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Jul 05 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337 (Erroneously assigned Appellate Case No. 2022-000784)
Trial Court Case Nos. 2016-CP-07-01919, 2019-CP-07-01253 and 2019-CP-07-01294

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak,Appellant,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
of Paul Brandon Barringer II, J. Randolph Light Jr., Merrill B. Light as
Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
Trust, Defendants.

Of whom

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
Of Paul Brandon Barringer II, Merrill B. Light as Putative
Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
And Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
Trust, are Respondents,

--and--

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent.

**REPLY TO RETURN TO APPELLANT'S
PETITION TO REINSTATE APPEAL**

INTRODUCTION

Appellant Hampton Luzak (hereafter Ms. Luzak) filed a Supplemental Notice of Appeal on June 1, 2022 in Appellate Case No. 2021-001337, seeking to add the appeal of an additional trial court order (an order to bifurcate) to the existing appeal in Appellate Case No 2021-001337, which appeals a final order of summary judgment for two causes of action concerning Respondent Barringer's power to appoint certain voting stock. Ms. Luzak's addition of the appeal of the bifurcation order to the appeal of the final summary judgment order in Appellate Case No 2021-001337, pursuant to her Supplemental Notice of Appeal, is timely and proper.

As discussed in more detail below, the underlying trial court case has been designated as complex, and a number of trial court orders granted in favor of Respondents at different times are on appeal, with many more issues remaining to be decided at the trial level.¹ The appeals are:

1. A separate appeal of a bifurcation order by Judge Mullen issued on December 30, 2020. In Appellate Case No. 2021-000159, this Court determined that the bifurcation order was not immediately appealable by itself. The Supreme Court agreed.
2. A separate appeal of final orders subsequently issued by Judge Price on June 7, 2022, and July 6, 2022.² In Appellate Case No. 2021-000837, Ms. Luzak, pursuant to § 14-3-330(1), properly and timely appended her appeal of the bifurcation order to her appeal of these final orders.

¹ Respondents chose to seek these summary judgment orders at different times before different judges. It is not Ms. Luzak's fault that the appellate posture in this complex case is disjointed.

² Judge Price denied Ms. Luzak's Motions to Reconsider these orders on July 13, 2021 and August 4, 2021. These orders dealt with only a few of the numerous causes of action in the underlying complex case.

3. A separate appeal of the final order subsequently issued by Judge Bonds on August 8, 2021.³ This is the final order being appealed in Appellate Case No. 2021-001337, currently before this Court.
4. On April 29, 2022, the Supreme Court certified Case No. 2021-000837 and appeared to vacate the underlying trial court orders for lack of jurisdiction and then “dismissed” the appeal “as moot.” Ms. Luzak has filed a motion to alter or amend that Order, and Respondents have filed petitions for rehearing. The Supreme Court has not yet responded to the motion and petitions.
5. Because it appears that, by vacating the underlying trial court orders and dismissing the appeal in Case No. 2021-000837, the Supreme Court may have deprived Ms. Luzak’s express right pursuant to § 14-3-330(1), to append her appeal of the bifurcation order to the appeal of a final order, as she did with respect to the final orders in Case No. 2021-000837.
6. Consequently, Ms. Luzak filed a Supplemental Notice of Appeal with this Court in this Appellate Case No. 2021-001337 to timely and properly append her appeal of the bifurcation order to her existing appeal of the final trial court order in this Case No. 2021-001337, pursuant to § 14-3-330(1). Unless this Court allows her to do so, she will be without the appropriate opportunity to append her appeal of the bifurcation order to an existing appeal of a final order pursuant to § 14-3-330(1). In effect, Ms. Luzak seeks to transfer her existing appeal of the bifurcation order, permitted by § 14-3-330(1) to be heard in Appellate Case No. 2021-000837, from her appeal of the

³ Judge Bonds denied Ms. Luzak’s Motion to Reconsider this order on October 8, 2021. This order dealt with only two of the numerous causes of action in the underlying complex case.

final trial court orders in Case No. 2021-000837, vacated by the Supreme Court on April 29, 2022, to her appeal of another final trial court order in this Case No. 2021-001337.

