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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. 2023-002006
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. Hesterton 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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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, Incl; 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

Mohed Altrad and Altrad Investment Authority SAS are the........... Appellants.

ALTRAD DEFENDANTS' OPPOSITION TO MOTION TO DISMISS INJUNCTION APPEAL

This appeal is rightly before this Court pursuant to South Carolina Code § 14-3-330(4), which authorizes litigants to immediately appeal any order "granting, continuing, modifying, or refusing an injunction" issued by the circuit court. The Altrad Defendants expressly moved the circuit court to enjoin the Receiver from proceeding without any authority to do so, but the circuit court refused to do so and expressly authorized the Receiver to continue unabated. That refusal to issue an injunction is immediately appealable as a matter of right. Accordingly, the Receiver's motion to dismiss this appeal should be denied, and the Receiver should be required to timely file a respondent's brief on the merits of this appeal.[1]

BACKGROUND

The Receiver's motion to dismiss mischaracterizes the facts and procedural posture of this case to create the misimpression that this appeal involves a run-of-the-mill order granting discovery and nothing more. This superficial argument is plainly incorrect, ignores the black-letter point of South Carolina that the effect of an order—not its label—controls the appealability analysis, and reinforces why the issues raised in this appeal need to be evaluated with the benefit of full appellate briefing and oral argument.

The Receiver's motion suffers from two grave problems. First, it seeks dismissal of the appeal on jurisdictional grounds without citing, much less distinguishing, one case addressing the

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[1] The Altrad Defendants filed their opening brief concurrently with their notice of appeal. All arguments, authorities, and prior incorporations and adoptions by reference included in the those prior filings, including briefs and related materials filed with this Court, are incorporated by reference herein.

appealability of orders that have the practical effect of denying a motion for injunction. Second, rather than addressing the actual jurisdictional issue, the Receiver dedicates his entire motion to arguing the merits of the appeal—*i.e.*, whether the Receiver may proceed to litigate this case (and others) while the propriety of his receivership is being challenged in multiple separate appeals pending before this Court.

The Receiver's truncated recitation of the facts, incorrect characterization of the appealed order, and perfunctory analysis of the law is a transparent effort to avoid meaningful review of an appealable order based on a complete record. To be clear, the issue on appeal is not a discovery order. It is the circuit court's error in refusing the enjoin all activity by the putative Cape PLC Receiver, which has resulted in a court-appointed receiver attempting to function without any authority to do so in violation of Rule 205, SCACR.

This unprecedented receivership over an active foreign company with no assets in this State is unlawful—it violates multiple provisions of the United States Constitution and is not authorized by any South Carolina statute. The Altrad Defendants raised these objections in a motion to dissolve the receivership, but the circuit court denied that motion in a December 6, 2023 order, granted a new receivership over a different foreign entity that was not named in the original appointment order, and held that the Altrad Defendants (including an individual foreign citizen) are subject to personal jurisdiction in South Carolina despite having zero contacts with the state.

The Altrad Defendants, 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 (the U.K. company Cape Intermediate Holdings Limited ("CIHL")) instead of the one at issue in the initial appointment (the Bailiwick of Jersey company Cape PLC). That order is both

immediately appealable and incorrect as a matter of law under existing Supreme Court precedent. *See Porter v. Brown*, 149 S.C. 151, 152–59, 146 S.E. 810, 810–13 (1929) (reviewing through an immediate appeal and reversing a trial court's denial of a motion to terminate an unlawful receivership because, precisely as here, the receiver was wrongly appointed over a company that had been misdescribed in the request for a receivership).

There are presently six appeals involving that order: Appellate Case Numbers 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, and 2023-002011. All are still pending, and none have been dismissed.

As this Court knows well, pursuant to Rule 205, SCACR, the circuit court has no jurisdiction to proceed with any matter that is affected by the pending appeals. Because the pending appeals referenced above challenge the very existence of the receivership, any continuing action by the Receiver in the circuit court will, by definition, be affected by the pending appeals—including the obvious examples of discovery, trial, and entering agreements with tort plaintiffs.

