THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Dec 18 2023

S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2016-CP-10-01833
Appellate Case No. 2023-001643

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 & MillworkOmni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen 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,

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 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 are

Respondents.

AND

Seaquest Development Company, Inc.,

Third-Party Plaintiff/ Petitioner,

v.

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

Third-Party Defendants/Respondents.

RESPONDENTS' RETURN TO PETITION FOR *CERTIORARI*

December 18, 2023

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STATEMENT OF THE CASE

This is the second appeal in this case involving an Order of Former Chief Justice Jean Hoefer Toal while she was sitting as the Presiding Judge for the Ninth Judicial Circuit. The first appeal concerned only the general contractor in this construction defect litigation, Appellant Seaquest Development Company, Inc. (hereinafter "Seaquest"). McIntire v. Seaquest Dev. Co., Inc., Op. No. 2019-UP-413 (Ct. App. filed Dec. 31, 2019) (unpublished disposition) (hereinafter "First Appeal"). This appeal concerns the effect of Former Chief Justice Toal's Order, upon remand, on Respondents, who were not parties to the First Appeal.

Plaintiffs Andrew and Kimberly McIntire filed their Complaint on April 8, 2016. (R. pp. 42-56.) The McIntires generally alleged that their residence in Mount Pleasant was defectively constructed. The Complaint asserts claims against both Seaquest and most of the Respondents, who were all subcontractors of Seaquest.

Seaquest filed an Answer, Cross-claims, and Third-Party Complaint on June 17, 2016. (R. pp. 57-84.)[1] Seaquest asserted cross-claims or third-party claims against Respondents for "Equitable/Contractual Indemnity and Contribution," Breach of Contract, Negligence, and Breach of Express and Implied Warranty. (R. pp. 69-82.)

That same day, Seaquest filed a Motion to Dismiss or Stay Proceedings pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810, *et seq.* (hereinafter "Right to Cure Act"). (R. pp. 85-89.) Seaquest contended

[1] Sealtight of South Carolina, LLC is a third-party defendant, but not a direct defendant. The remaining Respondents were both direct defendants and cross-claim defendants. Some of the subcontractor defendants have settled out.

that the McIntires failed to serve written notice of the claim as required by Section 40-59-840 prior to bringing this action. (Id.)

Respondent Red Bay Constructors, Corp. (hereinafter "Red Bay"), filed a motion to dismiss on June 23, 2016. (R. pp. 90-93.) Red Bay's motion was also based upon the Right to Cure Act. (Id.)

The McIntires subsequently moved to stay, but for a different reason. They sought to compel arbitration against Seaquest. (R. pp. 98-121.) The McIntires' Motion was filed on July 27, 2016. It is undisputed that the only parties to the arbitration agreement are the McIntires and Seaquest. (See R. p. 31 n.2.)

Former Chief Justice Toal heard the three above-referenced motions, along with a related discovery motion, on October 13, 2016. (R. p. 4.) At the hearing, Seaquest argued that the McIntires admitted they failed to comply with the Right to Cure Act. (R. p. 370.) Seaquest further contended that the Right to Cure Act stays all proceedings, including arbitration, and that the right to arbitrate was waived. (R. pp. 373-74.) The McIntires' primary argument was that the Right to Cure Act issues should be stayed along with all other issues if there is an enforceable arbitration agreement. (R. pp. 390, 398.)

During the hearing, counsel for one of the Respondents, Lowcountry Fireplaces, Inc., asked to be heard. (R. p. 380.) The trial court granted that request, commenting that "it's all on the table right now." (Id.) Counsel then pointed out that Respondents cannot be forced into arbitration because the McIntire-Seaquest arbitration agreement does not apply to the subcontractors. (R. pp. 380-86.) Counsel contended that any order referring the case to arbitration should not include Respondents. (R. pp. 385-86.) The McIntires agreed they are not seeking to enforce arbitration against Respondents. (R. p. 389.) The court expressed recognition of Respondents' position that

if arbitration was ordered, the claims against Respondents would need to be stayed. (R. pp. 395-97.)

By e-mail dated January 4, 2017, Former Chief Justice Toal requested that Seaquest draft a proposed order. (R. p. 436.) The e-mail outlines her ruling, which was (1) to deny the McIntires' Motion to Stay and Compel Arbitration, (2) to grant Seaquest's Motion to Dismiss due to failure to comply with the Right to Cure Act, and (3) "[t]he remaining motions for protective order and dealing with the co-defendants are moot because the action is being dismissed." (Id.) Part (3) directly references the subcontractor defendants.[2]

Counsel for the McIntires objected to Seaquest's proposed order by letter dated January 20, 2017. (R. pp. 441-44.) The Former Chief Justice did not issue her ruling until several months later.

