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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

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-002011
Appellate Case No. 2023-002010
Appellate Case No. 2023-002009
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs, ... Plaintiffs,

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; and Zurn Industries, LLC, ...

Defendants,

of which

Asbestos Corporation Limited is the..... Appellant,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, ... Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,..... Third-Party Defendants,

of which

Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the ..... Appellants.

INITIAL BRIEF OF APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. (INJUNCTION APPEAL)

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STATEMENT OF ISSUE ON APPEAL

Rule 205 of the South Carolina Appellate Court Rules vests the appellate court with "exclusive jurisdiction" over all issues that could be affected by an appeal. Despite having no jurisdiction to proceed, the circuit court entered an order effectively denying a request for injunctive relief and allowing a court-appointed receiver to use the court's discovery tools while the propriety of the receiver's appointment and the receiver's authority to undertake any activity at all is the subject of a pending appeal in this case. Did the circuit court err in continuing to assert jurisdiction over this matter after the initial appeal and/or in failing to enjoin the receiver's conduct pending appeal?

STATEMENT OF THE CASE

An initial appeal was filed regarding an order of the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated December 6, 2023. Appellants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively, "Appellants") filed timely notices of appeal on December 19, 2023. This subsequent appeal is before the Court on appeal from an order of the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated March 12, 2024 (the "March 2024 Order") granting certain relief to a receiver whose appointment is the subject of the previously pending appeal and arises out of the circuit court's 1) failure to recognize its lack of jurisdiction after Appellants appealed the order denying the motions to dissolve the receivership and denying the related motions to dismiss for lack of personal jurisdiction, and 2) refusal to enjoin Respondent, the court-appointed receiver ("the Receiver"), from continuing to act during the pendency of the initial appeal. [1] The details of that receivership appointment are chronicled in the Appellants' Opening Brief in the initial appeal in this matter, and they are summarized below:

I. The Initial Receivership Appointment in the *Park Case* Over Cape PLC

The Receiver was appointed the receiver over Cape PLC, an active foreign company formed in 2011 that has never done business in the United States, in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. Nine months after the *Park* plaintiff reported to

[1] Pursuant to Rule 208(6), SCACR, and to the extent not inconsistent with the arguments presented herein, Appellants adopt and incorporate by reference the initial appeal briefs filed by other third-party defendants/appellants in this matter and/or related to the March 12, 2024 Order. Appellants also adopt and incorporate by reference the initial appeal briefs filed by them and others with regard to the December 6, 2023 Order.

the circuit court that the case was "fully resolved," the *Park* plaintiff filed a motion to have a receiver appointed over "Cape PLC and its subsidiaries, affiliates, successors, and assigns," none of which were defined or identified in the motion.[2]

The *Park* plaintiff named two distinct, active, and presently existing "Cape" entities as defendants: Cape PLC and Cape Intermediate Holdings Limited ("CIHL").[3] The *Park* plaintiff chose to only seek a receiver over Cape PLC. The Receiver is unhappy about the *Park* plaintiff's decision, but admitted that Cape PLC and CIHL are distinct and separately existing active companies:

- Cape Intermediate Holdings Limited.

  As explained in the Receiver's Third-Party Complaint in this matter, CIHL is believed to be the present name of Cape Asbestos Company Ltd.:

  > [O]n December 28, 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom…. Since the 1970s, Cape Asbestos Company Ltd. has undergone several changes to its organization, including (i) changing its name to Cape Industries Ltd. in 1974 (i.e., removing "Asbestos" from its name, soon after the onset of asbestos products-liability litigation); (ii) re-registering as a public company and changing its name to Cape Industries PLC in 1981; (iii) shortening its name to Cape PLC in 1989; (iv) changing its name to Cape Intermediate Holdings PLC in 2011; and (v) re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013.[4]

- Cape PLC.

  As plead by the Receiver: "Cape PLC ***is*** … a private company organized and existing under the laws of the United Kingdom…."[5] Counsel for the Receiver elaborated on

[2] R. p. ___; Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*).
[3] R. p. ___; *Park* First Amended Compl, filed November 17, 2021, at p. 1; ¶¶ 15, 26-27.
[4] R. p. ___; *Tibbs* Third-Party Compl. at ¶45 and 113.
[5] R. p. ___;*Tibbs* Third-Party Compl. at ¶40.

Cape PLC at the hearing on the Motion to Dissolve: "Cape plc, … this newly created 2011 company … which is a tax company that has no -- never did any business in the U.S., did not sell asbestos."[6] The Receiver thus admits that the presently existing Cape PLC is not the company formerly known as Cape Asbestos Company Ltd.

The *Park* plaintiff chose to seek appointment of a receiver over Cape PLC even though Cape PLC has no assets in South Carolina, no involvement in any of the historical asbestos-related activities that form the basis of the *Park* lawsuit in which the receivership originated (or in the present *Tibbs* case, for that matter), and no contacts with this state sufficient to establish personal jurisdiction in South Carolina. There is no evidence that the *Park* plaintiff ever served anything at all on Cape PLC. Further, there was no motion for entry of default or default judgment entered against Cape PLC in *Park*. The Receiver admits that Cape PLC was formed in 2011, did not sell asbestos, and never did business in the US. It is a stranger to this state and to this litigation.

