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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Heath P. Taylor, Circuit Court Judge

Appellate No. 2023-000720

Cases No. 2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, and Jane Doe 2 and Rachel Roe, individually and as representative of a class of people similarly situated, Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are the ..... Appellants,

v.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity ..... Respondents.

INITIAL BRIEF OF DIOCESE RESPONDENTS

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ISSUES ON APPEAL

I. The circuit court properly denied "intervention" pursuant to Rule 24, SCRCP, where the parties seeking to intervene were either named parties to the 2007 class action (Sires), or had submitted claims and participated in the class action settlement (McDonalds). Intervention would, therefore, be entirely improper.

II. The circuit court properly denied Appellants plea for a "post award fairness review" of the class action settlement. Neither Rule 23, SCRCP, nor applicable precedent permits reopening a class action for additional review after the claims process has concluded and settlement funds have been distributed pursuant to the terms of the Court's preliminary and final orders approving settlement.

STATEMENT OF THE CASE

The parties settled this action on a class basis in 2007. Appellant *pro se* Alan Sires ("Sires") was one of the John Doe parties to that action. The record before the circuit court reflects that the Diocese complied with each and every obligation of the Class Action Settlement Agreement (***J.A.*** __) and the Circuit Court's Orders Approving Settlement dated July 30, 2007 (***J.A.*** __) and August 31, 2007 (***J.A.*** __). The claims process concluded in 2008. This matter has been concluded with finality for nearly 15 years.

It is indisputable that class counsel and the Diocese executed the class action settlement in accordance with the terms of the class action settlement agreement and the Circuit Court's orders approving settlement. As ordered, class counsel published notice of the class settlement in 11 South Carolina newspapers, the Augusta *Chronicle*, and in the Diocese's publication, *The Catholic Miscellany*. Class counsel and the Diocese also provided notice by First Class Mail to all individuals about whom the Diocese had prior actual notice of alleged abuse but who had not previously made a claim.[1] This was exactly as ordered by the court.[2] As part of the class action

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[1] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 94 S. Ct. 2140 (1974). There were a handful of individuals whom the parties could not locate, but who remain entitled to actual notice of the class action settlement.

[2] MANUAL FOR COMPLEX LITIGATION 4TH (Federal Judicial Center, 2004), § 21.312 recommends that the notice to the class should include:

- A definition of the class(es);
- A clear description of the options open to the class members and the deadlines for taking action;
- A description of the essential terms of the proposed settlement;
- Disclosure of any special benefits provided to the class representatives;
- Information regarding attorney's fees;
- The time and place of the hearing to consider approval of the settlement;
- A description of the method for objecting to (or, in permitted, for opting out of) the settlement;
- An explanation of the procedures for allocating and distributing settlement funds;
- An explanation of the basis for nonmonetary benefits if the settlement includes them;

settlement, the Diocese agreed not to raise a number of defenses, including the statute of limitations, charitable immunity, or other legal or equitable defenses, against anyone submitting a claim. Thus, any member of the class could submit a claim without regard to when and how long ago the alleged abuse took place.

Counsel for the McDonald Appellants represented several objectors and opt-outs to the class action settlement. The objections to the class action settlement raised many of the points Appellants asserted to the circuit court in this matter regarding the process of the class action settlement. Judge Goodstein's July 30, 2007 Order overruled all objections with detailed analysis of each.[3] No objector appealed any adverse ruling on any objection, and objectors' counsel ultimately withdrew all objections to the class action settlement.[4] The objectors' claims were resolved and likewise paid in full, and the Diocese obtained releases of those claims. Appellant *pro se* Sires *did not* file any objection to the class action settlement.

Class counsel administered the settlement and collected claim forms from class members – both victims of sexual abuse and loss of consortium claimants. Again, the claim forms were handled exactly as ordered. The claimants each participated in arbitration proceedings as the settling parties agreed. The arbitrator then made awards to each claimant, with payments coming

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- Information that will enable class members to calculate or at least estimate their individual recoveries, including estimates of the size of the class and any subclasses; and,
- A prominent display of the address and phone number of class counsel and how to make inquiries

Judge Goodstein's order contains all this information.

[3] *See* Order Approving Settlement, pp. 6-11 (***J.A.*** __).