Notwithstanding these appeals, the Receiver has insisted on pressing forward with discovery despite the pending appeal challenging the validity of the receivership. The Altrad Defendants—like the other third-party defendants/appellants—objected to this discovery on various grounds, including that that the pending appeals stripped the circuit court of any jurisdiction to proceed with the receivership pursuant to Rule 205, and every case that has construed the rule. (Appx. 1; Altrad Defendants' Objections to Discovery.) The Receiver then moved to compel responses. In that motion, the Receiver described the Altrad Defendants' citations to Rule 205, and the numerous cases enforcing that rule as "frivolous and flatly contrary to law," though the Receiver has never actually engaged on the jurisdictional issues presented by that rule and those cases. (Appx. 53; Receiver's Mot. to Compel at 3 (Jan. 12, 2024).)

The Altrad Defendants opposed the Receiver's motion by citing Rule 205. Critically, because the Receiver was attempting to function without any authority to do so, the Altrad Defendants filed a cross-motion in the circuit court to enjoin the Receiver from proceeding with any activity at all—discovery, filing new pleadings, anything—"unless or until the appellate process is fully and finally adjudicated." (Appx. 73; Altrad Defendants' Cross-Mot. to Enjoin All Activity by the Putative Cape PLC Receiver at 16 (Feb. 16, 2024).) They also explained that taking any action on the Receiver's motion to compel would "equate to a denial of the requested injunction." (Appx. 93–94; Altrad Defendants' Objection to Court Ruling on Motions at 17–18 (Feb. 27, 2024).)

On March 12, 2024, the circuit court rejected the Altrad Defendants' arguments, granted the Receiver's motion, and authorized the Receiver to proceed without restriction despite the pendency of the appeal. (Appx. 96; Order on Appeal (Mar. 12, 2024).) While the challenged order included a footnote stating that the cross-motions for injunctive relief "will remain under the Court's advisement to be addressed at another time," the order had the unambiguous and immediate effect of refusing to issue an mandatory injunction.

It is the practical effect of the order that matters for purposes of appealability, not titles or disclaimers in footnotes. By allowing the Receiver to promulgate discovery and compelling the Altrad Defendants to participate in it, the circuit court necessarily refused to the request to immediately enjoin the Receiver from pursuing any litigation (including, but not limited to, discovery) in the name of Cape PLC (or CIHL) while multiple appeals challenging the propriety of his appointment are pending. This appeal is properly before this Court because the challenged order has the practical effect of refusing an injunction, rendering it appealable for purposes of South Carolina Code § 14-3-330(4).

ARGUMENT

The Receiver's Motion seeking dismissal of this appeal makes incorrect arguments regarding this Court's jurisdiction and premature arguments regarding the merits of this injunction appeal. As to the first issue, the motion incorrectly characterizes the order on appeal as a mere "interlocutory discovery order" when in fact the order had the effect of denying the Altrad Defendants' cross-motion to enjoin the Receiver from proceeding without jurisdiction in violation of Rule 205. It is black-letter law in South Carolina that denials of motions seeking injunctions are immediately appealable.

The fact that the circuit court did not expressly deny the cross-motions for injunction in the text of the appealed order, and purported in a footnote to keep those cross-motions "under advisement," does not matter. While the Receiver is correct that discovery orders are generally interlocutory, and thus, not immediately appealable, the motion to dismiss fails to address that the circuit court's refusal to rule on the cross-motion while simultaneously compelling discovery that—in substance and practical effect—was a denial and refusal of injunctive relief, an outcome on which the Altrad Defendants apprised the circuit court in the underlying cross-motion for injunctive relief and subsequent briefing thereon.

I. The circuit court's order is immediately appealable because it has the effect of refusing to enter a mandatory injunction.

Even though the circuit court styled its order as an order on a discovery-related motion, labels included on a circuit court's order *do not control* and are irrelevant when the effect of the order is to the contrary. *See Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) ("The label given to the order is not determinative of its immediate appealability."). Accordingly, appellate courts look to the effect of an order to determine what that order does. *See, e.g., id.* (noting appealability depends on "the substance of the order"); *Thornton*

v. S.C. Elec. & Gas Corp., 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability . . . ."); *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").

