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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. 2023-001461
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, 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 theAppellant,

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; Altrad Investment Authority SAS; ArranCo US, LLC; Hawk Bidco US Inc.; Sparrows Offshore, LLC; Anglo American PLC; De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the.....Appellants.

RETURN OF APPELLANTS CHARTER CONSOLIDATED, LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. TO MOTION TO DISMISS “INTERLOCUTORY APPEALS”

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Appellants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining,” and collectively, “Appellants”) hereby respectfully submit this Return to Motion to Dismiss “Interlocutory Appeals” (“Motion to Dismiss”) filed by Peter D. Protopapas, in his purported capacity as the court-appointed receiver for Cape PLC¹ (“Receiver”).

INTRODUCTION

The Court should deny the Receiver’s Motion to Dismiss the Appeal because the December 2023 Order, which, among other things, granted a receivership over a new entity, is an immediately appealable order under S.C. Code Ann. § 14-3-330(4). Indeed, interlocutory orders “granting, continuing, modifying, or refusing the appointment of a receiver” are immediately appealable. S.C. Code Ann. § 14-3-330(4). Ignoring that clear mandate, the Receiver cites only to four unpublished decisions where either the Supreme Court or the Court of Appeals dismissed appeals of orders refusing to *dissolve* a receivership. Although the December 2023 Order did reject a request to dissolve the receivership over Cape PLC, the Receiver wholly ignores that the very same order *granted* a receivership over a new entity, Cape Intermediate Holdings Limited (“CIHL”). None of the cases cited by the Receiver involved the creation of a receivership over a new company that was not part of the original receivership order—and are therefore wholly inapplicable. Furthermore, the Court is within its power to exercise its discretion to hear and decide the issues related to personal jurisdiction in the December 2023 Order because they are companion issues.

¹ The Receiver and the circuit court have defined Cape and Cape PLC different ways at various times causing confusion. When citing to or referring to a filing or submission by either the Receiver or the circuit court, Appellants have attempted to use the term in the same way used by the Receiver or the circuit court therein.

PROCEDURAL HISTORY

This Appeal is predicated on the circuit court order by the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated December 6, 2023 (the “December 2023 Order”), which granted, modified, and continued the appointment of the Receiver. The details of the receivership appointment are chronicled in Appellants’ Initial Brief in this Appeal and that Brief is incorporated herein by reference.² An abbreviated procedural history is provided below.

The Receiver was appointed over Cape PLC in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. In *Park*, the plaintiff named two distinct, active, and presently existing “Cape” entities as defendants: Cape PLC and Cape Intermediate Holdings Limited (“CIHL”).³ Specifically, on “June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) Cape PLC, ... On November 17, 2021, Ms. Park’s son, Keith, amended the complaint... [to add] Cape Intermediate Holdings Limited...”⁴ Both Cape PLC and CIHL were alleged to be current and active entities.⁵ The *Park* plaintiff never filed a proof of service pursuant to Rule 5(d), SCRCF as to either Cape PLC or CIHL.

Nine months after the *Park* plaintiff reported to the circuit court that the case was “fully resolved,” the *Park* plaintiff moved to appoint Mr. Protopapas as receiver over Cape PLC (CIHL was not mentioned). The Receiver, while unhappy about the *Park* plaintiff’s decision to not seek

² See Rule 208(b)(6), SCACR.

³ See R. p. ____; *Park* First Amended Complaint, filed November 17, 2021, at p. 1; ¶¶ 15, 26-27.

⁴ R. p. ____; Order P 3.

⁵ See R. p. ____; *Park* First Amended Complaint, filed November 17, 2021, at p. 1; ¶¶ 15, 26-27; R. p. ____; *Tibbs* Third-Party Complaint (“Third-Party Compl.”) at ¶¶ 40, 45, 113; Oct. 25, 2023 Hr’g Tr., at 42.

a receivership of CIHL, clearly pleads that Cape PLC (a Jersey entity) and CIHL (a United Kingdom entity) are distinct and separately existing active companies.⁶