The trial court's "Order of Dismissal" was filed on May 1, 2017. (R. pp. 3-14.) Seaquest's Motion to Dismiss was granted. The trial court ruled that the McIntires failed to comply with the Right to Cure Act. (R. pp. 5-9.) The court denied the McIntires' motion to compel arbitration, ruling that their right to demand arbitration and their contractual limitations period had expired. (R. pp. 9-13.) The Order dismissed the case in its entirety. (R. p. 4.) The Order states that the remaining motions, including Red Bay's motion to dismiss, are moot. (Id.)

Reconsideration of the Order of Dismissal was not sought by any party. The deadline for filing such motions expired on May 12, 2017. Rule 59(e), SCRCP.

The McIntires' Notice of Appeal in the First Appeal is dated May 30, 2017. (R. pp. 445-46.) The caption identifies Seaquest as the only Respondent; the subcontractor defendants are listed as "Defendants." (R. p. 445.) Third-Party Defendant Sealtight of South Carolina, LLC

[2] Respondents were all subcontractor defendants.

(hereinafter "Sealtight") was not included on the caption at all. (Id.) The Notice of Appeal recites May 2, 2017 as the date when notice of entry of the trial court Order was received. (Id.) The Proof of Service for the Notice of Appeal indicates that it was served on only one respondent, Seaquest. (R. p. 462.)

On June 2, 2017, counsel for the McIntires e-mailed a courtesy copy of the Notice of Appeal to the other defendants in the case. (R. pp. 349, 351.) The cover e-mail states that "[a] hard copy was mailed via regular U.S. Mail to *counsel for Respondents only* on May 30, 2017. (R. p. 349 (emphasis added).) That e-mail had a separate Proof of Service evidencing service on "Defendants" on June 2, 2017. (R. pp. 351-52.) At the time, electronic service did not qualify as effective service of a Notice of Appeal. Rules 203(a) and (b)(1), 262(b), SCACR (2017).

Seaquest did not file a cross-appeal. Respondents were not made parties, and they did not participate in the First Appeal. (R. pp. 504-05.) In briefing the First Appeal, the McIntires sought reversal of the trial court order based upon the Right to Cure Act as well as the arbitration issue. (R. p. 468.) The effect of former Chief Justice Toal's Order on parties other than Seaquest was not raised in the briefing.

On December 31, 2019, the Court of Appeals filed its Opinion in the First Appeal. McIntire, Op. No. 2019-UP-413 (R. pp. 15-20). The court reversed on the arbitration issue, finding insufficient evidence that the McIntires waived their right to arbitrate. The court therefore "remand[ed] the case for arbitration." (R. p. 19.) The Court of Appeals declined to rule on the Right to Cure Act issue, finding its ruling on the arbitration issue was dispositive. (R. p. 20.)

The Court of Appeals denied Seaquest's Petition for Rehearing on March 27, 2020. This Court denied Seaquest's Petition for a Writ of *Certiorari* on December 11, 2020. The trial court received the Remittitur of the First Appeal on December 17, 2020.

The McIntires and Seaquest filed a Joint Motion for Clarification two months after remittitur on February 16, 2021. (R. pp. 247-91.) Appellants contend they filed their Joint Motion for Clarification after a status conference. This Motion, which was not based upon Rules 59(e) or 60, SCRCP, sought a ruling as to whether the subcontractor defendants remain parties to this case. (R. pp. 248, 411.) Judge Roger M. Young, Sr. opined informally via e-mail that reversal generally vacates an appealed order. (R. p. 532.)

However, counsel for one of the Respondents expressed intent to oppose the Joint Motion for Clarification and requested a hearing. (R. p. 521.) The subcontractor defendants filed a joint Memorandum in Opposition on March 3, 2021. (R. pp. 292-304.) Sealtight filed a separate opposing memorandum on March 4, 2021. (R. pp. 305-06.)

On May 3, 2021, Judge Young announced he would deny the Joint Motion for Clarification. (R. p. 544.) However, he withdrew this ruling after learning the motion was heard by Judge McCoy. (R. p. 543.)

The Honorable Jennifer B. McCoy heard the Motion for Clarification on April 22, 2021. On August 19, 2021, Judge McCoy issued a Form 4 Order denying the Joint Motion for Clarification and requesting proposed orders. (R. pp. 26-28.) Her formal Order was filed August 23, 2021. (R. pp. 29-41.) Judge McCoy ruled that because the effect of the dismissal on the claims against the subcontractor defendants was not raised in the First Appeal, Former Chief Justice Toal's ruling on that issue became law of the case. (R. pp. 32-36.) Judge McCoy's Order also held that the Joint Motion for Clarification was untimely, and no procedural mechanism exists for entertaining the request at this stage. (R. pp. 36-39.)