In making this inquiry, appellate courts are "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." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015). In *Morrow*, for instance, the Supreme Court held that an order styled as an unappealable "bifurcation order" was immediately appealable because of what the order actually did: deprived the plaintiffs of the substantial right "of bringing their case against the defendant of their own choosing." *Id.* at 539, 773 S.E.2d at 146.

Similarly, in *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842–43 (Ct. App. 1999), this Court held that an order that did not finally resolve the question of arbitrability, but instead deferred a final ruling until after the parties conducted discovery, was immediately appealable because the "order favored litigation over arbitration."

And there is no dispute that an order refusing an injunction is immediately appealable, even if it comes in the context of the denial of a motion to dismiss. *See, e.g.*, *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 124, 857 S.E.2d 4, 6 (2021) (reviewing on immediate appeal the denial of a motion to dismiss because the circuit court's order refused to "permanently enjoin" the claims against a defendant based on a bankruptcy court order); *Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 464–65, 415 S.E.2d 809, 810 (1992) (holding that an order denying a motion to dismiss

was immediately appealable under South Carolina Code § 14-3-330(4) because it had the effect of disregarding an injunction required by North Carolina law).

Here, the Altrad Defendants sought to enjoin all activity by the Receiver while this appeal is pending, as such a restraint is required by Rule 205, and the circuit court's lack of jurisdiction. The circuit court rejected that argument, held that the receivership is not "stayed,"[2] and allowed the Receiver to proceed uninhibited, rendering the 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).

Rule 205 is designed to be self-executing, without exception, and the absence of jurisdiction renders the circuit court without power to act. Yet, the Receiver's insistence upon advancing the litigation below while the validity of his very appointment is pending on appeal forced the Altrad Defendants to seek an injunction against the Receiver to enforce Rule 205.

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[2] This ruling appears to be related to this Court's order issued September 8, 2023 in the *Childers* case. *See* Order in Appellate Case No. 2023-000727 (filed Sept. 8, 2023). That Order seemingly addressed an issue framed under Rule 241—not Rule 205—and did not address the established South Carolina precedent that a *stay* is different from a circuit court's *jurisdiction* and *authority to proceed* as determined by Rule 205, SCACR. To date, there has been no published opinion from any appellate court that overturns the holdings of *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), and *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), cases that provide the relevant, detailed analysis as to the critical distinction between the two rules, the consequent meaning thereof, and how Rule 205 is to be applied in this instance. Moreover, to the extent the Court believes there is any inconsistency between Rule 205's jurisdictional prohibition and South Carolina Code § 14-3-450's provision regarding a stay pending appeal, Rule 205 governs. *See* 1991 S.C. Acts No. 115, § 5 ("In event of conflict between any provision of the South Carolina Appellate Court Rules and any other statutory provisions as to appellate procedure not repealed in this act [including Section 14-3-450], the provision of the rules shall control.").

Accordingly, the Altrad Defendants' opposition to the Receiver's motion to compel discovery included a cross-motion to enjoin all activity by the Receiver—both in litigation, and outside of litigation—based on the exact same legal predicate: that Rule 205 prevents the circuit court and the Receiver from engaging in any additional activity unless and until the appellate process is fully and finally adjudicated. (Appx. 73; Altrad Defendants' Cross-Mot. to Enjoin All Activity by the Putative Cape PLC Receiver at 16 (Feb. 16, 2024).)

By authorizing the Receiver to continue his activities, the circuit court necessarily refused to enter the injunction sought by the Altrad Defendants. *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 arbitrability). That refusal to enjoin the Receiver was an error of law.

The Receiver purports to be "the officer of the Court" or "the arm of the Court." *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). But, the absence of jurisdiction renders the court without power to act. *See Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (holding that "[w]ithout jurisdiction, a court cannot proceed at all in any cause").