Nonetheless, the circuit court granted the *Park* plaintiff's motion, explaining:

> This Court finds that the application [to appoint Mr. Protopapas as receiver] is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company') have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.[7]

But the court relied on "facts" that were simply not true. As now admitted by the Receiver, Cape PLC has not dissolved, has not forfeited its charter, and has never been served with anything in the *Park* case.

With no basis under South Carolina law, the *Park* court appointed the Receiver over an active foreign corporation, with no South Carolina assets, and with no South Carolina creditors, and

[6] R. p. ___; Hearing Transcript (Oct. 25, 2023) at 42.; See also R. p. ___; Jersey Financial Services Commission Registry for Cape PLC.
[7] R. p. ___; Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*).

purported to grant to him "the power and authority to fully administer all assets of Cape [PLC], accept service on behalf of Cape [PLC], engage counsel on behalf of Cape [PLC] …."[8] There is no evidence that Cape PLC has ever been notified of the appointment of the Receiver.

This receivership cannot exist as a matter of federal constitutional law and as a matter of South Carolina substantive and procedural law. It is fraught with legal errors that are detailed at length in the Appellants' opening briefs in the various other appeals arising from this same situation.

II. The Receiver's Attempts to Extend the Receivership to Cape Intermediate Holdings Limited in the *Tibbs* Case

The Receiver has filed two lawsuits to date. First, he filed a third-party complaint in *Park* captioned "Cape, PLC, by and through its duly appointed Receiver, Peter D. Protopapas, Third-Party Plaintiff, v. Locke Lord, LLP, Third-Party Defendant" alleging that Locke Lord was Cape's legal counsel, that he as Receiver for Cape PLC controls the attorney client privilege of Cape, and that he is entitled to a copy of Locke Lord's legal file for Cape.[9] The Receiver's Third-Party Complaint against Locke Lord did not mention CIHL. Locke Lord moved to dissolve the Cape PLC receivership, but that motion has not yet been heard.

The Receiver's second action (the present action) was filed as a purported Third-Party Complaint in Tibbs – where the Receiver described himself (incorrectly) in the caption as "Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff." [10] The Receiver brought this action against several foreign companies attempting to (among other things) pierce Cape PLC's corporate veil and "recover" funds from entities alleged to have had a historic connection

[8] *Id.*
[9] R. p. ___; *Park* Third-Party Compl.
[10] R. p. ___; *Tibbs* Third-Party Compl.

with CIHL to satisfy potential future CIHL liabilities. Appellants moved to dissolve the receivership.

Appellants have demonstrated there was no legal or equitable basis for the original receivership appointment over Cape PLC. The statutory receivership requirements have not been met. Neither the Receiver nor the *Park* plaintiff demonstrated compliance with the necessary elements of S.C. Code Ann. § 15-65-10(4), provided evidence that a receivership is appropriate under S.C. Code Ann. § 15-65-10(5); or provided evidence that there has been a judgment entered against Cape PLC (or any Cape entity) in the *Park* case or any other action.

In opposing the motions to dissolve, the Receiver readily admitted that no entity named Cape PLC was ever served in *Park*. Instead, the Receiver pivoted and argued that CIHL should be deemed the entity in receivership even though CIHL was incorporated in the United Kingdom in 1893, has no assets in South Carolina, has no judgment entered against it in South Carolina, and is not subject to personal jurisdiction in South Carolina. The Receiver urged this argument to the circuit court even though CIHL was not named in the *Park* Motion to Appoint Receiver, was not named in the Receivership Order, and is not a defendant in the underlying *Tibbs* Suit. In short, the Receiver recognized that CIHL is the present, active, UK entity that was formerly known as Cape Asbestos Company Ltd (and not Cape PLC). The Receiver further recognized that unless he became the receiver over CIHL, he would have no standing to assert any of the allegations in the third-party complaint (and that the circuit court would have no basis to assert personal jurisdiction over Appellants). Accordingly, instead of dismissing his third-party action, the Receiver argued that the circuit court should deny the motions to dissolve and the motions to dismiss for lack of personal jurisdiction and instead rule that he is also receiver over CIHL.

Even though the Receiver's argument bore no connection to anything in the record, the circuit court accepted it. The circuit court denied the motions to dissolve the receivership, held that the Receiver is also the receiver over CIHL, modified the original receivership appointment to seemingly include CIHL (despite the absence of any notice to that foreign company of the Receiver's arguments or the potential appointment of a receiver over its assets), and held that because the Receiver may act for CIHL, Appellants are subject to personal jurisdiction in South Carolina. [11]

The Appellants, as well as numerous other third-party defendants, appealed that order, as it both continued a receivership over objections that it was void *ab initio* as a matter of federal and state law, and it modified the original order to place into receivership a different foreign entity than was at issue in the initial appointment. Further, by improperly placing the different foreign entity (CIHL) into receivership, it allowed the circuit court to improperly assert personal jurisdiction over Appellants. There are presently ***six*** appeals pending[12] involving that order – each of which involve a full challenge to the Receiver's authority to act and a full challenge to the circuit court's finding that it has personal jurisdiction over third-party defendants. Every issue in the third-party action is affected by the matters on appeal.