[4] *Devlin v. Scardelletti*, 536 U.S. 1, 10, 122 S. Ct. 2005, 153 L. Ed. 2d 27 (2002) ("class members [are] allowed to appeal the approval of a settlement when they have objected at the fairness hearing. To hold otherwise would deprive nonnamed class members of the power to preserve their own interests in a settlement that will ultimately bind them, despite their expressed objections before the court"); 5 *Moore's Federal Practice - Civil* § 23.169 (2022)

from an escrow account administered by a third party. All valid claims were paid in full. All claimants received offers of psychological treatment and pastoral care as well. The claims period concluded as approved by Judge Goodstein's orders approving the settlement. As is reflected in the report from the escrow agent, arbitral awards were paid from the settlement fund to class counsel (or to individual claimants or their separate counsel) (***J.A.*** __). No record of how claimants' counsel, including class counsel, handled disbursement to their clients was provided to the Diocese or to the circuit court.

Appellants sought to reopen the long-concluded 2007 class action by filing what they styled as a Motion to Intervene and for something referred to as a post-award fairness review in the three cases that had been consolidated prior to class certification. (***J.A.*** __ ***and*** __). The Diocese and Class Counsel opposed the motion. (***J.A.*** __ ***and*** __). By order of the South Carolina Supreme Court, the matter was referred to Circuit Judge Heath Taylor November 10, 2022 (***J.A.*** __). Judge Taylor conducted a status conference on November 23, 2022, to attempt to discover what was left for the circuit court to resolve in the cases. The parties then submitted briefs and a reconstructed case file **(The Diocese, *J.A.* __, Class Counsel, *J.A.* __, McDonalds, *J.A.* __, Sires, *J.A.* __).** On January 27, 2023, Judge Taylor heard oral argument regarding the merits of the McDonalds' motions, as well as those of Appellant *pro se* Sires.

On March 24, 2023, Judge Taylor denied the motions for post-award fairness hearing and determined that intervention pursuant to Rule 24 was unnecessary. **(*J.A.* __).** The McDonalds filed a Rule 59(e) motion, in which Sires joined. (***J.A.*** __). Judge Taylor denied petitioners' motion to reconsider in a Form 4 order entered April 5, 2023. (***J.A.*** __). This appeal followed.

ARGUMENTS

The circuit court properly denied the motion the McDonald Appellants filed. Quite simply, Rule 23, SCRCP, does not permit or command courts to engage in a so-called post-award fairness review. The McDonalds' proposed remedy does not exist pursuant to applicable Rule or precedent. The procedure suggested by Appellants should not be read into Rule 23, and it especially should not be invented for or applied to a case that concluded long ago.

Systemic and procedural problems notwithstanding, what Appellants ultimately seek is an impermissible. court-ordered reworking of the class action settlement agreement – to reallocate money that is no longer available, to redirect that money to persons who did not make claims within the period established by Judge Goodstein's orders, and to reform the class action along terms to which the parties did not agree and that Judge Goodstein did not approve. In essence, Appellants have mounted an impermissible and untimely collateral attack on Judge Goodstein's 2007 orders, which is in no way a proper application of Rules 23 and 24, SCRCP.

I. THE MCDONALD APPELLANTS SOUGHT NOTHING LESS THAN AN IMPERMISSIBLE COLLATERAL ATTACK ON THE JUDGMENTS OF THE CLASS ACTION COURT THAT WERE ENTERED MORE THAN FIFTEEN YEARS AGO.

A. The Circuit Court Correctly Determined the McDonald Appellants Were Not Entitled to Second-Guess the Judgment of the Class Action Court

The circuit court correctly ruled that permitting the Appellants to upend the class action settlement and judgment by reopening the long-concluded class action case would turn class action practice on its head. Judge Goodstein conducted two lengthy hearings to approve the class action settlement. First, in January, 2007, she certified the two classes and gave preliminary approval of the settlement. In July, 2007, she gave final approval to the class action settlement after hearing, and overruling, the objections brought by Mr. Meyers' clients. As the

MANUAL FOR COMPLEX LITIGATION provides – review of a proposed class action settlement generally involves two hearings – the first to make a preliminary fairness determination and the second to give final approval.[5] That process is exactly what happened.

One of the purposes the class action procedure is to promote finality and certainty for both defendants and the plaintiff class.[6] That finality – and the *res judicata* and collateral estoppel afforded to class action judgments – is the reason courts are careful to analyze the settlement terms and conditions and to issue a judgment that the proposed settlement is fair, reasonable, and adequate, not just to the representative parties, but to the class as a whole.[7] Finality is also one reason that class members are entitled to notice of the settlement and the opportunity to opt out or object.[8] If a class member neither objects nor opts out of a class settlement, they are bound by the judgment. The only proper procedure for reviewing a court's findings regarding a class settlement is through direct appeal from the denial of an objection to the settlement.

