

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Nov 03 2022**

**S.C. SUPREME COURT**

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

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Appellate Case No. 2022-001327

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

Hampton Barringer Luzak, .....Petitioner,

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, ..... Respondents.

--and--

Hampton B. Luzak, .....Petitioner,

v.

Merrill U. Barringer, .....Respondent.

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**REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## INTRODUCTION

Petitioner (Ms. Luzak) files this Reply to the Respondents' Return to Ms. Luzak's Petition for a Writ of Certiorari (Return) filed and served October 24, 2022.<sup>1</sup> Ms. Luzak's present Petition for Certiorari seeks review of the dismissal of Ms. Luzak's Supplemental Notice of Appeal that she was compelled to file to protect the issue when the Supreme Court initially appeared to dismiss the entire appeal in Appellate Case No. 2021-000837. *See* Supreme Court Order dated April 29, 2022, in Appellate Case No. 2021-000837.

In its orders dated April 29, 2022, and September 14, 2022 (clarifying its order dated April 29, 2022, after all parties to the appeal sought relief),<sup>2</sup> this Court vacated two summary judgment orders: (1) one of the orders being appealed in Appellate Case No. 2021-000837, and (2) the only order being appealed in Appellate Case No. 2021-001337.<sup>3</sup> Although this Court expressly certified Appellate Case No. 2021-000837, it did not expressly certify Appellate Case No. 2021-001337. Ms. Luzak properly appended an appeal of Judge Mullen's bifurcation order to the orders being appealed in Case No. 2021-000837. After this Court's April 29, 2022 order certifying Appellate Case No. 2021-000837, and before this Court's clarification order of September 14, 2022, Ms. Luzak was not certain whether this Court vacated all of the orders being appealed in Appellate Case No. 2021-000837 and whether it dismissed the entire appeal in Appellate Case No. 2021-000837. Because her appeal of the bifurcation order was properly appended to the final orders

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<sup>1</sup> South Carolina Appellate Court Rule (SCACR) No. 242(c) requires this Reply to be filed and served within ten (10) days thereof, or no later than November 3, 2022

<sup>2</sup> All parties to the appeal in Appellate Case No. 2021-000837 filed a Joint Motion for Extension of Time on May 10, 2022, which was granted by this Court on May 11, 2022 (which erroneously captioned the case as still pending in the Court of Appeals), corrected by order issued May 12, 2022 (properly captioned in this Court).

<sup>3</sup> Those orders vacated Judge Price's order granting summary judgment to Merrill Light, which was one of the orders being appealed in Appellate Case No. 2021-000837. Those orders also vacated Judge Bonds' order granting summary judgment in favor of Merrill Barringer, which was not a part of Appellate Case No. 2021-000837; Judge Bonds summary judgment order was appealed only in Appellate Case No. 2021-001337.

appealed in Appellate Case No. 2021-000837, Ms. Luzak sought to append her appeal of the bifurcation order to the appeal of the final order in Appellate Case No. 2021-001337,<sup>4</sup> which, before this Court's September 14, 2022 order, appeared to remain viable.

However, it now appears from this Court's order dated September 14, 2022 that this Court intended to vacate one of the final orders in Case No. 2021-000837 as well as the final order in Case No. 2021-001337. If this Court in fact intended to vacate the only order in Appellate Case No. 2021-001337 in addition to one of the orders in Appellate Case No. 2021-000837, then Ms. Luzak does not need to petition to append her appeal of the bifurcation order to Appellate Case No. 2021-001337 because Appellate Case No. 2021-001337 will be entirely dismissed and, of course, this Petition for Certiorari in Appellate Case No. 2021-001337 would be moot.<sup>5</sup>

### **BASIS OF THIS PETITION FOR CERTIORARI**

The procedural history of this intensely complicated case at the trial level and the appellate level has been fully described in Ms. Luzak's current Petition for a Writ of Certiorari (Petition for Certiorari) as well as in the Respondents' Return and the many other filings in the appellate courts in this matter. This Reply does not seek to re-plow that history, but instead to remind this Court – and the Respondents – of a few discrete points that provide the foundation for Ms. Luzak's current Petition for Certiorari and makes reference to the complex history of this case as necessary to highlight those points.