III. Pre-Appeal Discovery Requests and Motions in the *Tibbs Case*

The Receiver served his First Set of Interrogatories and Requests for Production directed to ESAB on July 20, 2023, and directed to Central Mining and Charter on September 6, 2023 (together the "Discovery Requests"). On September 6, 2023, the Receiver also served Central

[11] R. p. ___; Order (Dec. 6, 2023).
[12] Appellate Case Numbers 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, and 2023-002011.

Mining with an initial Notice of Deposition pursuant to Rule 30(b)(6), SCRCP, which was subsequently amended on December 15, 2023 (the "30(b)(6) Notice").

On September 1, 2023, Appellants filed three separate Motions to Dismiss the Third-Party Complaint and requested an order granting dismissal, pursuant to Rule 12(b)(2), SCRCP, of all counts, claims, and causes of action asserted in the Third-Party Complaint on the grounds that the Court lacks personal jurisdiction over Appellants; an order granting dismissal of the Third-Party Complaint on other grounds; and an order staying discovery as to Appellants pending resolution of their motions to dismiss (the "Motions to Dismiss"). Appellants subsequently filed combined Motions for Protective Orders (the "Motions for Protective Orders") and Motions to Dissolve Receivership (the "Motions to Dissolve") on October 6, 2023.[13] The circuit court held a hearing on October 25, 2023 and addressed certain of Appellants' motions (including the motions to dissolve and motion to dismiss for lack of personal jurisdiction) and "paused" discovery, but did not rule on the Motions for Protective Orders. The circuit court entered an order on December 6, 2023 denying Appellants' Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction, but did not address Appellants' Motions for Protective Orders.[14]

Appellants filed and served notices of appeal of the December 6, 2023 Order (the "Appeal") on December 19, 2023, thereby notifying the circuit court and all parties of the pendency of the appeal. The notices of appeal stated that the December 6, 2023 Order was immediately appealable because, among other things, "it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never

[13] R. p. ___; Appellants' Motions for Protective Order and to Dissolve the Receivership (October 6, 2023).
[14] R. p. ___; Order (December 6, 2023).

involved in the initial motion to create this receivership."[15] Appellants likewise appealed the denial of the motions to dismiss for lack of personal jurisdiction (the reasoning of which overlapped and relied upon the denial of the motions to dissolve and were contained in the same order denying the motion to dissolve.)[16]

IV. Post-Appeal Activity in the *Tibbs Case*

Although the notices of appeal divested the circuit court of jurisdiction over all matters affected by the legitimacy of the receivership, and although the Motions for Protective Order were still pending, out of an abundance of caution and with an explicit reservation of all rights and defenses, Appellants served responses to the Discovery Requests on January 5, 2024 (the "Responses"). The Responses indicated that proceeding with discovery while the Appeal was pending was improper pursuant to Rule 205, SCACR, ("Rule 205") because the circuit court lacked jurisdiction to proceed with this matter at that time, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation were pending before the South Carolina Court of Appeals.[17]

Nevertheless, on January 8, 2024, the Receiver served Appellant with a letter (the "Rule 11 Letter") stating his intention to seek relief from the circuit court compelling Appellants' further responses to the Discovery Requests.[18] The Rule 11 Letter did not address Rule 205 or acknowledge that it was the primary basis of Appellants' January 5, 2024 objections; rather, the Receiver argued that discovery should continue during the pendency of the Appeal pursuant to Rule 62(a), SCRCP, and Sections 14-3-330(4) and 14-3-450 of the South Carolina Code (neither of which is an exception to Rule 205).

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[15] R. p. ___; Appellants' Notice of Appeal (December 19, 2023).
[16] R. p. ___; Appellants' Initial Appellate Brief for Initial Appeal (Feb. 22, 2024).
[17] R. p. ___; Appellants' Objections to Written Discovery (Jan. 5, 2024).
[18] R. p. ___; Receiver letter (January 8, 2024).