The *Park* plaintiff sought appointment of a receiver over Cape PLC even though Cape PLC was never served with the *Park* complaints, was never served with a motion to appoint a receiver, is a foreign company with no assets in South Carolina, was formed in 2011, had no involvement in any of the historical asbestos-related activities at issue in the *Park* lawsuit, and has no alleged contacts with this state sufficient to establish personal jurisdiction in South Carolina. Nonetheless, the circuit court granted the *Park* plaintiff's *ex parte* motion, relying on "facts" that the Receiver has since admitted are simply not true, including that Cape PLC had been dissolved.⁷

On April 5, 2023, Mr. and Mrs. Tibbs filed the present action and named Cape PLC as a defendant, alleging that: "Defendant, CAPE PLC, ... **is** a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. ... CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina."⁸ CIHL is **not** a defendant in Tibbs. Mr. Protopapas is not a defendant in Tibbs. *Tibbs* plaintiffs never filed proof of service pursuant to Rule 5(d), SCRCP as to either Cape PLC or CIHL.

Cape PLC has not answered or otherwise made an appearance in *Tibbs*. The law firm of Rikard & Protopapas filed a "General Denial" for Cape PLC "by and through its Receiver Peter

⁶ See R. p. ____; *Tibbs* Third-Party Complaint ("Third-Party Compl.") at ¶¶ 40, 45, 113; Oct. 25, 2023 Hr'g Tr., at 42.

⁷ See R. p. __; Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*).

⁸ R. p. ____; *Tibbs* Compl. at ¶ 41.

D. Protopapas...”⁹ There was no request for a receivership by the *Tibbs* plaintiffs, no order in the *Tibbs* case appointing a receiver, and no order otherwise allowing Mr. Protopapas leave to file the third-party complaint. Nonetheless, the following day, Mr. Protopapas filed a document entitled “Third-Party Complaint,” purporting to be the “duly appointed receiver” over “Cape PLC.”

The Receiver’s Third-Party Complaint asserts claims against multiple 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 with CIHL to satisfy potential future CIHL liabilities.

Appellants challenged 1) the propriety of the Receivership order in *Park*, 2) the authority of the Receiver named in *Park* to act outside of *Park*, 3) the authority of Mr. Protopapas to act as the receiver for Cape PLC in *Tibbs*, and 4) the authority of Mr. Protopapas to act as a receiver for CIHL in *Tibbs*. 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 on 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.¹⁰ 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

⁹ R. p. ____; Receiver’s General Denial, dated June 29, 2023.

¹⁰ Cape PLC and Cape Intermediate Holdings Limited were both listed as defendants in *Park*. The *Park* plaintiff for some reason chose to request appointment of a receiver over only Cape PLC. The Receiver admits that neither Cape PLC nor Cape Intermediate Holdings Limited was served with the operative *Park* Summons and Complaint.

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 urged the circuit court to deny the motions to dissolve, appoint him as the receiver over CIHL, and then deny the motions to dismiss for lack of personal jurisdiction.

Even though the Receiver's argument bore no connection to anything in the record, the circuit court accepted it, denied Appellants' challenges, and appointed Mr. Protopapas as Receiver over CIHL. The Appellants, as well as other third-party defendants, appealed the December 2023 Order (the "Appeal"), as the Order granted a new receivership over a corporate entity that was never involved in the initial motion to create this receivership; continued a receivership over objections that it was void *ab initio* as a matter of federal and state law; specifically continued a receivership despite a motion to dissolve; modified the scope of the receivership in numerous ways; and, by improperly placing the different foreign entity (CIHL) into receivership, it allowed the circuit court to improperly assert personal jurisdiction over Appellants. 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' Initial Brief.

STANDARD OF REVIEW

The critical inquiry on a motion to dismiss an appeal from an interlocutory order is whether the order is immediately appealable, which arises from and is controlled by statute.¹¹ Absent a specialized statute, a party may only appeal from an interlocutory order that falls within S.C. Code

¹¹ See *Hagood v. Sommerville*, 362 S.C. 191, 194-95, 607 S.E.2d 707, 708 (2005).