Because the circuit court unambiguously lacks jurisdiction to proceed, the Receiver himself also lacks authority to conduct any activity, as he cannot possibly have any greater power to function than does the circuit court that appointed him. The South Carolina Supreme Court has specifically said so. *See Pollock v. Carolina Interstate Bldg. & Loan Ass'n*, 48 S.C. 65, 75, 25 S.E. 977, 980 (1896) ("Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator. The stream cannot rise higher than its source.").

Accordingly, the absence of jurisdiction by the circuit court also requires the Receiver to be enjoined from further activity unless and until the circuit court regains jurisdiction. With great respect for the circuit court, this is not a matter of discretion; the Altrad Defendants sought an injunction as a matter of law based on the circuit court's lack of jurisdiction and black-letter South Carolina law enforcing that lack of jurisdiction. The circuit court's order permitting the Receiver to continue conducting litigation activities without the power to do so is therefore void *ab initio* and should be vacated accordingly. *Arnal v. Fraser*, 371 S.C. 512, 517–23, 641 S.E.2d 419, 421–24 (2007); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878, 878 (1985); *Wilson v. Walker*, 340 S.C. 531, 540, 532 S.E.2d 19, 23 (2000).

Nor is this a unique circumstance. The South Carolina statute governing interlocutory appeals of injunction orders is substantially similar to the corresponding federal appellate statute. *Compare* S.C. Code Ann. § 14-3-330(4) (authorizing appeals of "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction"), *with* 28 U.S.C. § 1292(a)(1) (authorizing appeals of "[i]nterlocutory order of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions").[3]

And like the South Carolina Supreme Court, the United States Supreme Court has recognized that "where an order has the 'practical effect' of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction." *Abbott v. Perez*, 585 U.S. 579,

[3] South Carolina courts often look to federal authority when interpreting analogous state court rules or statutes. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules."); *State v. Taylor*, 333 S.C. 159, 170–72, 508 S.E.2d 870, 875–76 (1998) (examining federal authorities when "Rule 106, SCRE, has not been interpreted by this [c]ourt," but was "substantially similar to Rule 106 of the Federal Rules of Evidence").

594 (2018). In recognizing the "practical effect" test—just like the South Carolina Supreme Court—the United States Supreme Court reiterated that "the label attached to an order is not dispositive," and that "we have not allowed district courts to 'shield' [their] orders from appellate review' by avoiding the label 'injunction.'" *Id.* at 595–96. Consequently, the circuit court's footnote 1 purporting to keep the cross-motions for injunction "under advisement" while practically denying the relief sought is not effective to insulate the appealed order from review.

Applying the same "practical effect of the order" standard, the Fifth Circuit issued a published decision just six days ago explaining how *delay or inaction* in ruling on a motion for injunction is *equivalent to denial* and entitles the aggrieved party to interlocutory appeal, precisely as the Altrad Defendants previewed for the circuit court here:

> Because the district court did not expressly deny the motion here, we must determine whether the district court's inaction, in light of the unique expedited nature of the case, amounts to an "effective" denial.
>
> It's generally understood that a motion for preliminary injunctive relief "must be granted promptly to be effective," so if a district court does not timely rule on a preliminary-injunction motion, it can effectively deny the motion. **We have accordingly recognized that simply sitting on a preliminary-injunction motion for too long can effectively deny it.**

In re Fort Worth Chamber of Commerce, No. 24-10266, --- F.4d ----, 2024 U.S. App. LEXIS 8336, at *7 (5th Cir. Apr. 5, 2024) (emphasis added); *see also Gray Line Motor Tours, Inc. v. New Orleans*, 498 F.2d 293, 296 (5th Cir. 1974) ("If, for example, an action has the effect of denying the requested relief without actually making a formal ruling, then the refusal of the district court to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable.").

Here, particularly considering the Receiver's insistence on proceeding with discovery in the face of multiple pending appeals challenging the propriety of his appointment, the cross-motion

for injunctive relief to enforce Rule 205 must be granted promptly to be effective. If the Receiver is able to proceed with litigation conduct and the Altrad Defendants are ordered to participate in discovery and trial notwithstanding their pending appeals seeking the dissolution the receivership, Rule 205 will be rendered meaningless.