Seaquest and the McIntires then filed the present appeal. The McIntires' appeal has been dismissed. On May 31, 2023, the Court of Appeals affirmed the trial court's ruling, finding that

the dismissal of the claims against Respondents is law of the case because it was not raised in the First Appeal. McIntire, Op. No. 2023-UP-206. Seaquest petitioned for rehearing of that decision. The Court of Appeals denied Seaquest's petition on September 21, 2023.

Seaquest then filed the instant petition for *certiorari*.

STANDARD OF REVIEW

The standard of review recited in Seaquest's Petition for *Certiorari* is the standard for briefing the merits of the appeal, not the standard for petitions for *certiorari*. An argument that the court overlooked or misapprehended a point will not support a petition for *certiorari*. That is the standard for a petition for rehearing. See Rule 221(a), SCACR. The "special and important reasons" standard governs at this stage.

"A writ of *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Factors that may be considered in determining whether to grant a petition for *certiorari* include:

> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

ARGUMENT

Seaquest has not identified any special or important reason why this Court should entertain this appeal. There was no dissenting opinion in the Court of Appeals. No conflict with prior precedent has been shown. There are no constitutional or federal questions in this appeal. Seaquest

has not briefed any novel question of law in its Petition. For this reason alone, the pending Petition should be denied. Even were this not true, Seaquest's position fails on the merits.

A few key facts control the disposition of this appeal. First, the McIntires and Seaquest both asserted claims against Respondents in this action.[3] (R. pp. 69-82.) Second, the trial court dismissed the entire case. (R. pp. 4, 14.) Third, the prior appeal only preserved the McIntires' claims against Seaquest. (R. pp. 445-46, 462-63.) Because no court retained jurisdiction over Respondents after the claims against Respondents were not appealed, Judge McCoy's ruling must be affirmed.

I. The courts below correctly ruled that Respondents are no longer parties to this action.

Seaquest has not demonstrated any special or important reason why this Court should grant *certiorari*. Seaquest's appeal incorporates its own arguments and those it obtained by way of assignment from its settlement with the McIntires. As discussed above, neither party timely appealed the dismissal of the claims against Respondents, and the ruling on the law-of-the-case issue is dispositive of the entire appeal.

A. Seaquest was aggrieved by the Order of Dismissal.

Seaquest quibbles with the trial court's findings that no claims were previously "litigated" and that Seaquest "failed to appeal" the Order of Dismissal. Seaquest contends it was not aggrieved by the Order of Dismissal and that it had nothing to appeal. The trial court did not err in rejecting these arguments.

As an initial matter, Seaquest's argument that it was not aggrieved by the Order of Dismissal was not raised to and ruled upon by the trial court to preserve it for this appeal. (R. pp. 29-41.) Issue preservation is a fundamental component of appellate practice, and "one cannot

[3] As noted above, Sealtight was a third-party defendant only.

present and try a case on one theory and then attack the result below by presenting another theory on appeal." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532-33, 564 S.E.12d 322, 322-23 (2001).

These arguments also fails on the merits. Seaquest relies on the rule that a party must be aggrieved by a trial court order to appeal that decision. Rule 201(b), SCACR. "An aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property." State v. Rearick, 417 S.C. 391, 399, 790 S.E.2d 192, 196 (2016).

Seaquest's argument that it was not aggrieved by the Order of Dismissal is an exercise in misdirection. Seaquest certainly prevailed with respect to the McIntires' claims against it, but those are not the claims at issue. This appeal concerns the claims the McIntires (excepting Sealtight) and Seaquest asserted *against Respondents*.

In its cross-claims and third-party claims, Seaquest sought indemnification for not only damages awarded in any judgment that might be rendered against it, but also investigation and defense costs and attorney's fees. (R. pp. 71, 79.) The Order of Dismissal extinguished those claims by dismissing the entire case. (R. pp. 4, 14.)

Seaquest was aggrieved by the dismissal of its cross-claims and third-party claims against Respondents. Seaquest may have considered those claims moot after the dismissal of the entire case. But Seaquest still suffered a legal detriment by the Order of Dismissal—the extinguishment of its claims for investigation and defense costs. When the McIntires appealed the dismissal of their claims against Seaquest, its cross-claims and third-party claims for indemnification for a potential damages award were no longer moot. Seaquest thus had standing to appeal the Order of Dismissal in the First Appeal.