CASE HISTORY AND ARGUMENT

Appellant, Ms. Luzak, filed a Supplemental Notice of Appeal on June 1, 2022 in Appellate Case No. 2021-001337, seeking to add an appeal of an additional trial court order to the existing appeal in Appellate Case No 2021-001337. This was done because of the Supreme Court's order dated April 29, 2022, which (1) certified Appellate Case No. 2021-000837 from the Court of Appeals to the Supreme Court for decision, and (2) simultaneously vacated the trial court's orders. After vacating the trial court's orders, the Supreme Court "dismissed" the remainder of Appellate Case No. 2021-000837 "as moot." *Id.*

Ms. Luzak filed a motion to alter or amend with the Supreme Court as to its dismissal of Appellate Case No. 2021-000837 on May 26, 2022, asking the Supreme Court to confirm that it vacated all the trial court orders being appealed in Appellate Case No. 2021-000837. There were four (4) orders on appeal in Appellate Case No. 2021-000837:

- (a) an order appealing CFRC's motion to intervene and dismiss causes of action;
- (b) an order granting Merrill Light's motion for summary judgment on certain causes of action;
- (c) an order of June 7, 2021 requiring that trial on August 30, 2021 "shall proceed on the bifurcated claims only;" and
- (d) Judge Mullen's order of bifurcation of December 30, 2020.

Opposing parties filed Petitions for Rehearing the same day, and the Supreme Court has not yet issued a ruling on the pending motion and petitions.

One of the orders on appeal in Appellate Case No. 2021-000837 was Judge Mullen’s order of December 30, 2020 that bifurcated certain causes of action to be tried “first and prior to” any other portion of the pending cases. Despite opposing counsel’s suggestion that Ms. Luzak “attempted to bootstrap” her appeal of that order to the other, immediately appealable orders as part of Appellate Case No. 2021-000837, in fact, that is specifically what S.C. Code Ann. § 14-3-330(1) permitted her to do, and under the circumstances, required her to do, or the appellate review of that order could be lost. Ms. Luzak’s appeal of the bifurcation order as part of Appellate Case No. 2021-000837 was indeed appropriate under § 14-3-330(1), regardless of any separate appellate history of the bifurcation order in Appellate Case No. 2021-000159.

Section 14-3-330(1) provides for immediate appellate jurisdiction for several different categories of orders, including those interlocutory orders that could not have otherwise been appealed at the time they were issued:

- (1) Any intermediate judgment, order or decree in a law case involving the merits. . . and final judgments in such actions; provided *if no appeal be taken until final judgment is entered* the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

Id. (emphasis added.)

Because Ms. Luzak did timely appeal the December 30, 2020 order at the time it was issued, this Court assigned the appeal Case No. 2021-000159, and directed counsel to specifically brief the issues of the immediate appealability of the order. Ultimately, by order dated August 19, 2021, the Court of Appeals issued its final order dismissing the appeal of the

December 30, 2020 order.⁴ In the interim, however, the trial court issued several additional orders that were final, and an immediate appeal of those orders was filed and served on August 5, 2021, to which this Court assigned Appellate Case No. 2021-000837.

This appeal also included an appeal from the December 30, 2020 order as permitted by § 14-3-330(1), and as a result, the appeal of the December 30, 2020 order was timely filed and served upon the Respondents as required by Rule 203(b)(1), SCACR.⁵ The appeal of the December 30, 2020 order was ripe for decision by this Court when the Supreme Court certified Appellate Case No. 2021-000837 and addressed the merits of the appeal by order dated April 29, 2022.⁶

Far from “bootstrapping” her appeal from the December 30, 2020 order to Appellate Case No. 2021-000837, Ms. Luzak did exactly what she was required to do. “[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation.” *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991). When the Supreme Court certified Appellate