On January 10, 2024, Appellants responded to the Receiver's Rule 11 Letter, reminding him that the circuit court lacked jurisdiction to proceed based on Rule 205.[19] Appellants' January 10, 2024 response further explained that the arguments the Receiver raised in his Rule 11 Letter were insufficient to overcome the circuit court's clear lack of jurisdiction and also pointed out that Appellants had outstanding motions for protective orders regarding the discovery requests.[20]

Rather than abide by Rule 205, the Receiver filed Motions to Compel Appellants' responses to the Discovery Requests and the deposition of Central Mining on January 12, 2024.[21] As with the Rule 11 Letter, the Motions to Compel were silent as to Rule 205, instead relying on Rule 62(a), SCRCP, and Sections 14-3-330(4) and 14-3-450 of the South Carolina Code as they relate to stays (an argument not asserted by Appellants).[22]

Instead of acknowledging that the Appeal deprived it of jurisdiction to hear the Motions to Compel, the circuit court directed the parties to submit competing proposed orders and objections for its review by February 27, 2024. Appellants filed their oppositions to the Motions to Compel on February 16, 2024 ("Opposition") and filed their objections to The Receiver's proposed order on February 27, 2024 ("Objections"). Both the Opposition and the Objections asserted, *inter alia*, Rule 205 and pointed out that the issues on appeal related to both 1) lack of personal jurisdiction over Appellants, and 2) whether the receivership should be dissolved.[23] The Opposition and the Objections requested that the circuit court acknowledge its lack of jurisdiction to rule on the outstanding motions, and in the alternative to enjoin the Receiver from taking action during the

[19] R. p. ___; Charter letter to Receiver (January 10, 2024).
[20] *Id.*
[21] R. p. ___; Receiver's Mot. to Compel at 3 (Jan. 12, 2024).
[22] *Id.*
[23] R. p. ___; Appellants' Objection to Court Ruling on Motions (Feb. 27, 2024); R. p. ___; Appellants' Memorandum in Opposition to Motions to Compel Deposition and Discovery and Cross Motion for Injunctive Relief (Feb. 16, 2024)

pendency of the appeal.[24] Appellants specifically explained that taking any action other than granting the injunction would equate to a refusal of the requested injunction.[25]

On March 12, 2024, the circuit court rejected the Appellants' arguments, granted the Receiver's motion, and authorized the Receiver to proceed without restriction despite the pendency of the appeal (March 2024 Order).[26] This order effectively ruled that 1) the appellate courts do not have exclusive jurisdiction, and 2) that Appellants' request for injunction was refused. This subsequent appeal follows.

STANDARD OF REVIEW

Although the circuit court styled the March 2024 Order as one "granting the Receiver's motion to compel discovery responses," this Court and the Supreme Court have been clear that the effect of an order, not its nomenclature, govern its appealability. *See, e.g.*, *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539–40, 773 S.E.2d 144, 147 (2015) ("Our review of trial court orders is not constrained by how the order is styled. . . . We are therefore free to evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable."); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature"); *Thornton v. SCE&G*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) (holding that "an appellate court should look to the effect of an interlocutory order to determine its appealability"); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842–43 (Ct. App. 1999) (holding that an order requiring

[24] *Id.*
[25] R. pp. ___–___; Appellants' Objection to Court Ruling on Motions (Feb. 27, 2024).
[26] R. p. ___; Order (Mar. 12, 2024).

discovery but permitting a defendant to re-seek to compel a matter to arbitration after engaging in discovery was immediately appealable because "[t]he circuit court's order favored litigation over arbitration"); *Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992)(holding that an order denying a motion to dismiss, which would normally not be immediately appealable, was immediately appealable under § 14-3-330(4) because the effect was a refusal of an injunction.)

Here, Appellants first requested that the circuit court acknowledge its lack of jurisdiction per Rule 205, but they also sought to enjoin all activity by the Receiver while the appeal was pending.[27] The circuit court rejected that argument, held that the receivership was not "stayed," allowed the Receiver to proceed uninhibited, and refused to enjoin the Receiver, rendering the March 2024 Order immediately appealable. *See* S.C. Code Ann. § 14-3-330(4) (authorizing immediate appeals of interlocutory orders "refusing an injunction"); *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 124, 857 S.E.2d 4, 6 (2021) (addressing on immediate appeal the propriety of an order that allowed a case to proceed and refused to "permanently enjoin" the claims against a defendant based on a bankruptcy court order).

An order refusing an injunction is reviewed for an abuse of discretion, which occurs when the decision is "unsupported by the evidence or controlled by an error of law." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). In turn, questions of law involving jurisdiction and interpretation of statutes and rules "are reviewed *de novo*, without deference to the lower courts." *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 354 (2022).

[27] R. p. ___; Appellants' Memorandum in Opposition to Motions to Compel Deposition and Discovery and Cross Motion for Injunctive Relief (Feb. 16, 2024)

Additionally, by continuing to assert jurisdiction over the receivership matters on appeal in violation of Rule 205, and by allowing the Receiver to continue to prosecute this case, the effect of the order is the continuation of a receivership. *See* S.C. Code Ann. § 14-3-330(4) (authorizing immediate appeals of interlocutory orders "continuing…the appointment of a receiver.")

ARGUMENT

I. Because the propriety of the receivership and whether the court has personal jurisdiction are issues pending before this Court, all issues associated with the Receiver's third-party action are affected by the current appeal and therefore within this Court's "exclusive jurisdiction."

