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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-01833
Appellate Case No. 2021-001055

Andrew and Kimberly McIntire,

Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants.

and

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a

Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; New South Construction Supply, LLC; Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC, are

Respondents.

PETITION FOR REHEARING

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NOW COMES Seaquest,[1] by and through its undersigned counsel, pursuant to Rule 221(a), SCACR, following the filing of this Court's opinion in this matter, namely, Unpublished Opinion No. 2023-UP-206, filed May 31, 2023 (the "Subject Opinion"), and hereby timely petitions for rehearing of this matter,[2] contending, most respectfully, that the Court overlooked and/or misapprehended a number of material points, as explained below.

BACKGROUND

A. Background Regarding the Right to Cure Act[3]

In short, the Right to Cure Act requires that, before suing a contractor for allegedly defective residential construction, a homeowner must serve the contractor with written notice of their claim and allow the contractor the opportunity to inspect the alleged defect(s) and to either make an offer to cure (i.e., an offer to remedy the alleged defect(s) or an offer to settle the claim) or deny the claim. *See* §§ 40-59-820, -840, -850. Compliance with the requirements of the Act is a prerequisite to "proceed[ing] with a civil action or other remedy provided

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[1] "Seaquest" is general contractor Appellant Seaquest Development Company, Inc., who is the only remaining appellant in this appeal, now that the appeal by homeowners Appellants Andrew and Kimberly McIntire has been dismissed.

[2] By order filed July 3, 2023, the Court extended the time for serving and filing this petition until today, July 17, 2023.

[3] The "Right to Cure Act," or simply the "Act," is the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810 to -860.

by contract or by law." § 40-59-850(C). If a homeowner files suit before complying with the requirements of the Act, on motion of a party to the action, the circuit court must "stay the action until the [homeowner] has complied with the requirements of th[e] [Act]." § 40-59-830.

B. Procedural History

Seaquest was the general contractor for the construction of the McIntires' house. Every respondent to this appeal (collectively, "Respondents") was involved in the construction of the home as a subcontractor or material supplier.

The McIntires filed this lawsuit against Seaquest and the Other Defendants[4] in the Charleston County Court of Common Pleas on April 8, 2016, alleging defects in the construction of their home and asserting a number of causes of action for money damages. (R. pp. 44–56.)

Seaquest timely answered the McIntires' complaint on June 17, 2016, denying its alleged liability, raising a number of affirmative defenses, and asserting cross-claims against the Other Defendants and third-party claims against the Third-Party Defendants[5] on the premise that "[i]f [it] is compelled to pay damages for any reason

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[4] The "Other Defendants" refers, collectively, to the other defendants that the McIntires sued besides Seaquest. Their individual names are stated in the above caption.

[5] The "Third-Party Defendants" refers, collectively, to Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC. To be clear, "Respondents" refers, collectively, to the Other Defendants and the Third-Party Defendants.

in this matter, it alleges that any liability it has for the damages would be an imputation of liability upon it as a result of wrongful acts or omissions committed by [the Other Defendants/Third-Party Defendants]." (R. pp. 61–82.)

Also on June 17, 2016, i.e., contemporaneous with its answer, Seaquest moved to dismiss or, alternatively, stay the action because of the McIntires' failure to comply with the requirements of the Right to Cure Act. (R. pp. 86–87.) Because the McIntires had not given it the required pre-suit claim notice (and had thus also denied it the opportunity to exercise its rights under the Act), Seaquest contended that the action had to be "stay[ed] . . . until the [McIntires] . . . complied with the requirements of [the Act]." § 40-59-830. Moreover, because the McIntires had already hired experts and substantially completed repairing the alleged construction defects without notifying it, Seaquest contended that the McIntires could not possibly comply with the requirements of the Act.

Of the Other Defendants, only Red Bay Constructors Corp. ("Red Bay"), via motion filed June 23, 2016, followed Seaquest's lead in moving to dismiss or, alternatively, stay the action based on the McIntires' failure to comply with the requirements of the Right to Cure Act. (R. pp. 90–91.)

On July 27, 2016, the McIntires moved to compel arbitration with Seaquest, contending it was required by their construction contract,[6] and shortly thereafter, on

[6] (R. pp. 98–121.)