The fact that the challenged order compelled discovery without addressing the cross-motions for injunction does not matter. Courts have found that "discovery orders" that have the practical effect of denying pending motions for injunction are immediately appealable. For example, in *United States v. Texas Education Agency*, 431 F.2d 1313, 1315 (5th Cir. 1970), the court held that an interlocutory appeal of an *order setting a pretrial conference* was permitted, where an injunction ordering school desegregation for the 1970-71 term was sought but the pretrial conference was set ten days *after* school began. *Id.* The appealed order set for September 10 (after the opening of the school year) a "preliminary pretrial conference * * * at which conference questions concerning jurisdiction, venue, pleadings, parties, severance, and pending motions will be considered." *Id.* (asterisks in original). The court found that the "effect of the order was to deny the injunction, since desegregation plans would not be put into operation until some time after the opening of schools for the 1970-71 term." *Id.*

So too here. The purpose of Rule 205, and the Altrad Defendants' motion for injunction to enforce it, is to prevent trial court proceedings from occurring that affect matters on appeal. The effect of the appealed order in this case was to refuse to issue the mandatory injunction, which sought not only to bar the Receiver from pursuing discovery but also sought to enjoin him from taking any action—inside or outside of Court—to impair the rights of the Altrad Defendants under the auspices of the appealed receivership order. Consequently, the circuit court's order refusing that injunctive relief is immediately appealable under South Carolina Code § 14-3-330(4).

Given the Receiver's persistence in pursuing this litigation and discovery in the face of pending appeals, an injunction was an appropriate remedy to restrain further actions and enforce Rule 205. Because the circuit court appeared unpersuaded by the argument that Rule 205 prevented action on any matters affected by the appeal—specifically including the Receiver's ability to seek discovery, the circuit court's ability to grant a motion to compel and dispose of pending motions for protective order, and other related actions—the Altrad Defendants included in their Opposition to Receiver's Motions to Compel a Cross-Motion for injunctive relief whereby the circuit court—if it determined it had the power to do so—could afford the Altrad Defendants the same outcome sought pursuant to Rule 205.

In so moving, the Altrad Defendants explained that the injunction was mandated by the plain and clear text of Rule 205. Second, and because Rule 205 creates a jurisdictional bar to action by which a lower court is divested of authority to rule on all but a few matters, the circuit court cannot act any further. *See Limehouse*, 404 S.C. at 104, 744 S.E.2d at 572 ("Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." (quoting 32A Am. Jur. 2d Federal Courts § 581 (2007))). Third, as set forth above, the Receiver acts as an arm of the court. *Pollock*, 48 S.C. at 75, 25 S.E. at 980. Because the circuit court lacked jurisdiction to proceed, the Receiver himself also lacked authority to conduct any activity, as he does not any greater authority to function than the circuit court itself: "The stream cannot rise higher than its source." *Id*. This is not a matter of discretion; the Altrad Defendants were entitled to an injunction to enforce the clear dictates of Rule 205 as a matter of law.

On these bases, the Altrad Defendants sought to have the circuit court enforce the basic and fundamental rules necessary to preserving the orderly review and determination of the issues

pending on appeal. However, rather than rule on the cross-motion for injunctive relief, the circuit court refused to issue the mandatory injunction. In practice and substance, this was a refusal to enjoin and a resulting error of law as to the Altrad Defendants' simple and straightforward request: enforce Rule 205 and every case that has construed it. The order is immediately appealable accordingly. S.C. Code Ann. § 14-3-330(4); *Hazel*, 433 S.C. at 124, 857 S.E.2d at 6; *Williams*, 307 S.C. at 464–65, 415 S.E.2d at 810.