The circuit court should not have issued the March 2024 Order because it lost jurisdiction when other third-party defendants served their Notices of Appeal on December 6, 2023 (and in any event no later than when Appellants served their Notices of Appeal on December 19, 2023). Pursuant to Rule 205 , the service of a notice of appeal vests the appellate court with exclusive jurisdiction over all matters affected by the appeal. *See* Rule 205, SCACR; *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) ("Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter."); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that "[t]he appellate court obtains exclusive jurisdiction over the appeal upon the service of the notice of appeal"); *Morris v. Morris*, 295 S.C. 37, 367 S.E.2d 24 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Arnal v. Fraser*, 371 S.C. 512, 641 S.E.2d 419 (2007) ("Rule 205, SCACR, provides the appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal."). This jurisdictional mandate is so critical that the South Carolina Supreme Court has emphasized, to both courts and litigants, the mandatory and important nature of the grant of exclusive jurisdiction to the appellate courts over

matters affected by the appeal. *See Lancaster v. Georgia-Pac. Corp.*, 403 S.C. 136, 138, 742 S.E.2d 867, 868 (2013) ("we hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court"); *Grosshuesch v. Cramer*, 377 S.C. 12, 31, 659 S.E.2d 112, 122 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.").

The critical inquiry in a Rule 205 analysis is whether the appeal will affect the action being taken in the lower court. *See e.g., Arnal*, 371 S.C. at 519 (analyzing on an issue-by-issue basis whether the action by the lower court was "affected by a matter on appeal"); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal."). The South Carolina Supreme Court has interpreted "affect" with respect to Rule 205 broadly to mean "to produce an effect on" or to "influence in some way." *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016) (relying on Black's Law Dictionary's definition of "affect," which is "to produce an effect on; to influence in some way").

Here, the issues affected by the Appeal (and which are therefore subject to the exclusive jurisdiction of this Court) include any action taken by the Receiver and any action taken against Appellants (whose only involvement in the *Tibbs* action is as the Receiver's third-party defendants) – both necessarily include the Motions to Compel. The December 6, 2023 Order on appeal included the denial of the motion to dissolve the receivership, which means that the Receiver's receivership appointment and purported authority to act thereunder are matters presently pending before this Court. Additionally, the December 6, 2023 Order held that The

Receiver was appointed as receiver over a different entity, CIHL, which is both a grant/modification of the appointment of a receiver and a basis upon which the circuit court determined it could assert personal jurisdiction over Appellants. As a result, the matters addressed in the December 6, 2023 Order that are now on appeal include, but are not limited to, the following:

- Whether *the ex parte* appointment of a receiver over an active foreign company is valid;
- Whether the receivership should be dissolved;
- Whether a receiver who is appointed over one defendant ("Cape PLC" – an entity formed in 2011 that has nothing to do with asbestos and has never conducted business in the United States), may assert claims on behalf of a separate defendant not referenced in the order appointing the receiver ("Cape Intermediate Holdings Limited"); and
- Whether the court has personal jurisdiction over Appellants (which is not possible unless the Receiver is allowed to control CIHL).[28]

Accordingly, the issues on appeal relating to the propriety of the receivership affects every aspect of whether the Receiver has the authority to bring and/or maintain claims against Appellants. In other words, if the Receiver's receivership appointment was improper, then he is legally unable to assert third-party claims against Appellants, let alone pursue discovery with respect to such claims. When actions taken in the underlying proceeding are by someone whose very grant of authority is being appealed, those actions are a matter "affected by the appeal" such that the lower court does not have jurisdiction under Rule 205 . *See In re Estate of Connor v. Slotchiver*, No. 2009-UP-502, 2009 WL 9530097 (Ct. App. 2009) (per curiam) (interpreting Rule

[28] R. p. ___; Order (December 6, 2023).

205 and finding that an appeal of the validity of a special administrator's appointment necessarily affected the administrator's ability to pursue claims in the lower court pending the appeal); *Ditech Financial, LLC v. Snyder*, 2022 WL 2826359, at *9 (S.C. Ct. App. July 20, 2022) (holding that Rule 205 divested the lower court of jurisdiction over deciding whether to proceed with a foreclosure because a pending appeal of an order that, if reversed, would have had the effect of preventing the foreclosure in the first place); *Stokes-Craven Holding Corp.*, 416 S.C. at 532, 787 S.E.2d at 493 (holding that a legal malpractice claim was "necessarily" affected by an appeal of the underlying case because, if the appellate court reversed the outcome on appeal, there would be no legal basis for a malpractice claim); *Rudd v. Pepper Hill Nursing & Rehab Center, LLC*, 2021 WL 8153809, at *1 (S.C. Com. Pl. Mar. 16, 2021) (finding that a motion to amend the complaint to add defendants on a veil-piercing theory "involved matters affected by the pending appeal" and could not proceed in the lower court because the appealed order denying the motion to compel arbitration, if reversed, would result in the dismissal of existing defendants and any basis for veil piercing).

Likewise, the issues on appeal relating to personal jurisdiction affect every claim asserted against Appellants. In other words, if the court does not have personal jurisdiction over Appellants, every third-party claim against Appellants must fail. Thus, because every claim is affected by personal jurisdiction, all claims against Appellants are matters "affected by the appeal" such that the lower court does not have jurisdiction under Rule 205.