Judge Goodstein's thorough analysis of the class settlement in her orders approving settlement are not subject to collateral attack more than 15 years after they were entered. She followed the requirements of both Rule 23(c), SCRCP, and the MANUAL FOR COMPLEX LITIGATION, §21.6. Judge Goodstein made factual findings regarding the fairness and adequacy

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[5] MANUAL FOR COMPLEX LITIGATION, § 21.632 *citing In re Amino Acid Lysine Antitrust Litigation*, MDL NO. 1083, 1996 U.S. Dist. LEXIS 5308 (N.D. Ill. April 22, 1996). *See also Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991)(citing MANUAL FOR COMPLEX LITIGATION with approval).

[6] PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION. §3.14, comment a. (American Law Institute, 2010).

[7] Rule 23(d)(2), SCRCP; *see also* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.62 AT 315-16 (2014); PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, § 3.02 comment a.

[8] Rule 23(b), SCRCP; *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

of the class action settlement and, only after thorough review and consideration, gave the parties' agreement her approval. She analyzed and overruled the numerous objections to the class settlement. No appeal was taken from her rulings in 2007.

Having participated in the class action settlement, the McDonalds broadly released any claim they might have had against the Diocese or any of its employees. They further both explicitly and implicitly waived any right to challenge the fairness, reasonableness, or adequacy of the settlement. As was required under the orders approving the settlement and the notice provided to the members of the class, participating class members waived all right of appeal. (***J.A.*** __). The McDonalds cannot now challenge the very terms of the settlement in which they participated many years ago. Notwithstanding that waiver, the McDonalds are time barred from raising these late-objections to the class action settlement – the circuit court's preliminary approval set the deadline for objecting to the terms of the settlement of February 22, 2007.[9] Failing to file a timely objection was fatal.[10] Failing to file a timely appeal of an order overruling a timely objection is doubly so.

B. <u>There is no procedure pursuant to Rule 23 for anything styled as a "Post Award Fairness Review."</u>

Moreover, collateral review of a class settlement – such as that suggested by Appellants – would undermine the entire process of class actions. Accepting the argument put forward by Appellants would render moot the careful and considered analysis that Rule 23 requires. Rule 23 commands a well-ordered procedure for settling class actions, with multiple levels of protection for absent class members' interests. The protections afforded to absent class members by the

[9] Order Preliminarily Approving Settlement, at 9 (***J.A.*** __).
[10] *See e.g. Farber v. Crestwood Midstream Partners, L.P.*, 863 F.3d 410 (5th Cir. 2017) (Court lacked jurisdiction to consider appeal of denied objection where the objection was untimely).

court's Rule 23(c) approval of the settlement and determination that settlements are fair to the absent class members, would always be open to collateral attack by frustrated class members who fail, for whatever reason, to make a claim in the class action. Even more concerning would be the creation of some procedure that allows those, like Appellants, who took full advantage of the class claims process, to challenge the settlement process many years later. Importantly, neither class action courts nor appellate courts are permitted to rewrite a proposed class-wide settlement agreement in any respect.[11] Counsel has located no case, no secondary source, no treatise, or any law review articles calling for a third hearing to determine the fairness of the class action settlement after the claims have been submitted, the settlement fund has been distributed, and the defendants have been released.

The American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION is instructive and clearly precludes collateral assault on the 2007 class settlement:

> § 3.14 Postjudgment Challenges to Settlement
>
> (a) The normal vehicle for challenging a settlement is a direct appeal from the order or judgment approving the settlement. Apart from appeal, a judgment embodying a class-action settlement may not be challenged, except:
>
> (1) before the court in which the settlement occurred on grounds generally applicable under the governing rules of civil procedure for obtaining relief from judgment; or
>
> (2) before the same or a different court on the ground that the settlement court lacked personal or subject-matter jurisdiction, failed to make the necessary findings of adequate representation, or failed to afford class members reasonable notice and an opportunity to be heard as required by applicable law.

[11] *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (the settlement must stand or fall in its entirety).

> In restricting collateral challenges to a class settlement, this Section leaves unchanged existing law governing class members' ability to pursue claims of malpractice or breach of fiduciary duty against class counsel as permitted by applicable law.[12]

If Appellants' position is accepted, contrary to all law and common sense, the specter of unending challenges to any settlement would wreak havoc on class action practice. Parties simply could not settle any matter on a class-wide basis for fear of never-ending challenges to court-approved and court-ordered processes and virtually unlimited future exposure. Without any guarantee of finality and a bar on future suits, no reasonable party would agree to settle a class action. Allowing collateral attacks on class action judgments would impose profound challenges to the courts and to any party faced with class claims.

