

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Case No. 2022-CP-23-04451
Appellate Case No. 2023-001740

Danny Rose,

Respondent,

v.

Robert Rose, Gloria Rose-Ruch,
Mary Margaret Doll Rose, and John
Does 1-99, Defendants,

Of Whom Robert Rose, Gloria Rose-Ruch,
and Mary Margaret Doll Rose are the

Petitioners.

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Apr 04 2024

S.C. SUPREME COURT

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COUNTER-STATEMENT OF THE CASE

The within action arises out of Petitioners' collective refusal to return \$225,000.00 taken from Respondent's bank account. The money taken from Respondent constituted the proceeds Respondent obtained from the sale of the home he owned for over three decades. After Petitioners ignored multiple pleas to return the money, Respondent filed suit in the Greenville County Court of Common Pleas asserting several causes of action including, *inter alia*, money had and received; conversion; fraud/constructive fraud; and breach of fiduciary duty;

Petitioners' Answer admitted (A) Respondent deposited the home sale proceeds into his bank account on March 9, 2022; (B) on March 22, 2022, Petitioner Robert Rose transferred \$225,000.00 from Respondent's bank account to his sister, Gloria Rose, and his ex-wife, Mary Margaret Doll Rose; and most importantly, (C) Respondent **owned**, and continues to own, the money removed and any assets acquired with Respondent's money. In response, Respondent successfully moved for judgment on the pleadings pursuant to Rule 12(c), SCRCF, as to the claims for money had and received and conversion, obtaining a total judgment in the amount of \$249,835.50, including prejudgment interest, attorneys' fees, and costs. After Petitioners' Rule 59(e), SCRCF, motion was denied, they filed a notice of intent to appeal. That appeal is currently in the initial briefing stage at the Court of Appeals¹.

After appealing the judgment, Petitioners sought to depose Respondent, which Respondent opposed. Petitioners filed a motion to compel, which was denied by the trial court. Petitioners then filed a second notice of intent to appeal, which Respondent sought to dismiss. Respondent argued, and the Court of Appeals agreed, Petitioners were not permitted to seek immediate review of the trial court's denial of a discovery motion. After Petitioners' request for

¹ Although Petitioners' initial brief in the first appeal was due March 28, 2024, they have not yet filed a brief.

rehearing was denied, they petitioned this Court.

In addition to not complying with the form described in Rule 242(d), SCACR, the petition contains at least one factually inaccurate statement. Petitioners have **not** returned “all funds, plus interest and accepting market losses” to Respondent. As shown in the Greenville County Clerk of Court’s records, \$75,688.83, plus past and ongoing interest, remains unpaid.

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Is an order denying a motion to compel discovery immediately appealable?

ARGUMENT

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons.” Rule 242(b), SCACR. Petitioners do not identify any “special and important reasons” to justify their petition being granted by this Court. Likewise, Petitioners offer no explanation why *this* interlocutory appeal from *this* discovery motion is any different from similar appeals which have been uniformly rejected by the appellate courts. Since Petitioners cannot distinguish this matter from other appeals dismissed on the same basis Petitioners’ appeal was dismissed, the Court has no obligation or duty to expend efforts seeking to independently identify “special and important reasons” to grant the petition. Therefore, the petition should be denied.

The issue raised by Petitioners is straightforward and has long been settled by this Court. Fifty years ago, this Court dismissed the appeal of an order denying a motion to compel discovery, the exact same request made by these Petitioners. In *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974), an appeal resulted in a remand for the purpose of deciding damages. Although the parties were permitted on remand to submit additional testimony concerning damages, the trial court denied a motion to compel the depositions of

named defendants. *Id.* The party seeking those depositions appealed that discovery order, which the Supreme Court dismissed “upon the ground that the order under appeal was an intermediate or interlocutory decision...and is not appealable before final judgment.” *Id.*

Half a century later, history repeats itself: Petitioners ask this Court to review an interlocutory discovery order that does not finally decide any matter at issue. What was true in 1974 remains true in 2024. Discovery orders are not immediately appealable because they do not reflect a final judgment or decision by the Court. *See Lowndes*, 262 S.C. 431; *see also Wieters v. Bon Secours St. Francis*, 673 S.E.2d 417 (2009) (denying a petition for writ of certiorari because the discovery order on appeal was not immediately appealable); *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986).

Accordingly, for the reasons set forth hereinabove, the Petition should be denied.

Respectfully Submitted,

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