August 15, 2016, they made a related motion for a protective order, contending that, because the matter was subject to arbitration, they should not have to respond to the requests for admissions Seaquest had served on them. (R. pp. 94–95.)

By order filed May 1, 2017 (the "Dismissal Order"), the circuit court, the Honorable Jean Hoefer Toal presiding, granted Seaquest's motion and dismissed the action,[7] reasoning as follows: "Because the McIntires have not complied with the Right to Cure Act, the act plainly requires a stay; because they foreclosed even the possibility of compliance with the Right to Cure Act, the stay must be permanent; as a practical matter, a permanent stay is a dismissal, which this Court now orders." (R. p. 9.) Additionally, the Dismissal Order denied the McIntires' motion to compel arbitration and declared both the McIntires' motion for a protective order and Red Bay's motion moot. (R. pp. 3–14.)

The McIntires timely appealed the Dismissal Order, naming Seaquest as the only respondent. (R. pp. 445–63.) By opinion filed December 31, 2019, this Court reversed the Dismissal Order, finding that the circuit court should have simply granted the McIntires' motion to compel arbitration and should not have proceeded further to address Seaquest's motion regarding the Right to Cure Act. (R. pp. 15–20.) Following the Court's denial of Seaquest's petition for rehearing on March

[7] (R. pp. 1–14.)

27, 2020,[8] and the Supreme Court's denial of Seaquest's petition for a writ of certiorari on December 11, 2020,[9] the remittitur was issued on December 14, 2020. (R. p. 25.)

On remand, Respondents contended they were no longer parties to the case, arguing they had been dismissed from the case and their dismissal had never been appealed.

During a status conference on February 16, 2021, the circuit court, the Honorable Roger M. Young, Sr., presiding, suggested the filing of a motion for clarification, and the McIntires and Seaquest jointly filed such a motion that day. (R. pp. 247–49). Shortly thereafter, via email to counsel on February 19, 2021, Judge Young indicated that Respondents remained parties to the case:

> [A]fter the Court of Appeal's decision, [the Dismissal Order] became of no effect and is no longer in existence.
>
> In my opinion, that leaves any claims against [Respondents] alive.

(R. pp. 522.)

After requesting and receiving from Judge Young an opportunity to present further argument, a majority of Respondents filed a joint return to the motion for clarification on March 3, 2021, and Sealtight of South Carolina, LLC, filed its own memorandum in opposition on March 4, 2021. (R. pp. 292–306.) The McIntires

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[8] (R. pp. 21–22.)

[9] (R. pp. 23–24.)

and Seaquest then filed a joint reply in support of the motion for clarification on March 12, 2021. (R. pp. 330–52.)

The circuit court heard the motion for clarification on April 22, 2021, the Honorable Jennifer B. McCoy presiding,[10] and thereafter denied it by formal order filed August 23, 2021. (R. pp. 29–41.)[11]

This appeal timely followed[12] and in due course was briefed and made ready for decision.

The case was submitted on the record on appeal and briefs during the May 2023 term without oral argument and decided May 31, 2023, via the Subject Opinion, which affirmed the circuit court. The body of the Subject Opinion is brief enough to recite here in full:

> **PER CURIAM:** Andrew and Kimberly McIntire and Seaquest Development Company (collectively, Appellants) appeal the circuit court's order denying their joint motion for clarification. Appellants argue the circuit court erred in holding the subcontractors were no longer parties to this case after the order dismissing the case was reversed on appeal. We affirm.
>
> We hold the circuit court properly denied Appellants' motion and concluded the subcontractors were no longer parties to this case on remand. *See Atl. Coast Builders &*

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[10] (R. pp. 407–35.)

[11] The circuit court's formal order filed August 23, 2021, was preceded by a Form 4 order filed August 19, 2021, which stated the court's decision to deny the motion for clarification and requested the submission of a proposed formal order to that effect within ten days. (R. pp. 26–28.)

[12] (R. pp. 546–90.)

> *Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 398, 593 S.E.2d 183, 189 (Ct. App. 2004) ("Any unappealed portion of the trial court's judgment is the law of the case, and must therefore be affirmed."); *Dreher v. S.C. Dep't of Health & Env't Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) ("Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case."); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."); *C. I. T. Corp. v. Corley*, 196 S.C. 339, 343 13 S.E.2d 440, 442 (1941) (holding that an unappealed order becomes the law of the case and the circuit court is "wholly without power or jurisdiction to revoke, vacate, overrule or reverse the same").
>
> **AFFIRMED.**

(internal footnotes omitted.)