Seaquest may also have been deemed aggrieved under case law holding that a defendant may appeal the dismissal of a co-defendant when the dismissal of the co-defendant would affect the appealing defendant's liability exposure. See Shaw v. City of Charleston, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002). This appeal presents a stronger case for Respondents because Seaquest had direct standing to appeal the dismissal of its cross-claims and third-party claims in the First Appeal. Seaquest would not have been merely attempting to appeal an order dismissing a co-defendant against whom Seaquest's only claim would potentially be contribution.

Seaquest, as an aggrieved party, did not seek reconsideration of or appeal the Order of Dismissal. It is now too late to resurrect the claims against Respondents.

B. The law-of-the-case doctrine was properly applied.

Seaquest's argument that Judge McCoy's application of the law-of-the-case doctrine was improper because no claims were "litigated" is likewise unavailing. In the first place, that argument is not properly preserved for appeal. Appellants did not file a Rule 59(e) motion raising that issue to Judge McCoy and giving her the opportunity to address it.[4] "An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." In re Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004); Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Because the trial court was not provided the opportunity to resolve this issue before it was presented to this appellate Court, it is not preserved.

Furthermore, Seaquest's argument lacks merit. "Relitigation" is not a requirement for applicability of the doctrine of law of the case.

[4] The referenced Order is the one on appeal in the present proceeding, not the Order dismissing the case that was the subject of the First Appeal.

Seaquest improperly attempts to inject the elements of collateral estoppel into the law-of-the-case doctrine. Collateral estoppel is dependent upon an issue having been actually litigated and directly decided in a prior proceeding. Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 459 (Ct. App. 1997). But that is a red herring because collateral estoppel is not at issue in this appeal.

Law of the case and collateral estoppel are separate doctrines and, although their public policy aims are similar, their applicability is different. 46 Am Jur. 2d Judgments § 448 (Oct. 2023 Update). Law of the case prevents the same issues from being raised within successive stages of the same suit, whereas collateral estoppel prevents relitigation of issues in successive lawsuits. Matter of Ramage, 53 Kan. App. 2d 209, 212-13, 387 P.3d 853, 857 (Kan. Ct. App. 2016).

The law-of-the-case doctrine precludes parties from raising not only issues that were raised and rejected in a prior final order, but also issues that were not raised, but could have been. Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009). Once the ruling as to Respondents became law of the case, jurisdiction is lacking to revoke, vacate, overrule, or reverse it. C.I.T. Corp. v. Corley, 196 S.C. 339, 13 S.E.2d 440, 442 (1941). Respectfully, this Court has no jurisdiction to modify the Order of Dismissal concerning the claims against Respondents in this second appeal.

The Court of Appeals opinion, which is quoted in the Petition for *Certiorari*, cited several cases that applied the law-of-the-case doctrine without using the word "relitigate." (Pet. for Cert., pp. 8-9.) See Atlantic Coast Builders & 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."); C.I.T., 196 S.C. at 343, 13 S.E.2d at 442 (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").

The applicability of the law-of-the-case doctrine is not dependent upon the issue in question having been litigated in a prior proceeding. It is solely a function of the matter having been decided in a prior order that has become final.

The law-of-the-case doctrine binds parties that have an opportunity to appeal a ruling even when they do not take advantage of that opportunity. In Flexon v. PHC-Jasper, Inc., 399 S.C. 83, 731 S.E.2d 1 (Ct. App. 2012), this Court affirmed the denial of a motion to compel arbitration filed by one defendant (Coastal). Another defendant (Lifepoint) withdrew its motion to compel arbitration and took the deposition of a key witness. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 568, 776 S.E.2d 397, 401 (Ct. App. 2015). Lifepoint then filed a renewed motion to compel arbitration based on newly-discovered evidence. Id. This Court held that Lifepoint was bound by the law of the case established in Coastal's appeal. Id. at 576, 776 S.E.2d at 406.

The trial court dismissed the entire case. Judge McCoy correctly found that Seaquest failed to appeal that decision with respect to the claims against Respondents. Respondents were never made parties to the First Appeal. The dismissal of the claims against Respondents is now final.

II. The McIntires' arguments do not raise special or important reasons for granting *certiorari*.

Unlike Seaquest, the McIntires appealed from the Order of Dismissal. However, their failure to timely serve their appeal on Respondents[5] is dispositive of their claims.

[5] As previously stated, Sealtight was not listed on the caption of the Notice of Appeal.

