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**Apr 26 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2022-001162  
Civil Action No. 2017-CP-10-04112

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CHRIS KHAMNEI,

Appellant,

v.

COLUMBUS STREET HOLDINGS,  
LLC; ROY T. WILLEY, IV; AND ERIC  
M. POULIN,

Respondents.

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**INITIAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

1. DOES THIS COURT HAVE JURISDICTION OVER THIS APPEAL, WHERE APPELLANT DID NOT TIMELY SERVE THE NOTICE OF APPEAL?
2. DID THE TRIAL COURT CORRECTLY DENY APPELLANT'S MOTION TO SET ASIDE A MEDIATED SETTLEMENT AGREEMENT, WHERE NO EVIDENCE SUPPORTED APPELLANT'S RULE 60(B), SCRPC CLAIMS?

## STATEMENT OF THE CASE

### I. Background

This matter stems from Appellant Chris Khamnei's<sup>1</sup> agreement to sell, and Respondent Columbus Street Holdings, LLC's (CSH) agreement to buy, certain real property. Agreement to Buy and Sell p. 1; April 14, 2017 Addendum to Agreement. As part of the agreement, the parties decided that \$50,000 of the \$200,000 purchase price would remain in escrow to assure Khamnei's compliance with his post-closing obligations. April 14, 2017 Addendum.

At some point after closing, a dispute arose as to whether Khamnei had complied with the post-closing obligations, as required for release of the escrow funds. *See, e.g.*, Amended Complaint pp. 1-13; Answer pp. 1-9. Ultimately, on August 11, 2017, Khamnei filed a breach of contract action against CSH, alleging that he had fully performed but that CSH had wrongfully withheld consent for the release of the escrow funds. Complaint pp. 1-11. On September 5, Khamnei filed an amended complaint in which he added two individual defendants, Roy T. Willey, IV, and Eric M. Poulin, and also added a second cause of action (breach of contract accompanied by a

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<sup>1</sup> Khamnei has bounced from attorney to attorney and has been proceeding *pro se* for some time. *See, e.g.*, Summons; October 12, 2018 Notice of Appearance; September 13, 2019 Notice of Pro Se Appearance.

fraudulent act). Amended Complaint pp. 1-13.<sup>2</sup> The trial court later dismissed the individual defendants.<sup>3</sup> December 14, 2017 Order.

The defendants' September 13, 2017 answer denied Khamnei's claims and asserted several affirmative defenses and counterclaims, including a claim that Khamnei had breached the contract. Answer pp. 1-9.

Since then, as the trial court aptly noted, "the matter has gone through a procedural labyrinth." March 22, 2022 Order p. 2. The confusion has been compounded by Khamnei's inability or unwillingness to participate adequately in litigation; for example, the court had to compel him to produce basic discovery, *see* April 16, 2018 Order pp. 1-3; March 22, 2022 Order p. 2, and he failed to appear in court, *see* Oct. 22, 2018 Order; March 22, 2022 Order p. 2. Eventually, the court sanctioned him, compelling him to participate in a mediation session. Feb. 9, 2021 Order pp. 1-5.

After five hours of mediation, the matter fully settled on February 10, 2021. Feb. 18, 2021 Proof of ADR pp. 1-2.

## **II. The Current Dispute**

But the settlement was just the beginning. After allowing almost six months to pass, Khamnei moved to set aside the settlement agreement based on the reasons listed in Rule 60(b), SCACR:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

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<sup>2</sup> Khamnei later filed an "amended" summons and complaint with additional factual allegations, an additional defendant, and an additional cause of action. 2d Amended S&C pp. 1-22. However, because the trial court later dismissed this complaint (via a Form 4 order), July 30, 2020 Order p. 1, the September 5, 2017 complaint "is the operative Complaint in this matter," Mar 22, 2022 Order p. 2.

<sup>3</sup> Khamnei has named them as respondents on appeal. Notice of Appeal, Proof of Service & Cover Letter.

- (3) fraud, misrepresentation, or other misconduct of an adverse party;
  - (4) the judgment is void;
  - (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.
- Motion to Set Aside Mediated Settlement Agreement p.1.

Oral argument occurred on February 28, 2022. Feb. 28 Transcript pp. 1-13. After reviewing the written motion, the related affidavit, the oral argument, and “additional materials submitted by [Khamnei] after the hearing,” the trial court concluded that the “primary factual basis for this Motion is the involvement of the former escrow agent, Cobb, Dill, Hammett, LLC (“CDH”).” March 22, 2022 Order p. 4. It noted that “CDH filed an interpleader on March 30, 2018, in this Court (Case No. 2018-CP-10-01622) interpleading the \$50,000.00 in escrow funds” and that Khamnei, as a defendant in that case, had been active in the litigation. March 22, 2022 Order p. 4; *see* S&C in Case No. 2018-CP-10-01622 pp. 1-6, Docket in Case No. 2018-CP-10-01622 through March 22, 2022.

The court therefore held:

- (1) that Khamnei could not claim “mistake, inadvertence, surprise, or excusable neglect” or “newly discovered evidence” based on the former escrow agent’s involvement where he knew of, and participated actively in, the interpleader action for more than three years before moving to set aside the settlement;
- (2) that there was no evidence of “fraud, misrepresentation, or other misconduct” where there was no evidence that Khamnei would have refused to settle had he known of the former escrow agent’s involvement in the mediation, and where, even if there were such evidence, it is “customary for third-parties with an interest in litigation to have

some involvement in the mediation process to the extent necessary to protect their interest”;

- (3) that there was no evidence that the judgment was void or had been “satisfied, released, or discharged, or a prior judgment upon which it [was] based ha[d] been reversed or otherwise vacated, or it [was] no longer equitable that the judgment should have prospective application”—and that, because the matter involved not a judgment, but rather a voluntary settlement, any such arguments were inapplicable.

