

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Sep 08 2023**

S.C. SUPREME COURT

APPEAL FROM UNION COUNTY  
Court of Common Pleas  
William A. McKinnon, Circuit Court Judge

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Appellate Case No. 2022-000853

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Dwayne Thompson, ..... Respondent,

v.

LG Chem, Ltd., LG Chem America, Inc.,  
and Rolling Fog Vapor Company, LLC, .....Defendants,

Of whom, LG Chem, Ltd. and LG Chem America, Inc. are the..... Petitioners.

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**RESPONDENT'S MOTION TO STRIKE PORTIONS OF PETITIONERS'  
BRIEF AND MOTION TO STAY TIME LIMIT FOR FILING RESPONDENT'S  
BRIEF**

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Respondent Dwayne Thompson moves the Court pursuant to Rule 240, SCACR, for an Order striking the portions of Petitioners' Brief which improperly raise issues for the Court's review that were never ruled upon by the Court of Appeals or meaningfully raised in the Petition for Rehearing. Petitioners filed their Notice of Appeal after the Circuit Court denied their motions to dismiss for lack of personal jurisdiction. (App. pp. 1237-41). Petitioners' appeal was dismissed by the Court of Appeals after it found that the Circuit Court's Orders were not

immediately appealable. (App. p. 30). The Court of Appeals' Order did not address or rule upon the personal jurisdiction issues raised by Petitioners in their appeal.

In their Petition for Rehearing, Petitioners briefly discussed their position that the jurisdictional allegations contained within a complaint are not sufficient in themselves to justify denial of a motion to dismiss for lack of personal jurisdiction, but this discussion was included as part of Petitioners' argument that "[r]ecognizing the propriety of immediate review regarding sufficiency of minimum contacts will not 'open the floodgates' to the appellate courts" and in doing so only sought to address the immediate appealability issue. (Ex. A, Petition for Rehearing). Petitioners did nothing further to address personal jurisdiction in their Petition for Rehearing, and only asked the Court of Appeals "to correctly recognize that South Carolina Code Section 14-3-330 and *Mid-State Distributors* do not support a finding that this case is not immediately appealable and to allow this appeal to go forward on the merits." Thus, the only issue Petitioners asked the Court of Appeals to grant rehearing on was the issue of immediate appealability. The Court of Appeals denied the Petition for Rehearing without addressing personal jurisdiction. (App. p. 34).

Despite this, Petitioners' Brief contains nearly seventeen pages of briefing raising personal jurisdiction issues encompassed by the Circuit Court's Orders and the merits of Petitioners' motions to dismiss which were never ruled upon by the Court of Appeals and were not sufficiently raised in the Petition for Rehearing. (Pet's Br. 13-29). Petitioners' Statement of Issues on Appeal includes as a second issue the question of whether the Court of Appeals erred "by failing to reverse the

trial court's failure to dismiss the case for lack of personal jurisdiction against both Petitioners in violation of constitutional due process." (Pet'rs' Br. 1). This is misleading because the Court of Appeals did not fail to reverse the Circuit Court's Orders on the issue of personal jurisdiction. The Court of Appeals never reached the issue or took a stance on it at all because it found the Orders were not immediately appealable. Petitioners are essentially asking the Court to find that the Court of Appeals erred in ruling wrongly on the issue of personal jurisdiction when it never actually did so.

Rule 242(d), SCACR states that "[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Additionally, it is imperative that an issue must be raised to and ruled upon by a lower court for the issue to be preserved for appellate review. *FO'n, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Because the Court of Appeals never reached and ruled upon the merits of Petitioners' motions to dismiss, and Petitioners failed to request that the Court of Appeals do so in their Petition for Rehearing, the merits of Petitioners' motions to dismiss and the issue of personal jurisdiction are not properly before this Court, as the Court of Appeals has not had a fair opportunity to rule upon them.

The Court should therefore order that portions of Petitioners' Brief referring to the issue of personal jurisdiction be stricken, including:

1. Petitioners' second issue within the Statement of Issue on Appeal (Pet'rs' Br. 1);
2. Portions of Petitioners' Statement of Facts referring to the merits of the underlying motions to dismiss that were before the Circuit Court (Pet'rs' Br. 5-6);
3. Portions of the Standard of Review referring to the standard for reviewing an order granting or denying a motion to dismiss for lack of personal jurisdiction (Pet'rs' Br. 6); and
4. Text passages from Petitioners' Argument section containing personal jurisdiction arguments (Pet'rs' Br. 7, 13-30).

Given the uncertainty created by this Motion to Strike and the issues that will need to be addressed in Respondent's Brief, Respondent also requests a stay of his deadline to refile his Brief while his Motion to Strike is pending.<sup>1</sup> Respondent cannot effectively determine how to reduce the page length of his previously submitted Brief without first knowing whether the Court will decide to hear all of the issues raised by Petitioners' Brief. Accordingly, Respondent respectfully requests that the Court stay the deadline for his Brief pending resolution of his Motion to Strike, strike Petitioners' second issue from their Statement of Issues on Appeal, and order that any text passages concerning the merits of Petitioners'

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<sup>1</sup> Respondent filed a Motion to Exceed Page Limit on August 17, 2023, and a 75-page brief on August 21, 2023. The Court denied his motion on August 23, 2023 and granted thirty days for Respondent to file and serve an amended brief in compliance with the standard page limitations.

motions to dismiss for lack of personal jurisdiction be stricken from Petitioners' Brief and not considered by the Court.

Respectfully submitted,

PARKER LAW GROUP, LLP

By: \_\_\_\_\_

September 8, 2023  
Hampton, South Carolina

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