A. The automatic stay did not preserve Seaquest's claims against Respondents.

Under Rule 241(a), SCACR, matters decided in an order on appeal are automatically stayed during the pendency of the appeal. The problem here is that neither the McIntires nor Seaquest acted to preserve their claims against Respondents until after the conclusion of the First Appeal. The trial court ruling dismissing the case was not appealed as to Respondents, and therefore became law of the case, as discussed above. Even if the automatic stay extended to the entire case, it did not determine the trial court's jurisdiction after the appeal.

Judge McCoy found that the Subcontractor Defendants were not timely served with the Notice of Appeal from the Order of Dismissal. (R pp. 33-34 n.4.) Appellate courts reverse a trial court's factual findings only if no evidence supports them. Jones v. Builders Inv. Group, LLC, 415 S.C. 321, 328, 781 S.E.2d 737, 741 (Ct. App. 2015). Judge McCoy's factual finding is supported by evidence.

The McIntires' Notice of Appeal dated May 30, 2017 names only Seaquest as a Respondent. (R. p. 266; see also R. pp. 464, 468.) The Notice of Appeal recites receipt of the Order on May 2, 2017. (R. p. 266.) The Proof of Service for this document states it was served on "Respondent's attorneys of record." (R. pp. 283, 423.)

On June 2, 2017, after the thirty-day deadline had expired, counsel for the McIntires e-mailed a courtesy copy of the Notice of Appeal to the Subcontractor Defendants. (R. pp. 326, 423.) That same day, the McIntires filed a Proof of Service in this Court certifying that they served the Notice of Appeal on the "Defendants" via e-mail on June 2, 2017. (R. p. 328.) This electronic notice was neither timely nor effective. Rules 203(a) and (b)(1), 262(b), SCACR (2017).

It is undisputed that the subcontractor defendants did not participate in the appeal. The Court of Appeals' December 31, 2019 memorandum opinion did not contemplate outstanding claims against Respondents. (R. p. 20.)

Seaquest failed to meet their burden of demonstrating entitlement to reversal of Judge McCoy's ruling. The McIntires' position that they appealed the Order of Dismissal in its entirety is not supported by the evidence. The record reflects that they appealed a portion of the adverse ruling—that concerning their claims against Seaquest. Nevertheless, even if the automatic stay extended to the entire case, it did not determine the trial court's jurisdiction after the appeal. The mandate controls, as discussed in further detail below.

B. Reversal of the Order of Dismissal on one issue affecting only Seaquest did not vacate the dismissal of the claims against Respondents.

The general rule is that a reversal does not affect the rights of parties who were not joined to an appeal. Baum v. Helman, 528 So.2d 63 (Fla. Dist. Ct. App. 1988); 5 C.J.S. Appeal and Error § 1128 (Aug. 2023 Update). "Where a cause is reversed or remanded, it returns to the trial court as if it had never been decided, save only for the settled law of the case." 5 C.J.S. Appeal and Error § 1149 (Aug. 2023 Update) (emphasis added). Seaquest's perfunctory argument cannot overcome these rules.

1. The rule that reversal of an order on appeal vacates the effect of the order does not apply to non-parties to an appeal.

An appellate court's on-point reversal vacates a trial court order. Moore v. N. Am. Van Lines, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995); Brown v. Brown, 286 S.C. 56, 57, 331 S.E.2d 793, 793-94 (Ct. App. 1985). These cases are not controlling here because they do not address the effect of reversal on issues not raised in the appeal.

Moore was a workers' compensation case in which an employee was paid benefits under South Carolina law. 319 S.C. at 447, 462 S.E.2d at 275. The benefits award was reversed on appeal because the employee was not hired in South Carolina. Id. at 447, 462 S.E.2d at 275-76. After the appeal, the workers' compensation carrier sought restitution for benefits paid. Id. at 448, 462 S.E.2d at 276. The order granting that motion was appealed. Id. Rejecting a challenge to the

order requiring restitution, the Supreme Court held that the original benefits award was vacated in the first appeal. Id. Moore is not controlling because the appellate court ruling in the first appeal operated directly upon the lower court ruling at issue, *i.e.*, the benefits award.

Brown involved alimony payments under a divorce decree. 286 S.C. at 56-57, 331 S.E.2d at 793. The family court reduced the alimony amount, but the Supreme Court subsequently reversed the modification. Id. at 57, 331 S.E.2d at 793. The question was whether the husband owed the arrearage due to his payments in the lower amount during the pendency of the appeal. Id. The Supreme Court held that its ruling in the first appeal vacated the family court's modification order and required the husband to pay the arrearage. Id. at 57-58, 331 S.E.2d at 793-94.