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<sup>4</sup> Unfortunately, the Court of Appeals misinterpreted the Supplemental Notice of Appeal filed in Case No. 2021-001337 as a new appeal, assigned it a new Appellate Case No. 2022-000784, and determined it was untimely based on the original date Judge Mullen's order was issued. The Court of Appeals did not understand this was not a new appeal, despite Ms. Luzak's efforts to explain it clearly in the petition to reinstate. It is that error of the Court of Appeals that prompted this Petition for Writ of Certiorari.

<sup>5</sup> Even in that event, Ms. Luzak would continue to ask this Court to issue an order granting her motions in Items C and D in her Petition to Certify and in her Conclusion below.

It is now the law of the case that the Bifurcation Order of Judge Mullen dated December 30, 2020 was not immediately appealable *as a standalone appeal*. That was finally decided by this Court when it denied Ms. Luzak's Petition for Writ of Certiorari on that issue in a separate order dated April 29, 2022. That was Appellate Case No. 2021-00159 (SCSC Case No. 2021-001022) (Bifurcation Appeal).

However, even though that Bifurcation Order was not immediately appealable as a standalone appeal, Ms. Luzak has every right to append the appeal of the Bifurcation Order to the appeal of a final order pursuant to *S.C. Code Ann.* §14-3-330(1), and she did so in Appellate Case No. 2021-000837.

While the standalone appeal of the Bifurcation Order (Appellate Case No. 2021-000159) was pending, the trial court proceeded to issue several final orders in 2021 that were subject to subsequent appeals. The trial court granted Coastal Forest Resources Company's (CFRC's) motion to intervene along with associated relief on June 7, 2021 (including striking Ms. Luzak's cause of action for civil conspiracy and most of her damages as derivative) and then granted partial summary judgment to Merrill Light on July 6, 2021 and also ordered the bifurcated trial to commence on a specified date. Those Orders were appealed in Appellate Case No. 2021-000837 and the appeal of the Bifurcation Order of December 30, 2020 was appended to that appeal pursuant to *S.C. Code Ann.* §14-3-330(1).

The trial court later granted partial summary judgment to Merrill Barringer on August 20, 2021, and that order was appealed in Appellate Case No. 2021-001337.

Those orders were all entered and appealed while the Bifurcation Appeal (Appellate Case No. 2021-000159) was still pending.

Subsequently, the Supreme Court certified Appellate Case No. 2021-000837 on April 29, 2022 and vacated the order granting Merrill *Barringer* summary judgment even though that order was in Appellate Case No. 2021-001337 and not Appellate Case No. 2021-000837. The summary judgment order was “vacated” because the trial court “did not have authority” to proceed since the Bifurcation Appeal in Appellate Case No. 2021-000159 was pending, and Appellate Case No. 2021-000837 was dismissed as moot. That created confusion on whether all trial court orders issued during the Bifurcation Appeal were void, including the CFRC order of June 7, 2021 and the appended bifurcation appeal.

With that uncertainty and confusion, all parties moved or petitioned for reconsideration and clarification, but Ms. Luzak, faced with the apparent dismissal of the entirety of Appellate Case No. 2021-000837, including her pendent bifurcation appeal, quickly and timely moved to supplement her appeal in Appellate Case No. 2021-001337 with the appeal of the bifurcation. Since it appeared that the appeal in Appellate Case No. 2021-000837 was going to be completely dismissed, Ms. Luzak filed her Supplemental Notice of Appeal in Appellate Case No. 2021-001337 to transfer it to that appeal in order to preserve the issue. That was necessitated by the Court’s April 29, 2022 order that appeared to dismiss all of Appellate Case No. 2021-000837, based on the caption of this Court’s order. Ms. Luzak made it very clear that this was a *Supplemental* Notice of Appeal and was *not* a new appeal, but the Court of Appeals assigned it a *new* appellate case number, and, after motions and briefing, treated the Supplemental Notice as a new appeal and dismissed the Supplemental Appeal as untimely and denied the Petition for Rehearing. The present Petition for Certiorari requests review of that decision.

In the meantime, the Supreme Court issued its Order on September 14, 2022 clarifying its April 29, 2022 order on the scope of the dismissal of Appellate Case No. 2021-000837. The Court

stated that it vacated the summary judgment orders granted to Merrill Light (July 6, 2021)(Appellate Case No. 2021-000837) and Merrill Barringer (August 20, 2021)(Appellate Case No. 2021-001337), but it did not vacate the other orders in Appellate Case No. 2021-000837, which included the CFRC order allowing intervention and the granting of associated relief or the bifurcation order or appeal. The Respondents have Petitioned for Rehearing on that September 14, 2022 order, and that is also pending before the Court.

