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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Richland County
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2023-001461
Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global;

Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited is Appellant.

RESPONDENTS' RETURN TO REQUEST TO SET BRIEFING SCHEDULE

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Attorneys for Respondents

Introduction

In its latest effort to delay the ultimate resolution of this matter, Appellant Asbestos Corporation Limited (“ACL”) purports to withdraw its Motion to Confirm Automatic Stay and/or Purported Receiver’s Lack of Jurisdiction or, alternatively, Verified Petition for Supersedeas (“Motion to Confirm Stay”).¹ ACL represents it now wishes to belatedly petition the trial court for supersedeas. It further requests this Court’s guidance as to when ACL’s initial brief and designation of matter will be due. Respondents John and Margaret Tibbs now submit this return to set forth their position on ACL’s December 7, 2023, letter.

The Tibbs respectfully request this Court order ACL to file its initial brief and designation of matter on or before January 2, 2024. ACL has already requested multiple delays, and it is apparent that delay is one of its primary strategies in this matter.

Further, because ACL’s Motion to Confirm Stay is already briefed, and because ACL’s motion is wholly without merit, the Tibbs request this Court deny ACL’s motion in its entirety in lieu of deeming it “withdrawn.”

Procedural History

On September 8, 2023, Hon. Jean Toal entered its Order Holding Atlas Asbestos Company, LTD. in contempt. Finding ACL failed to comply with the court’s orders to fully answer discovery and appear for deposition, and further recognizing ACL represented it would never comply with the court’s discovery orders, Justice Toal found ACL in contempt and struck its answer.² In a

¹ ACL’s filing on this matter came in the form of a letter to the clerk of court dated December 7, 2023.

² See, 9/8/23 Order Holding Atlas Asbestos Company, LTD. in Contempt, previously submitted to this Court with ACL’s Notice of Appeal.

separate order entered the same day, the trial court appointed Peter Protopapas as receiver over ACL's insurance assets.³

ACL filed a Notice of Appeal as to both these orders on September 13, 2023. It ordered and received a hearing transcript on September 19, 2023, making the deadline to file its initial brief October 19, 2023.

On October 18, 2023, ACL requested its deadline be extended 30 days, until November 20, 2023. ACL represented an extension was needed “[o]n account of work-related and other time commitments.” Respondents did not object to this request, which was subsequently granted by this Court.

On November 20, 2023, ACL requested a second extension, asking for an additional 30 days to file its initial brief. Once again, ACL cited “work-related and other time commitments” as the reason for its request.

Despite having represented to this Court only two days earlier that “work-related and other time commitments” prevented it from timely filing its initial brief, on November 22, 2023, ACL filed a 19-page Motion to Confirm Automatic Stay and/or Purported Receiver's Lack of Jurisdiction or, Alternatively, Verified Petition for Supersedeas. This motion parroted a nearly identical November 7, 2023, motion filed by ACL's fellow Canadian asbestos supply company, Atlas Turner,⁴ in the related appeal *Welch v. Advance Auto Parts, et. al*, appellate case no. 2023-001096.

³ See, 9/8/23 Order on Plaintiffs' Motion to Appoint a Receiver, also submitted to this Court with ACL's Notice of Appeal.

⁴ Courts have long recognized the interrelationship between Asbestos Corporation Limited and Atlas Turner, and the companies have acted in lockstep with each other in cases filed across the United States for decades. See, e.g., *Roberts v. Owens-Corning Fiberglass Corp.*, 101 F.Supp.2d 1067, 1082 (S.D.IN. 1999), recognizing and reciting the interrelationship of various Quebec asbestos companies. See also, *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 643-44 (simultaneous considering motions relating to Atlas Turner, Bell Asbestos, and Asbestos Corporation Ltd., and referencing them collectively as “Canadian Defendants”). Also of note, in the *Welch* appeal, Atlas Turner's appeal raises the same issues raised in this appeal. See also, ACL's Appellant's Motion to Confirm

On the same day ACL filed its Motion to Confirm Automatic Stay, the Tibbs filed an objection to ACL's request for a 30-day extension of time to file its initial brief. In this objection, the Tibbs pointed out that in addition to ACL's multiple requests in this case, in the *Welch* case Atlas Turner (represented by the same counsel as ACL) had already filed four requests for extensions, seeking 77 days' worth of delay. The Tibbs further noted that in each of Atlas Turner's extensions, it represented the extension was needed for "work related and other time commitments." The Tibbs asked this Court to deny ACL's requested extension, and to discourage ACL from requesting any further delay based upon purported "work related and other time commitments."

On December 1, 2023, this Court denied Atlas Turner's version of the motion to confirm stay in the *Welch* case, finding Atlas Turner failed to first request supersedeas from the trial court as required by Rule 241(d)(1), SCACR. This ruling, on a nearly identical motion, signaled ACL's request that this Court "confirm" an automatic stay or grant supersedeas was also likely to be denied.

On December 4, 2023, the Tibbs responded to ACL's Motion to Confirm Stay, arguing that ACL's motion was contrary to the plain language of both Rule 62(a) SCRCR and S.C. Code Ann. §14-3-450. The Tibbs further cited to this Court's December 1, 2023, Order denying the substantially identical motion in *Welch*, noting ACL, like Atlas Turner, had failed to first request supersedeas as required by Rule 241(d)(1) SCACR.