March 22, 2022 Order pp. 4-5.

On April 20, 2022, Khamnei served a motion to reconsider “on the basis that NOT all the parties required to be in the mediation had attended the mediation,”<sup>4</sup> which was then filed on April 25, 2022. Motion to Reconsider p. 1; Certificate of Service to Motion to Reconsider p. 1. The court denied his motion by a Form 4 order on June 28, 2022, because the motion was untimely filed and “set[] forth no ground not previously considered by the Court.” June 28, 2022 Order p. 1. On July 27, 2022, Khamnei served his notice of appeal,<sup>5</sup> which was then filed on August 16, 2022. Notice of Appeal, Proof of Service & Cover Letter.

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<sup>4</sup> He served the motion solely on Stefan B. Feidler of the Anastopoulo Law Firm as attorney for the defendants. Certificate of Service to Motion to Reconsider p. 1. However, Feidler had not been an attorney of record since March 14, more than a month earlier, and was no longer associated with the firm. Notice of Intrafirm Transfer of File p. 1.

<sup>5</sup> Again, addressed to Mr. Feidler (at the firm he had left some months before). Proof of Service & Cover Letter.

## ARGUMENT

### I. **Because Appellant’s Notice of Appeal was untimely, this Court does not have jurisdiction over the appeal.**

#### A. *Standard of Review*

“The requirement of service of the notice of appeal is jurisdictional”; that is, “if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)).

#### B. *Appellant’s Untimely Notice of Appeal*

“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR; *see* Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal . . . may be extended . . . by the appellate court.”). A timely motion under Rule 59, SCRCR, stays the time for appeal until “receipt of written notice of entry of the order granting or denying such motion,” Rule 203(b)(1), SCACR, but a motion to alter or amend a judgment under Rule 59(e) is not timely if served “later than 10 days after receipt of written notice of the entry of the order,” Rule 59(e), SCRCR.

Here, the March 22, 2022 order was filed that same day. However, Khamnei did not serve his Rule 59(e) motion on the defendants until April 20, almost than thirty days later.<sup>6</sup> Because Khamnei served his motion well beyond the ten-day deadline prescribed by Rule 59(e), the motion

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<sup>6</sup> The motion was not filed until April 25, more than thirty days after the March 22, 2022 order.

was untimely and did not stay the deadline for appeal. Thus, when Khamnei finally served his Notice of Appeal on July 27, he had missed the deadline by more than three months. This Court cannot “rescue” Khamnei “by extending or ignoring the deadline for service of the notice;” therefore, it must dismiss his appeal.

**II. Even if Khamnei’s Notice of Appeal was timely, the trial court did not abuse its discretion in denying his motion to set aside the mediated settlement agreement.**

*A. Standard of Review*

An appellate court reviews the decision to deny a Rule 59(e), SCRCP motion for abuse of discretion. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 438 (Ct. App. 1995). A trial court does not abuse its discretion unless “the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support.” *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013) (citing *BB & T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501, 502–03 (2006)).

*B. The Court’s Appropriate Exercise of Discretion*

Here, the order of the court conformed to the law, carefully tracking the wording of Rule 60(b) in rebutting Khamnei’s arguments. In addition, the court’s findings had evidentiary support. Khamnei’s claims of some sort of trap or surprise regarding the former escrow agent’s involvement in mediation fell flat, given his heavy involvement with the agent’s interpleader action for almost three years before mediation. And as the court recognized, only an evidentiary black hole lay beyond these manufactured claims.

Thus, if this Court determines that Khamnei’s appeal is properly before it, it should affirm the trial court’s appropriate exercise of discretion.

## CONCLUSION

If this Court decides that Khamnei's Notice of Appeal was untimely, it must dismiss his appeal. However, if this Court decides that his Notice was timely, it must affirm the trial court's decision for the reasons stated above and for any other reason that may be evident from the record.

April 26, 2023

Respectfully submitted,

**POULIN | WILLEY | ANASTOPOULO, LLC**

s/ Angeline M. Larrivee

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Respondents.

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**PROOF OF SERVICE**

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Pursuant to Rule 262(c), SCACR, I certify that I have served Respondents' Initial Brief on Appellant by Electronic Mail and by placing a copy in the U.S. Mail, postage prepaid, on April 26, 2023, addressed to Appellant, Chris Khamnei, 82 Overlake Park, Burlington, VT 05401.

Respectfully submitted,

**POULIN | WILLEY | ANASTOPOULO, LLC**

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## Transportation & Insurance Liability Division

April 26, 2023

**VIA U.S. MAIL and E-MAIL [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: *Chris Khamnei v. Columbus Street Holdings, LLC (2)*  
*Appellate Case No.: 2022-001162*

\*OF COUNSEL

Dear Ms. Kitchings:

Attached for filing, please find Respondents' Initial Brief and Respondents' Designation of Matter with their associated proofs of service. Please let us know if you need any additional information.

Sincerely,

s/Angeline Larrivee

Cc: Chris Khamnei

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