

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2012-CP-23-06319

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Shaw Funding, LLC, Build A  
House, LLC d/b/a Multifamily  
Products, Builders Design House,  
LLC, Builders First Mortgage,  
LLC, Builders First Funding, LLC,  
Investor Funding, LLC, Total Stone,  
LLC, American Lighting Co.,  
Contract Supply, LLC, Global  
Solution, and MS Mechanical  
Solutions, LLC,

Respondents,

**RECEIVED**  
MAY 28 2013  
SC Court of Appeals

v.

Multifamily Products, LLC, and  
Paul Taylor, as a member of Build A  
House, LLC and individually,

Appellants.

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**RETURN TO MOTION TO DISMISS AND/OR FOR CLARIFICATION**

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Appellants submit the following Return to Motion to Dismiss pursuant to Rule 240  
SCACR.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 4, 2012 the Honorable Edward W. Miller signed two *ex parte* Orders from which Appellants have appealed.

On October 3, 2012, Judge Miller heard BAH's motion for temporary restraining order and motion for appointment of receiver *ex parte*. Judge Miller granted both motions despite the statutory

requirement that no appointment of receiver could be granted without notice to the opposing party.

On October 12, 2012 Appellants filed a motion to void, vacate or reconsider the order granting the TRO and receiver and on October 22, 2012 Appellants filed this appeal. At the time that the action was filed this case had not been accepted into the Business Court, to the contrary no motion was made for Business Court until January 2013.

Despite lack of any notice of any further hearings on the matter the Appellants appeared twice before Judge Miller to argue motions filed by Appellants and the Court *sua sponte* ruled on the permanent injunction issue without testimony or the allowance of the introduction of any evidence or any documents on behalf of the Appellants and solely upon the original affidavits filed by the Respondents.

### **STATEMENT OF ISSUES BEFORE THE COURT**

Taylor has appealed the issuance of both the TRO and temporary receiver order. He argues that the TRO was improperly issued in violation of Rule 65 of the South Carolina Rules of Civil Procedure because it did not explicitly state that it would expire in 10 days following its issuance. Taylor attacks the validity of the temporary receiver order alleging inadequate notice or opportunity to be heard in contravention of SC Code Ann. Section 15-65-20.

### **LEGAL ARGUMENT AND AUTHORITIES**

#### **A. One of the issues on appeal is not moot.**

The Respondents concede that the temporary restraining order has expired despite the failure to include the automatic expiration in the order. Given the Respondents' position that issue is indeed moot.

However, the issue of the improper issuance of the order appointing receiver (which the Respondents now conveniently call "temporary receiver order") is not moot.

Specifically, Section 15-65-90 provides a statutory remedy for costs and damages associated with the improper appointment of a receiver. The issue of whether the Respondents improperly obtained the appointment of a receiver through its *ex parte* proceeding is an essential determination for the purposes of the Appellants' proceeding to recover costs and damages pursuant to that statutory remedy. In addition, the Court's determination of the propriety of such procedure, or as Appellants' contend the lack thereof, would be beneficial to the members of the bench and bar of this state.


**B. The Courts *ex parte* restraining order was in error because of they did not explicitly comply with Rule 65 SCRPC.**

Given that the Respondents had conceded that the order expired and the Appellant has conceded that this issue is thus moot no further argument on this issue seems necessary.

**C. The remaining order which Appellants appeal is not an exception to the automatic stay codified in Rule 241(a) SCACR.**

Respondents quote substantially all of Rule 241 SCACR and then baldly state that the order appointing receiver falls within one of the exceptions although nowhere in the exceptions to the Rule is there an exception for the appointment of a receiver. This order is for the appointment of a receiver in accordance with Section 15-65-10, *et. seq.* of the Code of Laws, and not an injunction. Obviously no case or decision supporting that contention is supplied other than a case that was determined 90 years before the adoption of SCACR or SCRPC and that case does not stand for the proposition proposed by the Respondents but rather relates to the failure to give bond as required by the order.

**RANDALL S. HILLER, P.A.**



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**PROOF OF SERVICE**

I certify that I have served the Appellant's Return to Motion to Dismiss and/or for Clarification on Shaw Funding, et al by depositing a copy of it in the United States Mail, postage prepaid, on May 24, 2013, addressed to his attorney of record, D. Randle Moody, II, Esq., Post Office Box 10529, Greenville, South Carolina 29603.

May 24, 2013



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