This petition for rehearing timely follows.

STANDARD OF REVIEW

This appeal presents a pure matter of law for determination by the Court de novo,[13] "without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); *see also Bain v. Self Mem'l Hosp.*, 281 S.C. 138, 152, 314 S.E.2d 603, 611 (Ct. App. 1984) (explaining that, even where a ruling is on a matter within circuit court's discretion, if the ruling is based on a misunderstanding of the law, rather than upon the exercise of discretion, the question presented on appeal is one of law).

ARGUMENT

I. This Court has erroneously affirmed the circuit court's erroneous holding that Respondents are no longer parties to this action after the Dismissal Order was reversed on appeal.

A. The Court overlooked and/or misapprehended Seaquest's argument that no claims were "litigated" previously, and Seaquest had nothing to appeal.

In challenge to the circuit court's determination that Respondents were no longer parties to this case on remand after the Dismissal Order was reversed on appeal, Seaquest duly argued that no claims were "litigated" previously, and Seaquest

[13] *See Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 252–53 (2014) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.") (citation omitted); *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 107, 727 S.E.2d 407, 416 (2012) ("'In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'") (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)).

had nothing to appeal. (Br. of Seaquest pp. 7–10.) As evidenced by the fact that it is simply not addressed in the Subject Order, this Court has erred by overlooking and/or misapprehending this argument.

B. Had it reached Seaquest's argument that no claims were "litigated" previously, and Seaquest had nothing to appeal (as, most respectfully, it should have), the Court should have found that the circuit court erring in concluding Respondents were no longer parties to this case on remand after the Dismissal Order was reversed on appeal.

Viewing the Dismissal Order as having dismissed Seaquest's "claims," the circuit court faulted Seaquest for "fail[ing] to appeal" the order, declaring that "this unappealed ruling [is] the law of the case" and Seaquest is "barred from *relitigating* these extinct claims." (R. p. 36 (emphasis added).) This was error on the part of the circuit court, and this Court has repeated the circuit court's error. (*See* Subject Opinion (citing *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009), for the proposition that, "[u]nder the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court").)

First off, no claims were *litigated* to begin with. Based solely on her finding that the McIntires could not possibly comply with the requirements of the Right to Cure Act, Chief Justice Toal dismissed the action (her order speaking not of the dismissal of any claim but of the action itself) for the sole reason that, by its express terms, § 40-59-830 of the Right to Cure Act left her no choice ("*the court shall stay*

the action *until* the claimant *has complied* with the requirements of th[e] [Act]"[14]) but to stay the action pending the occurrence of something that would never occur, in other words, to stay the action in perpetuity, i.e., permanently, which, in practical terms, she equated with a dismissal of the action. (R. pp. 3–14.)

In discussing the doctrine of collateral estoppel, our case law speaks in terms of barring "*relitigation* of the same facts or issues *necessarily determined* in [a] former proceeding." *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997) (emphasis added); *see also Beall v. Doe*, 281 S.C. 363, 371, 315 S.E.2d 186, 191 (Ct. App. 1984) ("In order, however, to assert collateral estoppel successfully, the party seeking issue preclusion still must show that the issue was *actually litigated* and *directly determined* in the prior action and that the matter or fact directly in issue was necessary to support the first judgment.") (emphasis added). The Dismissal Order had nothing whatsoever to do with the merits of any claim, and just as no claim was actually *litigated* before, no claim can be barred from being *re*-litigated now.

In this same vein, nowhere in the Dismissal Order is the dismissal of the action said to be with prejudice; nor would it even make sense for the dismissal to be with prejudice, given that, again, the basis of the dismissal had nothing whatsoever to do with the merits of any claim. *See Collins v. Sigmon*, 299 S.C.

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[14] (emphasis added).

464, 467, 385 S.E.2d 835, 837 (1989) ("A dismissal of a case 'without prejudice means that the plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal. By contrast, dismissals with prejudice are intended to bar relitigation of the same claim.'") (citing Friedenthal, Kane & Miller, *Civil Procedure* 651 (1985)).