⁴ Ms. Luzak petitioned the Supreme Court for a petition for writ of certiorari to review the Court of Appeals’ decision dismissing the appeal in Appellate Case No. 2021-000159. Contrary to opposing parties’ assertion that the Supreme Court denied Ms. Luzak’s Petition for writ of Certiorari, the Supreme Court expressly addressed the merits of Ms. Luzak’s Petition for Writ of Certiorari to review the Court of Appeals’ dismissal of Appellate Case No. 2021-000159. By an order in Appellate Case No. 2021-001022 also dated April 29, 2022, the Supreme Court actually denied opposing parties’ motion to dismiss Ms. Luzak’s Petition, ruling instead on the merits of the Petition and agreeing that the Court of Appeals’ finding that the appeal of the December 30, 2020 order, standing alone, was in fact, not immediately appealable. Though the Supreme Court used verbiage that the Petition for Writ of Certiorari was “denied,” in substance Ms. Luzak’s Petition was not denied. The Petition was accepted, and the Supreme Court actually ruled on the merits of the Petition. The Supreme Court need not have addressed the merits of the Petition for Writ of Certiorari, but it chose to do so. Opposing parties are absolutely wrong that Ms. Luzak’s Petition for Writ of Certiorari was denied. It was granted and ruled upon on the merits.

⁵ Despite Respondents’ assertion to the contrary.

⁶ On the same day, the Supreme Court issued a separate order in Case No. 2021-000159, agreeing with this Court that Ms. Luzak’s *prior, separate stand-alone* appeal of the bifurcation order was premature because the bifurcation order was not final. The order in Case No. 2021-000159 did not address the issue of Ms. Luzak’s appeal of the bifurcation pursuant to § 14-3-330(1), appended to the appeal of other final orders in Case No. 2021-000837.

Case No. 2021-000837, it certified the entire appeal in Case No. 2021-000837, including the appeal of the December 30, 2020 bifurcation order.⁷

The Supplemental Notice of Appeal filed on June 1, 2022 was specifically designated as a Supplemental Notice in existing Appellate Case No. 2021-001337. This Court erred in assigning a new case number to the appeal,⁸ because this was not a new appeal. This was a supplement to append the appeal of the December 30, 2020 order to Appellate Case No. 2021-001337, which is an appeal of an existing final summary judgment order issued by Judge Bonds on August 20, 2021, followed by his October 8, 2021 Form 4 denial of Ms. Luzak's motion to reconsider that order. Ms. Luzak has done so in the event the Supreme Court declines to further address its Order in Case No. 2021-000837, which by vacating the final trial court orders in that appeal may have also effectively left Ms. Luzak's appeal of the bifurcation order, pursuant to § 14-3-330(1), without an existing final order in that appeal to which her appeal of the bifurcation order could be appended pursuant to § 14-3-330(1).

The Supplemental Notice of Appeal was in compliance with § 14-3-330(1), in that it appended the appeal of the bifurcation order to the final order on appeal in Appellate Case No. 2021-001337. Should the Supreme Court amend its Order in Appellate Case No. 2021-000837 and preserve Ms. Luzak's appeal of the bifurcation order in Appellate case 2021-000837, it may not be necessary to pursue the appeal of the bifurcation order in this case (Case No. 2021-001337), which was the subject of the Supplemental Notice of Appeal.

⁷ Jurisdiction over the appeal of the December 30, 2020 order remains at the Supreme Court, in the pending motions in case No. 2021-000837. The Supplemental Notice of Appeal merely transfers the active, pending appeal from Appellate Case No. 2021-000837 to Appellate Case No. 2021-001337, both of which were timely served and filed.

⁸ The Court of Appeals erroneously assigned Appellate Case No. 2022-000784 to the Supplemental Notice of Appeal, despite the clear designation on the Notice of Appeal that this Notice of Appeal was supplementing the existing Appellate Case No. 2021-001337.

However, if the Supreme Court grants no relief on the several motions pending after its opinion in Appellate Case No. 2021-000837, this Court must address the appeal of the December 30, 2020 bifurcation order as part of Appellate Case No. 2021-001337. Section 14-3-330(1) provides the means for doing so. Ms. Luzak is entitled to append her appeal of the bifurcation order to an appeal of a final order, which she properly did in Appellate Case No. 2021-000837. However, if the pending Supreme Court order in Appellate Case No. 2021-000837 results in the dismissal of that appeal because the trial court orders being appealed therein are vacated for lack of jurisdiction, then she is entitled to properly append her appeal of the bifurcation order to the final order being appealed in Appellate Case No. 2021-001337 before this Court, pursuant to § 14-3-330(1). Otherwise, Ms. Luzak's will be whipsawed into not having the opportunity to properly appeal the bifurcation order, which is related to the final order in this case before this Court.