II. This Court should decline the Receiver's invitation to prematurely rule on the merits of this appeal.

This Court can and should deny the Receiver's motion for the reasons stated above, or alternatively adjudicate the Receiver's jurisdictional objections at the merits stage with the benefit of full appellate briefing and oral argument. Aside from incorrectly, superficially labeling the challenged order as an "interlocutory discovery order" and declaring such orders unappealable without regard to what the order actually did, the Receiver's Motion does not cite one case addressing the appealability of orders that have the effect of denying injunctions. Instead, the Receiver's Motion focuses almost exclusively on arguing the merits of this appeal—whether the Receiver may proceed with litigating this case while the Altrad Defendants' appeals challenging the receivership are pending.

The Court should not address these contested merits issues in the context of a motion without the benefit of the record, which the Altrad Defendants have already addressed in the opening brief they filed concurrently with their notices of appeal in this matter (given the urgency of the denial of injunctive relief). This motion can be adjudicated by recognizing that the challenged order is appealable and deferring the parties' disagreements regarding the interpretation of Rule 205 and Rule 241 for the merits stage where they belong. While the Altrad Defendants hotly dispute the merits arguments raised in the Receiver's motion—which boil down to the

contention that the Receiver is free to take any action while any appeal is pending—the Court simply does not need to address that issue to resolve the present motion to dismiss the appeal.

This Court has jurisdiction over this appeal, and the merits arguments raised by the Altrad Defendants are solidly grounded in the abundant South Carolina jurisprudence interpreting Rule 205. Indeed, the Altrad Defendants are not aware of *any* South Carolina appellate authority that exempts receiverships from the ordinary operation of Rule 205. As detailed by the Altrad Defendants in their February 22 Initial Brief regarding the December 6 Order on appeal, the underlying receivership cannot exist as a matter of federal constitutional law and as a matter of South Carolina substantive and procedural law. Since the filing of that appeal, the Altrad Defendants have put before the circuit court on numerous occasions the argument that Rule 205 prohibits action by the circuit court on any matter affected by the currently pending appeal of the continuation, modification, and propriety of the Cape PLC receivership and the creation and grant of a new receivership over CIHL. Because the propriety of the underlying receivership is pending before this Court, all issues associated with such receivership are affected by the pending appeal and, therefore, the lower court and the Receiver are deprived of the power to proceed thereon. By nevertheless granting the Receiver's motions to compel and refusing the Altrad Defendants' cross-motion for injunction, the lower court has acted outside of its jurisdiction and power to proceed.

Recently, this Court has made clear that parties before it are not to file "motions to clarify" and that the Court will not take "action on any order which is not properly before it." Order in Appellate Case No. 2023-000727 (filed Nov. 21, 2023).[4] Accordingly, rather than seek

[4] The circuit court referenced both the November 21 Order in Appellate Case No. 2023-000727 as well as the September 8 Order in the same case. Neither point addresses head-on the issue as to Rule 205. The September 8 Order discusses only a stay, which, as discussed below, has no bearing on the question posed by a Rule 205 analysis; and, as noted above, Rule 205 necessarily trumps South Carolina Code § 14-3-450 to the extent the Court construes that statute to allow the

clarification by interlocutory motion, the Altrad Defendants simultaneously filed a proper notice of appeal and an accompanying initial brief to seek enforcement of Rule 205, and in the interim, seek an injunction to preserve their rights. The circuit court's March 12 Order—constituting action taken in violation of the precepts and limitations of Rule 205—is now properly before this Court for enforcement contrary to the Receiver's contentions.

CONCLUSION

For the reasons set forth herein, the Altrad Defendants respectfully request this Court deny the Receiver's Motion to Dismiss and resume the briefing timeline to determine the merits of the appeal of the March 12 Order refusing the injunctive relief requested by the Altrad Defendants and mandated by Rule 205.[5]

Respectfully submitted,

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April 11, 2024

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receivership to proceed despite the pendency of an appeal. 1991 S.C. Acts No. 115, § 5. The November 21 Order never reached the Rule 205 question because of the manner in which it was placed before the Court.

[5] Per Rule 208(b)(6), SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated co-appellants.

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Opposition to Motion to Dismiss Injunction Appeal and Appendix

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