In sum, the Appeal affects all aspects of the Receiver's claims against Appellants, including discovery. Whether the Receiver can prosecute claims in this action is the very basis of the Appeal, and therefore once the Notices of Appeal were served, the circuit court lost jurisdiction to consider the Motions to Compel or issue the March 2024 Order. Rule 205 applies automatically and is self-

executing. There are no exceptions. As such, this Court should vacate the circuit court's March 2024 Order because the circuit court lacked jurisdiction at the time the Order was entered.

II. The circuit court erred by refusing to enjoin the Receiver from undertaking any additional activities while this matter is pending before the appellate courts

Although the application of Rule 205 is automatic and does not require an order by this Court or the circuit court, the Receiver's insistence upon prosecuting this litigation, including, but not limited to, requesting orders from the circuit court addressing pending Motions for Protective Order that were filed prior to the Appeal; attempting to conduct discovery after the Appeal was filed; filing Motions to Compel discovery after the Appeal was filed; and requesting a ruling on its Motions to Compel that were filed after the Appeal, made it necessary for Appellants to raise this matter. For the above reasons, there is no legal basis to disregard the exclusive jurisdiction of this Court under Rule 205, and the circuit court therefore erred when it refused to enjoin the Receiver from undertaking any additional activities during the pendency of the Appeal.

Appellants argued to the circuit court that it should affirm that it lacks jurisdiction by not ruling on the Motions to Compel.[29] They further argued that if the circuit court determined it should enter an order related to the third-party action—which it should not—the only order that should be issued is one enjoining the Receiver from taking any action in the circuit court, including proceeding with the Motion to Compel, because, until the Appeal is resolved, the Receiver has no authority to take any action in the circuit court.[30] Appellants also argued that the circuit court should enjoin the Receiver from proceeding with the Motions to Compel and undertaking any further activities due to a lack of jurisdiction, unless and until the appellate courts issued a

[29] R. p. ___; Appellants' Memorandum in Opposition to Motions to Compel Deposition and Discovery and Cross Motion for Injunctive Relief (Feb. 16, 2024)

[30] *Id.*

remittitur regarding the issues on appeal, including, *inter alia*, the propriety of the receivership appointment in the first place.[31] Until such a remittitur was properly issued at the conclusion of the appeal, the circuit court should have clarified, by issuing the injunction, that the Receiver lacked any authority to "proceed at all," whether with respect to purportedly marshalling assets, conducting discovery from the litigants, conducting discovery from third parties, negotiating with asbestos plaintiffs, filing additional complaints/third-party complaints, or anything else. See, *Limehouse v. Husley*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013); *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (dismissing motions filed with the Supreme Court after the issuance of a remittitur because "[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard [in the appellate court] thereafter").[32]

By authorizing the Receiver to continue his activities, the circuit court in the March 2024 Order necessarily refused to enter the injunction sought by the Appellants. *See, e.g.*, *Towles*, 338 S.C. at 35, 524 S.E.2d at 842–43 (holding that delaying the grant of a motion to compel arbitration until after discovery rendered the order compelling discovery immediately appealable, as the circuit court had "favored litigation over arbitration" despite not finally resolving the question of

[31] *Id.*

[32] Because this motion was made as matter of law as directed by the South Carolina Appellate Court Rules, it falls beyond the traditional three-part test for issuing discretionary injunctions that are based on the merits of the underlying litigation. *See, e.g.*, *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 122–44, 857 S.E.2d 4, 5–16 (2021) (evaluating, in both majority and dissenting opinions, the propriety of a requested injunction that was based strictly on an order from a Bankruptcy Court without any analysis or mention of the traditional three-part analysis for injunctive relief). The injunction sought here is not discretionary; it is sought as a matter of law based on the circuit court's lack of jurisdiction and the black-letter South Carolina law enforcing that lack of jurisdiction. *See* Rule 205 (providing that "[u]pon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal," and allowing the circuit court to proceed only "with matters not affected by the appeal").

arbitrability). Further, the refusal to enter the injunction is highlighted by the circuit court's March 12, 2024 e-mail which accompanied the March 24 Order notifying the parties that the case was on track to go to trial during the April 15, 2024 docket.[33] That refusal to enjoin the Receiver was an error of law.

III. The circuit court's reliance on prior unpublished orders involving a "stay" is wrong as a matter of law.

The March 2024 Order's reliance on the one-paragraph order issued by the South Carolina Court of Appeals in *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727, on September 8, 2023, involving a different receivership, Payne & Keller (the "P&K Rule 62(a) Order") is misplaced. The P&K Rule 62(a) Order is an unpublished order with no precedential value. *See* Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.").