Additionally, Seaquest did not "fail" to appeal the Dismissal Order. Again, as explained, the order did not adjudicate the merits of any claim asserted in the action; nor procedurally could it have done so. Faced not only with the McIntires' failure to comply with the Right to Cure Act before filing suit but also their inability to do so ever after, Chief Justice Toal dismissed *the action* for the sole reason that, literally, per the plain and mandatory language of § 40-59-830, *the action* could *never* proceed. (R. pp. 3–14.) Besides this, Chief Justice Toal's order denied the McIntires' motion to compel arbitration and deemed both the McIntires' motion for a protective order and Red Bay's motion moot. (R. pp. 3–14.)

Seaquest was not aggrieved by Chief Justice Toal's order of dismissal. Not only did it have no reason to appeal the order, it could not have appealed it. Rule 201, SCACR ("*Only* a party *aggrieved* by an order, judgment, sentence or decision may appeal.") (emphasis added); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) ("[C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party . . . .").

Logic dictates that, for the law-of-the-case doctrine to apply, there must be an appealable order to begin with. In other words, there can be no *unappealed* ruling where there is no *appealable* ruling to begin with. Thus, the invocation of the doctrine (by both the circuit court and this Court) against Seaquest here is plainly misplaced.

C. The Court overlooked and/or misapprehended the McIntires' arguments.

In challenge to the circuit court's determination that Respondents were no longer parties to this case on remand after the Dismissal Order was reversed on appeal, the McIntires duly made a number of arguments, namely, (II) that appeal of the Dismissal Order stayed its effect,[15] (III) that reversal of the Dismissal Order restored the case to its posture prior to the filing of the motion to dismiss,[16] (IV) that the appeal was of the entire Dismissal Order,[17] (V) that there was no separate holding dismissing Respondents from the case,[18] (VI) that Seaquest was the proper respondent to the prior appeal,[19] (VII) that Respondents were served with notice of the prior appeal,[20] (VIII) that the motion for clarification was proper,[21] and (IX) that the circuit

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15 (Br. of McIntires pp. 4–5.)
16 (Br. of McIntires p. 5.)
17 (Br. of McIntires pp. 5–6.)
18 (Br. of McIntires p. 6.)
19 (Br. of McIntires p. 7.)
20 (Br. of McIntires p. 7.)
21 (Br. of McIntires pp. 7–8.)

court recovered jurisdiction following the remittitur in the prior appeal,[22] and, pursuant to Rule 208(b)(6), SCACR (providing that "[i]n cases involving more than one appellant . . . any party may adopt by reference all or any part of the brief of another"), Seaquest duly adopted these arguments, except insofar as they are inconsistent with or otherwise prejudicial to its position or interests. (Br. of Seaquest p. 7.) As evidenced by the fact that they are simply not addressed in the Subject Order, the Court erred by overlooking and/or misapprehending these arguments.

D. Had it reached the McIntires' arguments identified above (as, most respectfully, it should have), the Court should have found that the circuit court erring in concluding Respondents were no longer parties to this case on remand after the Dismissal Order was reversed on appeal.

1. Appeal of the Dismissal Order stayed its effect (McIntire Argument II).

The Dismissal Order was appealed, automatically staying its effect, pursuant to Rule 241(a), SCACR, which states:

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

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[22] (Br. of McIntires p. 8.)

No exception to a stay pending appeal (*see* Rule 241(b), SCACR) being applicable, the dismissal of the action was stayed pending the outcome of the appeal.

2. Reversal of the Dismissal Order restored the case to its posture prior to the filing of the motion to dismiss (McIntire Argument III).

Our Supreme Court has stated:

> Generally, reversal of a judgment on appeal has the effect of vacating the judgment and leaving the case standing as if no judgment had been rendered.

Moore v. N. Am. Van Lines, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995) (citing *Brown v. Brown*, 286 S.C. 56, 57, 331 S.E.2d 793, 793–94 (Ct. App. 1985)).

As Judge Young properly stated in his informal ruling:

> [A]fter the Court of Appeal's decision, [the Dismissal Order] became of no effect and is no longer in existence.
>
> In my opinion, that leaves any claims against [Respondents] alive.

(R. pp. 522.)