Rather, as PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION suggests, Appellants' remedy lies, if at all, in an action against class counsel. In that way, the finality of the class action judgment is given due respect without permitting collateral attacks on a judgment in a long-resolved case.

II. APPELLANT *PRO SE* ALAN SIRES LACKS STANDING TO APPEAL OR TO ATTEMPT TO CHALLENGE HIS OWN CLASS ACTION SETTLEMENT FROM 2007.

Appellant *pro se* Sires purports to appeal from the circuit court's order denying his improperly-filed "Motion to Intervene" in a long-concluded Dorchester County case **in which he was one of the John Doe parties-plaintiff**. Sires filed petitions for a "post award fairness review" and submitted additional filings that are unclear in what relief he sought. Having fully resolved all claims against the Diocese in 2007, Sires has no standing before this Court and is not entitled to appeal any matter decided below.

[12] PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, §3.14

Sires was one of the named plaintiffs in the 2006-2007 class action against the Diocese of Charleston, and he represented the class of victims of sexual abuse. In June of 2006, the parties to that suit agreed to settle the case on a class-wide basis. The class action settlement agreement was submitted to the circuit court for class certification and approval. On January 23, 2007, the circuit court granted preliminary approval of the settlement and certified the settlement class. On July 30, 2007, the circuit court entered an order approving the settlement agreement. On August 31, 2007, circuit court entered a supplemental order that clarified certain issues identified by class members and their counsel. These orders approving the class settlement are final orders and judgments.

As part of the class-wide settlement, the Diocese paid $100,000 to settle Sires' claims. The settlement was approved by the circuit court, although resolution of Sires' individual claims would not otherwise have required court approval. The claims process proceeded; the arbitration hearings went forward; the arbitrator made awards to the claimants; and the settlement funds were disbursed by the escrow agent. In 2009, a final accounting was provided to Judge Goodstein.

Now, some 16 years later, Sires seeks to reopen the class action case and have the Court reexamine his claims that were resolved and released long ago. Yet, this is not the first time Sires has sought to interject himself into litigation involving these parties. Sires has unsuccessfully pleaded for leave to intervene in the following cases:

- *John Doe 193 v. Bishop of Charleston, et al.*, 2013-CP-10-3733.
- *John Doe 194 v. Bishop of Charleston, et al.*, 2013-CP-10-4176.
- *John Doe 245, et al. v. Bishop of Charleston, et al.*, 2015-CP-10-5486.
- *John Doe 297 v. Bishop of Charleston, et al.*, 2016-CP-10-1632.

- *John Doe 432 v. Bishop of Charleston, et al.*, 2019-CP-10-1120.

Having failed in his efforts to intervene in other plaintiffs' cases to seek the same relief he purported to seek below, Sires then went so far as to file a separate case – *John Doe 79 v. Bishop of Charleston*, 2021-CP-2491. That case was dismissed on a motion to dismiss pursuant to Rule 12(b)(6), SCRCP.

Sires has no standing to seek additional review of the matter he settled more than a decade ago. Sires' appeal should be dismissed because he is barred by the principles of accord and satisfaction. Any objection to his own settlement should have been raised in 2007, and he cannot obtain relief in derogation of that settlement. Sires signed his settlement agreement and accepted the funds promised. He simply has no standing before the Court to challenge his own settlement, and the circuit court's orders below should be affirmed on this basis.

CONCLUSION

The circuit court should be affirmed in every respect, and the cases that comprised the 2007 Class Action should be relegated to the grave, never to be revivified. The McDonalds' seek remedies that do not exist at law or pursuant to the South Carolina Rules of Civil Procedure. Appellants seek to undermine and overturn the very finality on which parties to a class action settlement depend. Without the finality of those class action judgments, entering a class-wide settlement would be utterly futile and pointless.

Sires lacks standing before this Court just as he lacked standing to challenge the class action judgments before the circuit courts in this and a multitude of other cases. He resolved the entirety of his claims against Respondents 16 years ago and cannot now challenge the terms of his own settlement.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

23 Aug, 2023 By: _____

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Of Whom Class Members Julie McDonald and Richard McDonald are the

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Respondents

PROOF OF SERVICE

I hereby affirm that on August 23, 2023, I have served a copy of the enclosed Respondents' Initial Brief to:

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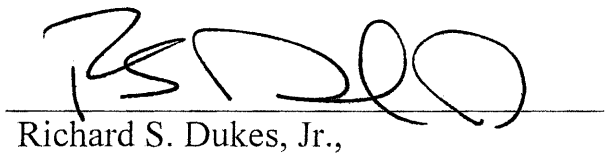

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