Automatic Stay and/or Purported Receiver's Lack of Jurisdiction or, Alternatively, Verified Petition for Supersedeas, which repeatedly references the *Welch* case and parrots Atlas Turner's position taken in that matter (large portions of their briefing are substantively identical). ACL's motion also notes counsel for ACL also represents Atlas Turner in *Welch* (at p. 7, FN 10).

Also on December 4, 2023, the duly appointed Receiver over ACL's insurance assets, Peter Protopapas, filed a motion to dismiss ACL's request for supersedeas set forth in its Motion to Confirm Stay. Like the Tibbs' return, the Receiver's motion addressed ACL's failure to comply with Rule 241(d)(1) SCACR, and the fact ACL's motion was contrary to both Rule 62(a) and Section 14-3-340.

Finally, on December 7, 2023, ACL filed a letter with this court withdrawing its Motion to Confirm Automatic Stay and/or Purported Receiver's Lack of Jurisdiction or, alternatively, Verified Petition for Supersedeas. In this letter, ACL indicated it wished to belatedly seek supersedeas with the trial court. ACL further requested this Court's "guidance" as to when its initial brief and designation of matter is due.

Argument

ACL's initial brief was originally due October 19, 2023. Having already delayed this appeal almost two months, it appears ACL is now attempting a "do over" by requesting supersedeas with the trial court. Such a request is untimely and lacks legal merit.

ACL's failure to first request supersedeas from the trial court was not the result of any good faith error or excusable neglect. ACL was aware of 241(d)(1) SCACR at the time it filed its Motion to Confirm, and ACL explicitly referenced the rule and requirement in a footnote.⁵ If ACL wished to pursue supersedeas with the trial court, it could and should have done so before filing a motion with this court. Its failure to do so at any point in the three months since the trial court issued its orders should be deemed a waiver.

Failing to comply with 241(d)(1) SCACR were not the only fatal flaws to ACL's Motion to Confirm Stay. ACL's arguments were also contrary to the plain language of both Rule 62(a)

⁵ See, ACL's Motion to Confirm, p. 15, at FN 13.

SCRCP and S.C. Code Ann. §14-3-450. Both this rule and statute unambiguously state receivership orders are not subject to the automatic stay set forth in 241(a) SCACR.⁶

ACL's delays are but one manifestation of its contempt for the courts of South Carolina. It also shows its contempt by refusing to acknowledge the South Carolina's jurisdiction over it, and in refusing to obey the trial court's discovery orders.⁷

ACL shows its ultimate contempt by making fraudulent misrepresentations to the trial court. As set forth in the Receiver for Asbestos Corporation Limited's Motion to Supplement the Record and for Sanctions for Fraud on the Court,⁸ ACL repeatedly misrepresented to the trial court that it has no insurance. In actuality, the Receiver's preliminary investigations revealed ACL has hundreds of millions of dollars of insurance. Denying the existence of such insurance in answer to direct questions about it posed by Justice Toal demonstrates ACL's utter lack of respect for the courts of this State.

ACL's goals are delay and obstruction. It has no meritorious arguments in this appeal, so it seeks to delay and obstruct the Receiver's ability to investigate the existence of its insurance assets. The Tibbs respectfully request this Court put an end to such tactics. Any request to the trial court belatedly asking for supersedeas would be untimely, substantively vacant, and ultimately futile, and this request should not allow ACL to further delay this appeal.

ACL's original deadline to file its initial brief was nearly two months ago. While claiming "work related and other time commitments" prevented it from meeting its deadlines, ACL has still found the time to submit, and now withdraw, a 19-page Motion to Confirm Stay. It has failed to

⁶ See, Respondent's Opposition to Appellant's Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas. See also, The Receiver for Asbestos Corporation Limited's Motion to Dismiss Appellant's Petition for Supersedeas.

⁷ In *Welch*, Atlas Turner's appeal briefs, drafted by the same lawyers who represent ACL in this matter, repeatedly reference South Carolina as a "judicial hellhole."

⁸ This motion was filed in the instant matter on December 11, 2023.

ever provide this Court with a substantive reason for its past delays, and provides the Court with no reason to permit future delays. The Tibbs therefore respectfully ask this Court to put an end to these tactics.

Request for Relief

For the foregoing reasons, Respondents John and Margaret Tibbs respectfully request an Order from this Court stating,

1. ACL's initial brief on appeal and designation of matter shall be due on or before January 2, 2024.

2. Absent an unexpected and compelling emergency, ACL shall be entitled to no further extensions or continuances for the remainder of this appeal.

3. ACL's Motion to Confirm Automatic Stay and/or Purported Receiver's Lack of Jurisdiction or, alternatively, Verified Petition for Supersedeas is denied in its entirety.

Respectfully submitted, December 15, 2023

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I, Elizabeth Moultrie, of Kassel McVey, hereby certify that **RESPONDENTS' RETURN TO REQUEST TO SET BRIEFING SCHEDULE** was served on all parties to this appeal on December 17, 2023, via email to their counsel of record:

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Receiver for "insurance assets"

of Atlas Turner, Inc. per appealed order



Elizabeth Moultrie