This was the proper interpretation of the law and the procedural posture of this action. Respondents remain parties to the action.

3. The appeal was of the entire Dismissal Order (McIntire Argument IV).

Moreover, there can be no contention that the dismissal of Respondents[23] was unappealed, because that order was appealed in its entirety.

The Notice of Appeal states, "Plaintiffs Andrew and Kimberly McIntire appeal the order of the Honorable Jean Hoefer Toal, dated January 17, 2017." (R. p. 445.) The McIntire's appellate brief stated, "[t]his Court should vacate *the trial court's order* and direct the parties to engage in arbitration" and "reverse *the judgment* of the circuit court . . . ." (R. pp. 471, 480 (emphasis added).) Therefore, the portion of the Dismissal Order that dismisses the case entire case was necessarily and expressly appealed.

This Court ordered that "*the decision* of the trial court is reversed and remanded." (R. p. 20 (emphasis added).) This had the effect restoring the case to its pre-dismissal posture, namely with Respondents as parties and the McIntires seeking to stay the claims against them while it arbitrates with Seaquest.

4. There was no separate holding dismissing Respondents from the case (McIntire Argument V).

The circuit court's order states that there was distinct holding in Dismissal Order dismissing Respondents from the case. (R. p. 36 ("The Order . . . clearly

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[23] Even assuming, *arguendo*, that there was a dismissal of Respondents in the Dismissal Order, which there was not, that order simply dismissed the entire case on procedural grounds.

dismissed all Subcontractor Defendants from the case.").) This is inaccurate. The Dismissal Order dismissed the case; it did not dismiss any particular parties from the case. (R. p. 14.) There was no separate holding to be appealed regarding Respondents' status in the case. There was only an order dismissing the entire case on the grounds asserted by Seaquest, and that order was appealed and reversed.

5. Seaquest was the proper respondent to the prior appeal (McIntire Argument VI).

Respondents argued to the circuit court that they should have been respondents to the prior appeal and that their omission as respondents supports their contention that they are no longer parties to the action. This is also erroneous.

The Dismissal Order granted Seaquest's motion and dismissed the case on that basis alone. Respondents did not join in that motion. The one Respondent motion that was filed (asserting the same grounds as asserted in Seaquest's motion) was denied as moot by virtue of the circuit court's ruling on Seaquest's motion and dismissal of the entire action. Accordingly, there was no motion or ruling as to Respondents that the McIntires could have appealed that would make any Respondent a proper respondent.

The McIntires properly appealed the order granting of Seaquest's motion and dismissing the case. Accordingly, the proper respondent to that appeal—the only proper respondent—was Seaquest.

6. Respondents were served with notice of the prior appeal (McIntire Argument VII).

Respondents also contend that they were not served with the prior appeal. (R. pp. 296–97.) This is inaccurate. Though not required because Respondents were not proper respondents to the prior appeal, they were served with notice of the same on June 2, 2017. (R. pp. 348–52.)

7. The motion for clarification was proper (McIntire Argument VIII).[24]

The circuit court's order states that the motion for clarification was seeking clarification of the Dismissal Order and thus is an improper Rule 59(e), SCRCP, or Rule 60(b), SCRCP, motion. This is inaccurate. The reversal of the Dismissal Order meant there was no order to reconsider. *Moore v. N. Am. Van Lines*, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995).

Instead, the motion sought clarification—in light of Respondents' position—of the status of Respondents as parties to the suit following the reversal of the Dismissal Order. Further, it was filed at the direction of the trial court in keeping with Rule 7(b)(1), SCRCP. The motion was proper.

Moreover, as argued in Seaquest's brief on this point, the circuit court's finding that the motion for clarification was improper is based on the erroneous premise that

[24] The fact that the Subject Order does not state that the Court found the motion for clarification to be improper would seem to indicate that the Court does not find it to be improper; however, Seaquest includes this argument (which also incorporates its own argument on this subject) out of an abundance of caution.