Moreover, the P&K Rule 62(a) Order addressed only the subject of a stay and said nothing about jurisdiction under Rule 205. *See* P&K Rule 62(a) Order ("order is not stayed during pendency of this appeal"; "receivership action and the receiver's ability to carry out his duties are not stayed"). A "stay" is irrelevant to the existence or absence of jurisdiction below. This Court has been clear that one has nothing to do with the other:

> However, the absence of a stay does not mean the [lower] court may proceed with the case while one of its orders is on appeal. . . . Under rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court . . . from proceeding with matter not affected by the

[33] R. p. ___; E-mail from Court (Eva Diaz) to Counsel of Record attaching the March 12, 2012 order with subject line: "Cape PLC v. Anglo American PLCC, et al. (2023-CP-40-01759) – Pending Motions to Compel" (Mar. 12, 2024)

> appeal." Thus, ***the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action*** and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[] affected by the appeal."

Tillman v. Oakes, 398 S.C. 245, 255, 728 S.E.2d 45, 50–51 (Ct. App. 2012) (emphasis added).

The *Tillman* Court explained that when proceeding below, the trial court "addressed the wrong question—whether the order was stayed during appeal. The question the court should have addressed is whether the issue raised in the petition was a matter affected by the appeal." *Id.* at 256, 728 S.E.2d at 51.

The clear distinction *Tillman* draws between a stay, which is discretionary, and the absence of jurisdiction, which is not discretionary and has no exceptions, is hornbook law:

> Note that the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal under Rules 205 and 2041(a).

Toal, *Appellate Practice in South Carolina*, at 121 (citing *Tillman*). As such, the short P&K Rule 62(a) Order by the Court of Appeals in another action provides no authority to disregard the express mandate of Rule 205 in this action that "the appellate court shall have exclusive jurisdiction over the appeal" and the lower court can only "proceed[ ] with matters not affected by the appeal." *See* Rule 205.

Likewise, the March 2024 Order's reliance on the November 21, 2023 Order issued by the South Carolina Court of Appeals in *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 ("P&K 205 Order") is misplaced. In that order, this Court expressly declined to examine

the Payne & Keller Rule 205 motion because there was no circuit court order properly before the court – the offending order had not been appealed.[34]

Here, the circuit court "addressed the wrong question" and committed an error of law by relying on two non-precedential orders that speak only to a stay and that are entirely silent on the dispositive point about the circuit court lacking jurisdiction when a matter is on appeal. Neither of those unpublished single-judge orders addresses the dispositive issue of the circuit court's lack of jurisdiction over a matter that is the subject of an appeal.

Moreover, both of the above referenced orders relate to the Payne & Keller appeal, which involves only the denial of the dissolution of a receivership. Here, however, the appeal also involves the issue of whether the court has personal jurisdiction over Appellants. The Payne & Keller exceptions to the automatic stay (Rule 241) relating to receiverships would not apply here.

A. South Carolina Code § 14-3-450 does not override the mandate in Rule 205 of the Appellate Court Rules that the appellate court has "exclusive jurisdiction" over matters affected by an appeal.

S. C. Code Ann. § 14-3-450 does not override Rule 205 of the Appellate Court Rules' mandate that the appellate court has "exclusive jurisdiction" over matters affected by an appeal. Section 14-3-450 merely states that:

> In case of an appeal under item (4) of Section 14-3-330 ***the proceedings in other respects*** in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.

See SC Code § 14-3-450 (emphasis added).

In other words, § 14-3-450 relates only to a stay during the pendency of an appeal and does not impact exclusive jurisdiction pursuant to Rule 205. Any argument that § 14-3-450 impacts and

[34] This appellate order appears to require that the offending circuit court order be before the court (be appealed) in order to allow this Court to perform a 205 analysis.

overrides the "exclusive jurisdiction" outlined in Rule 205 is unfounded. By using the language "in other respects," § 14-3-450 makes it clear that the underlying proceeding, to the extent it is *not* affected by the appeal, is not automatically *stayed* by an appeal of either a receiver order or an injunction. Rule 205 provides no exceptions other than for "matters not affected by the appeal."

Although the South Carolina Supreme Court has not evaluated this issue with respect to receivers, it certainly has done so with respect to appeals of injunctions, which are treated the same as appeals of receivership orders under §§14-3-330 and 14-3-450. *See Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 171-172, 866 S.E.2d 562, 575-6 (2021) (evaluating whether the appeal of an injunction under 14-3-330 relieved the lower court of jurisdiction over the remaining circuit court proceedings under Rule 205 because the remaining proceedings were affected by the appeal); *Ex parte McFarlin*, 2007 WL 8326605, at *4 (S.C. Ct. App. Feb. 12, 2007) (holding that, under Rule 205 the lower court lost jurisdiction over all matters affected by the appeal of the court order freezing accounts, which was immediately appealable under § 14-3-330(4)).