In both Moore and Brown, the parties to the first and second appeal were the same. In neither case did the parties raise questions as to portions of the vacated order that were not raised in the first appeal. When that occurs, "two-issue rule" controls.

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." Atlantic Coast Builders, 398 S.C. at 328, 730 S.E.2d at 284. "Any unappealed portion of the trial court's judgment is the law of the case, and must therefore be affirmed." Rumpf, 357 S.C. at 398, 593 S.E.2d at 189. The doctrine of law of the case applies to an order that finally determines a substantial right. Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013).

Neither Seaquest nor the McIntires appealed the Order of Dismissal with respect to the claims against Respondents. The appellate courts lacked jurisdiction to modify the Order to reinstate those claims.

On remand, jurisdiction is controlled by the mandate. The mandate from the Court of Appeals after the First Appeal was to "remand the case for arbitration." (R. p. 20.) This mandate cannot be applied to the Subcontractor Defendants because no arbitration agreement exists between them and either Appellant.

Courts have plainly spoken on the effect of the remittitur and mandate:

> After the remittitur is sent down from an appellate court, the trial court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form. The decision of the appellate court is final as to all questions decided. It is the duty of the trial court to follow the decision of the appellate court.

Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996). "A trial court has no authority to exceed the mandate of the appellate court on remand." Prince v. Beaufort Memorial Hospital, 392 S.C. at 605, 709 S.E.2d at 125. 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) "The mandate of the appellate court is jurisdictional." Id. "The trial court has a duty to follow the appellate court's directions." Id.

The contention that the reversal of the Order of Dismissal restored this case to its original posture cannot stand in light of the two-issue rule and the limitation to the mandate under Ackerman and Prince. The effect of the Court of Appeals' prior ruling depends on its mandate, not upon the general principle that a reversal vacates an order. This Court's mandate was to submit the case to arbitration. (R. p. 19.) That limited mandate cannot apply to the Subcontractor Defendants because they never agreed to arbitrate. The trial court thus lacked jurisdiction to reinstate the Subcontractor Defendants as parties to this case.

2. Judge Young's informal opinion is not controlling.

Seaquest's argument that reversal of the Dismissal Order restored the entire case to its original posture also seeks to pit one circuit court judge against another. This Court has found a

similar directive by a trial judge unavailing. See Flexon, 413 S.C. at 577, 776 S.E.2d at 406. Under the two-issue rule, any unappealed portion of the order becomes law of the case. Atlantic Coast Builders, 398 S.C. at 328, 730 S.E.2d at 284.

The fact that a judge directed or encouraged Seaquest to file the motion has no bearing on this appeal. Seaquest fails to point out that the judge in question subsequently requested a proposed order denying the Joint Motion for Clarification. (R. p. 532.) Judge Young withdrew his ruling after finding Judge McCoy had the motion under advisement. (R. p. 543.)

The acts of a court without jurisdiction are void. Katzburg v. Katzburg, 410 S.C. 184, 187-88, 764 S.E.2d 3, 5 (Ct. App. 2014). Unpublished rulings have no precedential effect. Rule 268(d)(3), SCACR. Judge Young's correspondence is not controlling.

C. All issues in the Dismissal Order were not appealed.

Seaquest's argument that the Dismissal Order was appealed in its entirety is untenable. Judge McCoy ruled that the dismissal of the claims against Respondents was not appealed. (R. p. 33.) The Court of Appeals affirmed that ruling based on the law-of-the-case doctrine.

Seaquest must come up with something special or important about this case to prevail in its Petition. Yet it merely reiterates that the McIntires' Notice of Appeal recites intent to appeal the entire Dismissal Order. Seaquest has no answer for the fact that Respondents were not timely or properly served in the First Appeal, thus preventing this Court from acquiring jurisdiction over the dismissal of the claims against Respondents.[6] Seaquest did not file a cross-appeal. An appeal cannot adjudicate the rights of non-parties to the appellate proceeding. 4 C.J.S. Appeal and Error § 355 (Aug. 2023 Update).

[6] That Respondents were not parties to the First Appeal also can be easily determined by the caption of the First Appeal, which listed Seaquest as the only respondent, or the fact that none of the Respondents' counsel were listed as counsel of record in the orders denying rehearing and *certiorari*. (R. pp. 15, 21-24).

Furthermore, it is unclear how this argument advances Seaquest's position. If the entire Dismissal Order was appealed in the First Appeal, then Seaquest should have contested the dismissal of its claims against Respondents in that appeal.

D. The lack of a separate ruling as to Respondents does not affect applicability of the law-of-the-case doctrine or change the result.

