

RECEIVED

Jul 10 2023

SC Court of Appeals

The State Of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie,Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,.....Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports +
Outdoors, is theAppellant.

Notice of Appeal

Defendant-Appellant Academy, Ltd. d/b/a Academy Sports + Outdoors (“Academy”) timely appeals the lower court’s Form 4 Order filed July 3, 2023 (the “Objections Order”), and its Form 4 Order filed July 10, 2023 (the “Production Order”) granting Plaintiffs’ March 29, 2023 Motion to Compel. Academy received written notice of the entry of the Objections Order on July 3, 2023, and the Production Order on July 10, 2023. Copies of the two orders are attached as **Exhibit A.**

As the South Carolina Supreme Court recently reiterated, whether an order is immediately appealable *must be determined on a case-by-case basis*. *Stone v. Thompson*, 826 S.E.2d 868, 870 (S.C. 2019) (emphasis added). Academy recognizes that ordinary discovery orders are not immediately appealable. *See Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 692 S.E.2d 920, 925 (S.C. 2010). But these are no ordinary discovery orders.

The orders issued by the Circuit Court require the rolling production, starting at 1:30 p.m. tomorrow, of hundreds of thousands of records of firearms sales and law enforcement trace requests. These records have absolute immunity from discovery under federal law. In particular, the Tiahrt Amendment states that these types of records “shall be immune from legal process [and] shall not be subject to subpoena or other discovery . . . in a civil action in any State.” *See* 2012 Consolidated and Further Continuing Appropriations Act, Pub. L. 112-55, 125 Stat. 552, 609–10. The records are also subject to qualified privilege under the Trade Secrets Act. *See Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 813 S.E.2d 696, 698 (S.C. 2018). Moreover, the records contain sensitive personal information of tens of thousands of nonparty customers who have an expectation that their names, addresses, and personal identifying information as well as the number and types of firearms they purchased would remain confidential. Notably, these voluminous records documenting thousands of unrelated firearms sales and other Academy customers have no relevance to the twelve firearms purchases to one individual at issue in this matter.

Absent intervention by this Court, the impermissible compelled production of these irrelevant and highly sensitive records would moot any later appeal by Academy based on federal immunity and qualified privilege, release highly confidential law enforcement trace request information, and defy the reasonable privacy expectations of tens of thousands of customers. These circumstances support the immediate appeal of the orders. *Cf. State v. Duncan*, 709 S.E.2d

662, 665 n.2 (S.C. 2011) (finding order refusing to enforce immunity in the nature of an appealable injunction).

The orders also affect the substantial rights of Academy and tens of thousands of nonparty customers. These rights will be lost and cannot be vindicated during a later appeal once the production of records has occurred. Moreover, this matter is of great public significance because the requested records subject to the discovery orders relate to the sales of over 100,000 firearms to nonparty consumers as well as numerous law enforcement trace requests, some of which would likely relate to ongoing criminal investigations. These records would include private and highly sensitive customer information, the disclosure of which would defy the privacy expectations of the customers, regardless of the existence of a confidentiality order or other protective steps.

For all of the above reasons, an immediate appeal is appropriate.¹ To the extent the Court has any doubt or concern regarding appealability, Academy respectfully requests the opportunity to provide more fulsome briefing and analysis regarding the propriety of immediate appeal under these circumstances.²

SIGNATURE PAGE ATTACHED

¹ This notice does not provide an exhaustive list of all of the reasons warranting the acceptance of this appeal and the need for appellate intervention at this point in this case. Academy will include all of the reasons in the event the Court requests briefing on the propriety of immediate appeal.

² Academy will be filing a Petition for Writ of Certiorari with the South Carolina Supreme Court and filing a motion to certify and transfer the appeal under Rule 204, SCACR. Academy is also seeking in the Circuit Court a stay of the above-referenced orders, and, if unsuccessful, will be filing an emergency writ of supersedeas pending appeal from the Court of Appeals.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ D. Larry Kristinik

D. Larry Kristinik
SC Bar No. 064983
E-Mail: larry.kristinik@nelsonmullins.com

A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com

Matthew A. Abee
SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Samuel W. Outten
SC Bar No. 004295
E-Mail: sam.outten@nelsonmullins.com
2 West Washington Street, Suite 400
Greenville, SC 29601
(864) 250-2300

Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 10, 2023

RECEIVED

Jul 10 2023

SC Court of Appeals

The State Of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie,Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,.....Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports + Outdoors,
is theAppellant