the motion asked for clarification of the Dismissal Order. (*See* R. p. 36 ("As an additional ground for denial, this Court finds that there is no procedural mechanism which affords [the McIntires] and Seaquest the right to request clarification of an order almost four years after it was issued.").) The motion for clarification did not seek any relief with respect to the Dismissal Order. It asked the circuit court to advise, in the wake of the McIntires' appeal of the Dismissal Order and this Court's reversal of the same, whether Respondents remained parties to the action. (R. pp. 247–249.) The idea that the circuit court is procedurally incapable of answering such a question is absurd. *Cf. Branham v. Ford Motor Co.*, 390 S.C. 203, 242–43, 701 S.E.2d 5, 26 (2010) (recognizing that trial judges in South Carolina have the inherent authority to manage and conduct a trial and may realign the parties at any stage of the action[25]); *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) ("Th[e] adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants."); *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible."); *Elam*, 361 S.C. at 25, 602 S.E.2d at 780 ("[C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party . . . ."); Rule 1, SCRCP ("These rules . . . shall be

[25] In this regard, Seaquest submits that logic dictates that the authority to realign the parties presupposes the authority to determine who they are.

construed to secure the just, speedy, and inexpensive determination of every action."); Rule 16(a), SCRCP ("In any action after the issues are joined by the actual filing and service of all pleadings, the court may in its discretion or upon motion of any party direct the attorneys for the parties to appear before it for a hearing to consider: (1) The simplification of the issues; . . . [or] (8) Such other matters as may aid in the disposition of the action."); Rule 16(b), SCRCP ("The court shall make a written order which recites the action, if any, taken at the hearing . . . ."); Rule 16(c), SCRCP ("Whether or not a formal pre-trial hearing has been held in an action, the trial judge may hold an informal conference before trial to dispose of any remaining matters . . . ."); *compare* Rule 7(a), SCRCP (expressly limiting the types of pleadings that are allowed) *with* Rule 7(b), SCRCP (containing no language limiting the types of motions allowed) *and* the Official Note to Rule 7(b) ("'Petitions' for special relief are simply stated as motions.").

8. The circuit court recovered jurisdiction following the remittitur in the prior appeal (McIntire Argument IX).

The circuit court order also states that the circuit court solely had jurisdiction to "require arbitration between Plaintiffs and Seaquest" and that it therefore lacked jurisdiction to decide the status of the subcontractors. (R. p. 29.) This misstates this Court's prior opinion and its effect.

This Court found the circuit court had erred in failing to grant the McIntire's motion to stay and compel arbitration, and on that basis, it "reversed and remanded"

the Dismissal Order. (R. p. 20.) The Dismissal Order was therefore reversed in its entirety, including its denial of the McIntire's motion to stay and compel arbitration, and remanded. The Court did not provide instructions or limitations on the circuit court's jurisdiction upon remand, other than stating the Court "remand[ed] the case for arbitration" between the McIntires and Seaquest. (R. p. 19.)

In other words, this Court found that the McIntire's motion to stay and compel arbitration should have been granted. The granting of the McIntire's motion to compel arbitration would have the effect of staying the case as to Respondents while the McIntires arbitrate with Seaquest. As part of this undertaking, the circuit court would be well within its jurisdiction to determine that Respondents remained parties to the suit.

CONCLUSION

For the foregoing reasons, along with any other or further reason(s) set forth in its appellate briefs already on file, the entirety of which it hereby adopts and incorporates herein by reference and reiterates/reasserts in support hereof, Seaquest asks this Honorable Court to grant the instant petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court's ruling on the motion for clarification and confirms that Seaquest's claims remain pending against Respondents.

Respectfully submitted,

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Seaquest Development Company, Inc.

Charleston, South Carolina

July 17, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-01833
Appellate Case No. 2021-001055

Andrew and Kimberly McIntire,

Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants.

and

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a

Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; New South Construction Supply, LLC; Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC, are

Respondents.

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant Seaquest Development Company, Inc., hereby certify that the **PETITION FOR REHEARING** in the above-captioned case were served on all parties to this matter (who have appeared in the action) on July 17, 2023, by emailing (see attached) a copy of the same to their respective counsel of record:

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Respectfully submitted,

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July 17, 2023

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Subject:	Andrew McIntire v. Red Bay Constructors Corp.//2021-001055
Date:	Monday, July 17, 2023 4:57:25 PM
Attachments:	image001.png McIntire v. Seaquest (2021-001055) -- Seaquest"s Petition for Rehearing.pdf

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Attached please find our **Petition for Rehearing** in the above-referenced case.

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