The argument that there was no separate holding concerning the Respondents in the Order of Dismissal does not change the result. In the first place, the argument is short, conclusory, and without supporting authority, and therefore should be deemed abandoned. First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding that mere allegations of error without arguments and supporting authority are insufficient to support an appeal); Cole v. S.C. Elec. & Gas, Inc., 355 S.C. 183, 196, 584 S.E.2d 405, 412 (Ct. App. 2003), aff'd as modified, 362 S.C. 445, 608 S.E.2d 859 (2005) ("Short, conclusory arguments unsupported by authority are deemed abandoned.").

Furthermore, the Order of Dismissal reflects the Former Chief Justice's considered decision to dismiss the Subcontractor Defendants pursuant to the Right to Cure Act along with Seaquest. (R. p. 436, part (3).) To preserve an argument that the relief exceeded what was requested, reconsideration or clarification should have been sought by a timely motion. Fryer v. S.C. L. Enf't Div., 369 S.C. 395, 399, 631 S.E.2d 918, 920 (Ct. App. 2006). Seaquest failed to overcome these arguments or identify any special or important reason why this Court should grant *certiorari*.

E. The argument that Seaquest was the only proper respondent to the First Appeal lacks merit.

The contention that Seaquest was the only proper respondent to the First Appeal is also short, conclusory, and without supporting authority. It should also be deemed abandoned. First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514. Cole, 355 S.C. at 196, 584 S.E.2d at 412.

Furthermore, the law does not support Seaquest's position. The McIntires asserted claims against Respondents in this action. (R. pp. 44-56.) Seaquest asserted cross-claims or third-party claims against Respondents. (R. pp. 59-84.) The Order of Dismissal dismissed the entire case. (R. pp. 4, 14.)

All parties to an action whose interests may be adversely affected by the decision of the appellate court are necessary parties to an appeal. Watkins v. Fannin, 278 S.W.3d 637, 640 (Ky. Ct. App. 2009); 15 S.C. Jur. Appeal and Error § 31; Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment, 295 S.C. 67, 367 S.E.2d 160 (1988) (Nov. 2023 Update).

Respondents, as direct defendants, cross-claim defendants, and/or third-party defendants, were necessary parties to the First Appeal, which Seaquest argues encompassed the entire case. Neither the McIntires nor Seaquest appealed the dismissal of their claims against Respondents in the First Appeal.

An appeal will be dismissed if all necessary parties are not joined in the appeal. Id.; 4 C.J.S. Appeal and Error § 355 (Aug. 2023 Update); see also Spanish Wells, 292 S.C. 542, 357 S.E.2d 487 (Ct. App. 1987), rev'd, 295 S.C. 67, 367 S.E.2d 160 (1988) (noting that the circuit court granted the motion to dismiss the appeal because a necessary party—as ultimately determined by the Supreme Court—was not joined). However, defects or objections as to parties that do not entirely defeat the jurisdiction of the appellate court may be waived by a general appearance coupled with the failure to make an objection. 4 C.J.S. Appeal and Error § 358 (Aug. 2023 Update).

Seaquest appeared and briefed the First Appeal. In its brief, Seaquest noted that the Subcontractor Defendants were not made parties to the appeal. (R. pp. 504-05.) Under Spanish Wells, Seaquest could have moved to dismiss the McIntire's appeal due to failure to join all

necessary parties during the First Appeal. The issue of whether complete relief could be granted in the absence of the Subcontractor Defendants evidently was not brought to this Court's attention because it found the arbitration issue to be dispositive of the appeal. McIntire, Op. No. 2019-UP-413, p. 6.

Accordingly, Appellants' claims against the Subcontractor Defendants did not survive the First Appeal. Judge McCoy's denial of Appellants' Joint Motion for Clarification should be affirmed.

F. The Subcontractor Defendants were not timely served with the Notice of Appeal.

The argument that Respondents were served with the Notice of Appeal is disingenuous. Respondents were not *timely and properly* served. (Respdt. Final Br., p. 18.)

As discussed above, the McIntires' Notice of Appeal dated May 30, 2017 names only Seaquest as a Respondent. (R. p. 266, 464, 468.) It was not served on the Subcontractor Defendants. (R. pp. 266-67, 464, 468, 423.)

After the thirty-day deadline had expired, counsel for the McIntires e-mailed a copy of the Notice of Appeal to the Subcontractor Defendants. (R. pp. 423, 349.) The McIntires' Proof of Service certified that they served the Notice of Appeal on the Defendants on June 2, 2017. (R. p. 351.)