Proof of Service

I, the partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by the following methods:

Document(s): **Notice of Appeal**

Counsel/Parties Served:

Via USPS

Todd Christopher Kohlhepp, 00372454
Lieber Correctional Institute
136 Wilborn Avenue
Ridgeville, SC 29472

Via USPS

Dustan Lawson
PO Box 184
Pauline, SC 29374

Via Email Only

Robert Cross, Esquire
rcross @bradyunited.org
Erin Davis, Esquire
edavis@bradyunited.org
Jenna Tersteegen, Esquire
jtersteegen@bradyunited.org

Via Email Only

R. Mills Ariail, Jr., Esquire
Law Office of R. Mills Ariail, Jr.
11 North Irvine Street, Suite 11
Greenville, SC 29601
mills@rmlawoffice.com

Via Email Only

J. David Standeffer, Esquire
Standeffer Law, LLC
Post Office Box 35
2124 N Hwy 81, Anderson, SC 29621
Anderson, SC 29622
dave@standefferlaw.com

Via Email Only

Mary F. Schiavo, Esquire
Motley Rice, LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
mschiavo@motleyrice.com

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ D. Larry Kristinik

D. Larry Kristinik
SC Bar No. 064983
E-Mail: larry.kristinik@nelsonmullins.com
A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com
Matthew A. Abee
SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Samuel W. Outten
SC Bar No. 004295
E-Mail: sam.outten@nelsonmullins.com
2 West Washington Street, Suite 400
Greenville, SC 29601
(864) 250-2300

Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 10, 2023

Matt Abee

From: Matt Abee
Sent: Monday, July 10, 2023 4:53 PM
To: mschiavo@motleyrice.com; Mills Ariail; dave@standefferlaw.com
Cc: Robert Cross; Erin Davis; Jenna Klein; jtersteegen@bradyunited.org; crenzulli@renzullilaw.com; Scott Allan; Larry Kristinik; Sam Outten; Matt Bogan; Kelly Taylor; Kevin Werner
Subject: Service Copy: Notice of Appeal and Supersedeas - Coxie (No. 2018-CP-42-04297)
Attachments: 2023.07.10 - Filing Letter - Notice of Appeal and Supersedeas [As Served].pdf
Importance: High

Counsel:

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find:

- Academy's Notice of Appeal
- Academy's Emergency Verified *Ex Parte* Petition for a Writ of Supersedeas

Please feel free to contact me should you have any questions. Thanks.

-Matt

Please note that I will be out of the office August 3–4, 2023.



MATT ABEE **PARTNER**
matt.abee@nelsonmullins.com

MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9335 F 803.256.7500

[NELSONMULLINS.COM](https://nelsonmullins.com) [VCARD](#) [VIEW BIO](#)

*Licensed in South and North Carolina.

D. Larry Kristinik
T: 803.255.9531
larry.kristinik@nelsonmullins.com

1320 Main Street, 17th Floor
Columbia, SC 29201
T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

July 10, 2023

RECEIVED

Jul 10 2023

SC Court of Appeals

Via Email

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
ctappfilings@sccourts.org

RE: Cindy Coxie v. Academy, Ltd. *et al.*
Consolidated Civil Action No. 2018-CP-42-04297
Our File No. 043449/01506

Dear Ms. Kitchens:

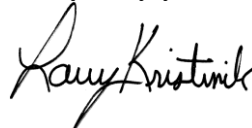
Enclosed for filing on behalf of our client Appellant/Petitioner Academy, Ltd. d/b/a Academy Sports + Outdoors, please find:

- Notice of Appeal
 - Exhibit A
 - Proof of Service

- **Emergency Verified Ex Parte Petition for a Writ of Supersedeas**
 - Verification
 - Exhibits A–C
 - Proof of Service

Please note that our check for \$300.00, for the Notice of Appeal, and Emergency Verified *Ex Parte* Petition for Writ of Supersedeas, is being hand-delivered under separate cover.

Very truly yours,



D. Larry Kristinik

cc: Via Email Only
J. David Standeffer, Esquire (w/no enclosures)

The Honorable Jenny Abbott Kitchings

July 10, 2023

Page 2

R. Mills Ariail, Jr., Esquire

Mary F. Schiavo, Esquire

Erin Davis, Esquire

Robert M. Cross, Esquire

Jenna Tersteegen, Esquire

Via U.S. Mail

Todd Christopher Kohlhepp

Dustan Lawson