Therefore, pending subsequent rulings from this Court, the current posture of the appeals is this:

**1. Appellate Case No. 2021-000159 (standalone Bifurcation Appeal) has been ended.**

**2. Appellate Case No. 2021-000837:**

- a) This appeal has been certified by the Supreme Court.
- b) The summary judgment granted to Merrill Light has been vacated by the Orders of the Supreme Court dated April 29, 2022 and September 14, 2022.
- c) The order granting CFRC the right to intervene and striking the civil conspiracy cause of action of Ms. Luzak and striking most of her damages has not been vacated and that appeal remains.
- d) Other than the vacated summary judgment order by Judge Price in Appellate Case No. 2021-000837, the remaining orders being appealed in that case have not been vacated and the appeal of those orders remains pending.

### **3. Appellate Case No. 2021-001337:**

- a) This case has not actually been certified to the Supreme Court, even though the Supreme Court has ruled on it by vacating Judge Bonds' order granting Merrill Barringer summary judgment in that case.

It appears necessary for this Court to confirm that, in its orders of April 29, 2022 and September 14, 2022, it intended to certify not only Appellate Case No. 2021-000837, which was expressly certified, but also Appellate Case No. 2021-001337.

In Appellate Case No. 2021-000837, Ms. Luzak has filed the Record on Appeal (and corrected it at the request of Respondents) and her final briefs (on November 2, 2022), and Respondents have received an order granting their request for an extension of time to file their final briefs in that case, which remains pending (extension order dated November 2, 2022).

Ms. Luzak's pendent bifurcation appeal in Appellate Case No. 2021-000837 remains in effect and appended at least to the appeal of the remaining orders not vacated in Appellate Case No. 2021-000837 and, if Judge Price's order granting summary judgment to Merrill Light is ultimately not vacated, to the appeal of that summary judgment order as well. In either event, since the appeal of the bifurcation order is appended to both the remaining orders in Appellate Case No. 2021-000837 and also to the order granting Merrill Light summary judgment, it remains on appeal in Appellate Case No. 2021-000837.

With respect to Appellate Case No. 2021-001337, the Supreme Court acquires jurisdiction over a case "for all purposes" when it certifies a case for review pursuant to SCACR No. 204. It would appear necessary for this Court to certify Appellate Case No. 2021-001337 in order for this Court to have authority to address the order granting summary judgment to Merrill Barringer in

that case. Until that certification of Appellate Case No. 2021-001337, that case remains in the Court of Appeals. Out of caution and given the uncertain posture of the various appeals, Ms. Luzak filed her Supplemental Notice of Appeal of the Bifurcation order in Appellate Case No. 2021-001337. If the Supreme Court ultimately certifies the appeal of Appellate Case No. 2021-001337 and vacates the order granting summary judgment to Merrill Barringer, then that appeal will be ended — lock, stock, and barrel — and there will be nothing left of that appeal to which the appeal of the bifurcation order can be appended. However, while the Supreme Court order of September 14, 2022 vacated the order of the trial court granting summary judgment to Merrill Barringer, it never certified that appeal. Therefore, Ms. Luzak must assume that Appellate Case No. 2021-001337 presently remains in the Court of Appeals, and she has accordingly supplemented her appeal of that summary judgment order to include the appeal of the bifurcation order.

Ms. Luzak's present Petition for Certiorari is to seek review of the Court of Appeals' dismissal of her Supplemental Notice of Appeal and to shift the appeal of the bifurcation order from Appellate Case No. 2021-000837 to Appellate Case No. 2021-001337 because of the Supreme Court's Orders dated April 29, 2022 and September 14, 2022. If the bifurcation appeal appended in the Appellate Case No. 2021-000837 does not proceed (despite the ongoing filing on final briefs, with Respondents' final brief now due on November 22, 2022), Ms. Luzak will have been deprived of her express right pursuant to *S.C. Code Ann.* § 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 Appellate Case No. 2021-000837. That is why the Supplemental Notice of Appeal was and is necessary.