The rules in effect at the time required service of the notice of appeal by delivery or mailing within 30 days of receipt of written notice of the entry of the order on appeal. Rules 203(a) and (b)(1), 262(b), SCACR (2017). The June 2, 2017 e-mail was outside the 30-day window. See Rule 203(b)(1), SCACR (2017). Furthermore, electronic service of a notice of appeal was not permitted at the time. Rule 203(a) and 262(b), SCACR (2017).

Service of the Notice of Appeal was not effective under Rule 203(b), SCACR. Because Rule 203(b) is jurisdictional, the Subcontractor Defendants never became parties to the First Appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Seaquest offers nothing to substantiate the position that the appellate courts acquired jurisdiction over Respondents in the First Appeal. Seaquest did not identify anything that would justify a grant of *certiorari* in this appeal.

G. The relief sought in the motion for clarification was improper.

The trial court found that "there is no procedural mechanism which affords Plaintiffs and Seaquest the right to request clarification of an order almost four years after it was issued." (R. p. 36.) That finding is unassailable. The only procedural mechanism for seeking clarification elapsed on May 12, 2017—ten days after receipt of the Former Chief Justice's Order. Rule 59(e), SCRCP. (R. p. 445.)

Seaquest seeks to circumvent that problem by arguing that trial courts generally have authority to entertain motions for clarification. Specifically, Seaquest asked the trial 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 this action."

The issue is not Appellants' general right to seek clarification, but the timing of that request. The Joint Motion for Clarification was filed long after the Rule 59(e) deadline expired.

The trial court never indicated it lacked the authority address the request for clarification. In fact, the court provided that clarification by ruling that Respondents are no longer parties. (R. p. 40.) Furthermore, the Court of Appeals had authority to resolve these issues in the First Appeal, had they been preserved. What Seaquest failed to do is provide authority empowering a court to reinstate Respondents as defendants years after the case against them was dismissed.

H. The trial court did not recover jurisdiction over Respondents upon remittitur of the First Appeal.

Seaquest cited no authority to support its argument that the trial court obtained jurisdiction over Respondents after remittitur of the First Appeal. It should also be deemed abandoned. First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514. Cole, 355 S.C. at 196, 584 S.E.2d at 412.

Former Chief Justice Toal considered the claims against all defendants before dismissing the entire case pursuant to the Right to Cure Act. (R. pp. 357, lines 7-10, pp. 380-86, 394-97.) Her ruling is now law of the case. Atlantic Coast Builders, 398 S.C. at 328, 730 S.E.2d at 284; Rumpf, 357 S.C. at 398, 593 S.E.2d at 189.

"A trial court has no authority to exceed the mandate of the appellate court on remand." Prince, 392 S.C. at 605, 709 S.E.2d at 125. "The mandate of the appellate court is jurisdictional." Id. The trial court must follow the appellate court's directions. Id.

Seaquest fails to even mention the cited on-point authorities, much less demonstrate why they are not controlling. Seaquest's argument that its requested "clarification" was not inconsistent with this Court's mandate ignores the effect of the law-of-the-case doctrine.

It would be different if the trial court had not dismissed the case. If the trial court had merely denied the motion to compel arbitration, the trial court would have retained jurisdiction over Seaquest's cross-claims and third-party claims. But the dismissal of the entire case did not affect only the claims against Seaquest—it necessarily also included Seaquest's claims against Respondents. The dismissal as to all parties other than Seaquest became final when it was not appealed, and the trial court could not "recover" jurisdiction of those claims merely because the McIntires' claims against Seaquest were appealed.

The trial court's sole mandate upon remand was to refer the case to arbitration. This mandate presupposes that the claims against the Subcontractor Defendants are no longer in the

case because they are not subject to arbitration. Nothing in the mandate granted the trial court jurisdiction to stay the claims against Respondents pending arbitration.

CONCLUSION

Seaquest cites no special or important reasons for this Court to entertain this appeal. See Rule 242(b), SCACR. Black-letter principles of law support the decisions of the courts below.

The effect of the Order of Dismissal on the claims against Respondents was not raised via timely motion for reconsideration or appeal. After the trial court dismissed the case, the trial court never acquired jurisdiction over Respondents because the Notice of the First Appeal was not properly and timely served on them. This Court's mandate that the case be submitted to arbitration demonstrates that the claims against the Subcontractor Defendants did not survive the First Appeal because the Subcontractor Defendants are not subject to arbitration. In light of the limited mandate on remand, Judge McCoy correctly ruled that she lacked jurisdiction to reinstate the Subcontractor Defendants as parties.

Respondents request that the Court affirm for the reasons set forth above, and for any ground appearing in the Record pursuant to Rule 220(c), SCACR. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000).

Respectfully submitted,

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