In *Greenville Bistro*, the plaintiff moved for a temporary injunction enjoining the enforcement of a particular county ordinance. The county defendant counterclaimed, seeking an injunction requiring the plaintiff to comply with three different county ordinances. The circuit court initially granted the plaintiff's request and issued an order enjoining the county, which the county immediately appealed pursuant to § 14-3-330(4)—the exact type of appeal that is governed by § 14-3-450. The circuit court subsequently denied the county's motion for an injunction stating that, under Rule 205, it did not have jurisdiction over the second injunction because the appeal of the first injunction order would affect the decision on the second injunction. The county defendants then appealed the denial of the second injunction. Both appeals were certified to the South Carolina Supreme Court prior to the Court of Appeals deciding the appeals and then were subsequently

consolidated. Instead of merely relying on § 14-3-450 to hold that an appeal of an injunction has no effect on the underlying proceedings, the Supreme Court instead specifically conducted a Rule 205 analysis to determine what affect, if any, the appeal of the first injunction would have on the remaining portions of the underlying proceeding. *Greenville Bistro, LLC*, 435 S.C. at 171-172. Accordingly, the Supreme Court's consideration of Rule 205 under those circumstances establishes that § 14-3-450 has no effect on Rule 205's divestiture of jurisdiction over matters affected by an appeal under § 14-3-330(4).

B. SCRCP 62(a) is inapplicable to this case because it does not override Rule 205's grant of "exclusive jurisdiction" to the appellate court of matters affected by the appeal, and it does not apply to interlocutory orders.

Rule 62(a), SCRCP likewise does not alter the application of Rule 205. Rule 62 only relates to the automatic stay of execution of judgments, providing that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry" and that "an interlocutory or final judgment . . . in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." Rule 62(a), SCRCP.

Nothing in Rule 62(a), SCRCP, purports to abridge or alter the exclusive jurisdiction of the Court of Appeals under Rule 205 which provides no exceptions other than for "matters not affected by the appeal." As discussed above, because whether the Receiver can seek discovery from Appellants is "affected by the appeal," Rule 205 is dispositive and sufficient to require suspension of The Receiver's attempts to litigate against Appellants in the circuit court.

Furthermore, even if Rule 62(a), SCRCP, could override Rule 205 (which it cannot), Rule 62(a)'s exception to the 10-day automatic stay of the execution of an interlocutory or final judgment in a receivership action is wholly inapplicable here as no "judgment" has been entered

or appealed from. On its face, Rule 62 does not govern stays in proceedings other than those to "enforce a judgment." SCRCP 62; *see* 25 S.C. Jur. Rules of Civil Procedure § 62.2 ("Coverage of Rule 62 only extends to those proceedings to enforce a 'judgment.' The Rule does not apply to stays prior to judgment."); *see also* § 2901 History of Rule, 11 Fed. Prac. & Proc. Civ. § 2901 (3d ed.) (Rule 62 "does not govern stays in proceedings other than to enforce a judgment"). "Judgment," as used in the South Carolina Rules of Civil Procedure, means a "decree or order which dismisses the action as to any party or finally determines the rights of any party." SCRCP 54; *see also Gateway Enters., Inc. v. S.C. Dept. of Revenue*, 341 S.C. 103, 106 (2000) (stating that Rule 62(a) "applies only to judgments as defined in Rule 54(a)") (quoting Wright & Miller, Federal Practice and Procedure, Section 2902 (2d ed. 1995)); SCRCP 54 Note (indicating that South Carolina defines "judgment" differently than the Federal Rules, which, unlike South Carolina, includes any appealable order in the definition of judgment).

Accordingly, Rule 62(a) simply has no applicability to an "interlocutory order" that does not rise to the level of a "judgment." Although Rule 62(a) does create an exception with respect to actions involving a receivership, that exception can only be applied to the actual rule, i.e. a stay of execution on a "judgment." *See* SCRCP 62 Note ("Rule 62(a) provides for an automatic stay of *execution* for 10 days in all but injunctive actions or those involving receiverships or accounting.") (emphasis added). The December 6, 2023 Order does not constitute a "judgment" because it does not dismiss the action as to any party and does not finally determine the rights of any party. *See* SCRCP 54. Accordingly, by its own terms, Rule 62(a) has no bearing on Rule 205's divestiture of the circuit court's jurisdiction over matters affected by the Appeal in this matter.

CONCLUSION

Rule 205 serves an essential purpose of protecting this Court's appellate jurisdiction. The Appellate Court Rules are designed to prevent parties from being forced to continue to litigate issues that are affected by the issues on appeal. Rather than forcing parties to speculate as to the outcome of an appeal or to be forced to appeal multiple orders relating to issues on appeal, the appellate rules provide exclusive jurisdiction to the appellate courts so they may review a static record and a static set of issues on appeal. *See, e.g.*, Rule 205 ("Upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241."); *id.* Rule 210(c) ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); *id.* Rule 210(h) ("Except provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.").

By asserting jurisdiction over the matters affected by the appeal and by refusing to enjoin the Receiver from attempting to engage in litigation activities while the propriety of the receivership is on appeal, the circuit court has abused its discretion and committed an error of law. Because its March 2024 Order permitting the Receiver to continue its activities, including taking voluminous discovery of the Appellants and others, was issued without jurisdiction, that order and all other orders issued by the circuit court after the notice of appeal are void *ab initio* as a matter of settled South Carolina law and should be vacated.

Respectfully submitted,

Dated: March 20, 2024

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