There is no requirement that interlocutory orders can be appended only to orders that completely end a case as the Respondents suggest to this Court. There is no basis for that in S.C.

Code Ann. §14-3-330, which expressly allows for appeal of an “intermediate judgment, order or decree,” if appealed with other orders that are immediately appealable. The appellate courts in this State have routinely recognized review of orders when there are still matters to be adjudicated in the trial court. *See Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979) (allowing appeal of motion to make more definite and certain when accompanying an appealable denial of a demurrer where case in trial court was continuing following denials of all dispositive motions and there was no final judgment on all issues below); *Woods v. Rock Hill Fertilizer Co.*, 102 S.C. 442, 86 S.E. 817, 819 (1915) (allowed review of interlocutory order on denial of motion to strike pleadings during appealable denial of demurrer even though all claims still remained before the trial court in order to allow further progress of the case); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (allowing review of interlocutory motion to dismiss during appeal of arbitration denial when no final judgment on any issue had been reached by trial court); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998)(allowing consideration of an interlocutory motion to amend complaint when it accompanied appeal of a summary judgment order even though cause of action allowed in the amended pleading continued the case in trial court).

The Respondents cite *Kriti Ripley, LLC v. Emerald Investments, LLC*, 404 S.C. 367, 379, 746 S.E.2d 26, 33 (2013), to imply that to be appealable the trial court must have finally disposed of all matters in the trial court, leaving nothing to be done. But that case is inapposite because it did not involve multiple issues on appeal. This Court allowed review of the trial court’s order in a case that involved only one cause of action or claim – the issuance of a charging order and foreclosure on the lien. The charging order and lien foreclosure issue was not appended to another issue since it was the exclusive issue on appeal, and this Court never limited consideration of

appended issues only when all other issues have been resolved. Further, the court said that the review of interlocutory orders also applies to orders on equity claims, not just law claims.

Respondents also 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 Appellate Case No. 2021-001337.

### **CONCLUSION**

In summary, in her instant Petition for Writ of Certiorari, Ms. Luzak has asked this Court to:

- A. Certify Appellate Case No. 2021-001337 and confirm that its April 29, 2022 and September 14 2022 Orders vacated Judge Bonds’ power of appointment summary judgment order, which would conclude Appellate Case No. 2021-001337;
- B. If it does not confirm the vacation of Judge Bonds’ power of appointment order, meaning that Appellate Case No. 2021-001337 remains viable, then (1) grant the Petition for Writ of Certiorari in Appellate Case No. 2022-000784, dispense with briefing, and issue an order consolidating the Supplemental Notice of Appeal with existing Appellate Case No. 2021-001337 (for the reasons stated in Ms. Luzak’s Petition to Reinstate Appeal attached

as Exhibit 1 to the Petition for Certiorari); and (2) consolidate Appellate Case No. 2021-000837 and Appellate Case No. 2021-001337;

C. Accept the filing of final briefs and the Records on Appeal in Appellate Case No. 2021-000837 as currently scheduled; and

D. Provide such other and further relief as will assist this Honorable Court in addressing and ruling on all issues pending on appeal in Appellate Case No. 2021-000837 and Appellate Case No. 2021-001337, including the Supplemental Notice of Appeal.

Respectfully submitted,

BALLARD & WATSON

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

James R. Gilreath (S.C. Bar No. 2133)

William M. Hogan (S.C. Bar No. 5272)

The Gilreath Law Firm, PA

110 Lavinia Avenue (zip 29601)

P.O. Box 2147

Greenville, South Carolina 29602

Telephone: 864.242.4727

Facsimile: 864.232.4395

jim@gilreathlaw.com

bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)

1713 Phelps Street

Columbia, South Carolina 29205

Telephone: 803.777.7465

Facsimile: 803.777.7465

amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)  
Macloskie Law Firm  
P.O. Box 280  
Beaufort, South Carolina 29901  
Telephone: 843.524.0909  
Fax: 843.521.1379  
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)  
CARTER, SMITH, MERRIAM, ROGERS &  
TRAXLER, P.A.  
900 East North Street (29601)  
P.O. Box 10828 (29603)  
Greenville, South Carolina  
Telephone: 864.242.3566  
Facsimile: 864.232.1558  
tom.traxler@carterlawpa.com

**Attorneys for Appellant Hampton B. Luzak**

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