Respondents argue that an intermediate order that is considered as part of an appeal with final orders must be "closely related" to the final orders that are on appeal. While none of the precedential cases say that, in any event there can be no doubt that the decision of Judge Mullen to bifurcate two causes of action to be tried "first and prior" to any other claims is directly related to the final order on appeal in Appellate Case 2021-001337 pending before this Court because the order on appeal in Appellate Case No. 2021-001337 is not only closely related, but directly related: the two causes of action being bifurcated to be tried first are the two causes of action that are the subject of the trial court's order being appealed in Case No. 2021-001337.

CONCLUSION

Ms. Luzak asks that this Honorable Court not address the merits of the pending motion until the Supreme Court has ruled on the numerous motions that were filed after the Supreme Court's order in Appellate Case No. 2021-000837. If the Supreme Court responds and its response allows Ms. Luzak to continue her appeal of the order of bifurcation from December 30, 2020 in Appellate Case No. 2021-000837, this Supplemental Notice of Appeal in Appellate Case No. 2021-001337 may be moot. In that event, ruling on the dismissal and reinstatement of the Supplemental Notice of Appeal filed on June 1, 2022 and erroneously assigned Appellate Case No. 2022-000784 will not be necessary.

In the alternative, it may be that the Supreme Court's order in Case No. 000837 not only vacated the underlying final order but effectively removes all the final orders to which Ms. Luzak's bifurcation appeal was appended pursuant to S. C. Code Ann. § 14-3-330(1). In that event, it will become necessary for this Court to address the merits of the Supplemental Notice of Appeal dated June 1, 2022, the erroneous assignment of Appellate Case No. 2022-000784, and the requirement pursuant to S. C. Code Ann. § 14-3-330(1) that the December 30, 2020 order be appended to Appellate Case No. 2021-001337. Should that occur, Ms. Luzak respectfully requests oral argument to further explore the issues presented by the pending motion to reinstate the Supplemental Notice of Appeal to Appellate Case No. 2021-001337.

Respectfully submitted,

BALLARD & WATSON

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
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Trial Court Case Nos. 2016-CP-07-01919, 2019-CP-07-01253 and 2019-CP-07-01294

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak,Appellant,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
of Paul Brandon Barringer II, J. Randolph Light Jr., Merrill B. Light as
Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
Trust, Defendants.

Of whom

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
Of Paul Brandon Barringer II, Merrill B. Light as Putative
Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
And Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
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--and--

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on July 5, 2022, I served a copy of the **Reply to Return to Appellant's Petition to Reinstate Appeal** in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

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July 5, 2022
West Columbia, South Carolina

Beth Cogan

From: Beth Cogan
Sent: Tuesday, July 5, 2022 4:29 PM
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Cc: Desa Ballard; 'Gilreath, Jim (Gilreath, Jim)'; katie@gilreathlaw.com; 'Macloskie Law Firm'; Alan Medlin, Esquire; Tom Traxler; Bill Hogan
Subject: (Luzak v. Light, et al. 2021-001337/2022-000784) Ltr to COA encl Reply to Return to A. Petition to Reinstate appeal
Attachments: 2022 07 05 Ltr to COA encl Reply to Return.pdf; 2022 07 05 Reply to Return to Appellants Petition to Reinstate Appeal.pdf; 2022 07 05 POS Reply to Return.pdf

Good afternoon,

Please see the attached Reply for the above-referenced matter that is being filed today with the Court of Appeals.

Kindest Regards,
-Beth

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July 5, 2022

Via Email (ctappfilings@sccourts.org)
The Honorable Jenny Abbot Kitchings
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SC Court of Appeals

Re: *Hampton Luzak v. Merrill B. Light, et al.*
Appellate Case Nos.: 2021-001337 (Erroneously assigned Appellate Case No.
2022-000784)

Dear Ms. Kitchings:

Enclosed for filing, please find a Reply to Return to Appellant's Petition to Reinstate appeal and Proof of Service for the above-referenced matter. By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Respondents. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

Enclosures

cc: *Via Electronic Mail*
Alice Paylor, Esquire
Bijan Ghom, Esquire
Charles Molster, Esquire
J. Ashley Twombly, Esquire
Lee Anne Walters, Esquire
Kevin Johnson, Esquire

The Honorable Jenny Abbot Kitchings
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Page 2 of 2

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