION  
By Counsel



Stephen L. Thompson, Esquire  
W. Va. State Bar No. 3751  
Barth & Thompson  
Post Office Box 129  
Charleston, WV 25321  
Telephone: (304) 342-7111  
Facsimile: (304) 342-6215  
sthompson@barth-thompson.com

Counsel for the Petitioner