Ann. § 14-3-330.¹² Under § 14-3-330, a party may appeal from an interlocutory order involving the merits; affecting a substantial right; or granting, continuing, modifying, or refusing an injunction or receivership.¹³

ARGUMENT

A. The December 2023 Order Granting A New Receivership Over CIHL Is Immediately Appealable.

On its face, the December 2023 Order is an appealable order because it grants a receivership over a new entity, CIHL, which was not part of the original receivership order in *Park*. Furthermore, the December 2023 Order, at the request of the Receiver, amended and modified the Receivership Order to expand the scope and powers of the Receiver. Both of these things squarely fall within the gambit of S.C. Code Ann. § 14-3-330(4). The Receiver’s sole argument to the contrary is that the Court should be bound by certain non-binding unpublished orders in different cases that rejected a party’s request to dissolve a receiver. Beyond being non-binding precedent, however, each of these cases is clearly distinguishable in meaningful ways on the facts. Although the December 2023 Order certainly did reject the Charter Appellants’ request to dissolve the receivership over Cape, the Order also granted a brand-new receivership over CIHL. An order creating a new receivership over a new entity is vastly different than an order refusing to dissolve an already existing receivership. As such, the cases cited by the Receiver are inapplicable and not controlling, and the December 2023 Order is immediately appealable under Section 14-3-330(4).

1. The December 2023 Order grants a new receivership over CIHL.

The December 2023 Order, by giving the Receiver authority to act as a receiver over CIHL—not Cape which was the entity originally named in the *Park* Receivership Order—granted

¹² *See id.*

¹³ *See id.*

a new receivership. In its Motion to Dissolve, Appellants challenged Mr. Protopapas' ability to file a third-party complaint seeking relief on behalf of Cape Intermediate Holdings Limited (not a defendant/party in the *Tibbs* matter). Appellants asserted that: (1) the circuit court did not have subject matter jurisdiction to hear the third-party complaint; (2) not only was the Receivership Order in the *Park* matter fatally defective, it did not provide Mr. Protopapas authority to assert claims outside of the *Park* case (including in the *Tibbs* matter); (3) Mr. Protopapas did not have authority to act as a receiver in the *Tibbs* case because the circuit court had not granted a receivership in this case; and (4) even if Mr. Protopapas has authority to act for Cape PLC, it did not have authority to act for (and had never been appointed a receiver over) Cape Intermediate Holdings Limited. The circuit court entered the December 2023 Order finding that

- the entities presently known as Cape PLC and CIHL are different and distinct entities;¹⁴
- the circuit court in *Park* “appointed a receiver for Caple PLC”;¹⁵
- Mr. Protopapas is seeking through his third-party complaint to assert claims on behalf of CIHL (not the presently existing Cape PLC);¹⁶
- correct corporate names are not required for service of process – imputing notice of a new receivership to CIHL even though the name “Cape PLC” was used for

¹⁴ The circuit court explained: “Cape PLC (as it was known from 1989 to 2011, and as is now known as Cape Intermediate Holdings Ltd.) is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)...” Order Page 6. “The second Cape PLC, on the other hand, is a new entity allegedly created in the Bailiwick of Jersey in April 2011.... Other than the common name, there is no evidence the Park Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy).” Order, P. 17.

¹⁵ Order, P.4.

¹⁶ Order, P. 6-9 summarizing third-party complaint allegations of “Cape” that all predate Cape PLC’s 2011 formation.

service;¹⁷

- the Receivership Order in *Park* was flawed because it incorrectly found that Cape was dissolved;¹⁸ and
- Mr. Protopapas may now act as the receiver for Cape Intermediate Holdings Limited for the Tibbs case.¹⁹

Accordingly, despite being labeled as a denial of a motion to dissolve, in reality the December 2023 Order granted the appointment of Mr. Protopapas as receiver over a new entity, CIHL.²⁰ The December 2023 Order also had the effect of modifying and/or continuing the receivership order entered in *Park*. The December 2023 Order, therefore, is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4).

2. Given that a pre-judgment receivership over a foreign corporation is only valid in the specific action in which the receiver was appointed, the December 2023 Order must have, by definition, granted a new receivership.

¹⁷ The circuit court stated: “To the extent the ‘Cape PLC’ name should not have been included in the service of process paperwork because it was a ‘formerly known as’ name rather than a current name, that misnomer does not render service ineffective.” Order, P. 19.

¹⁸ The circuit court stated: “Although the Order appointing the Receiver incorrectly described Cape as ‘dissolved,’ even though Cape is still a going concern in the United Kingdom, that does not impact the legality of the Receivership, as dissolution of the entity placed in receivership is not required under subsection (5).” Order, P. 25, fn 16. *See also generally* Order P. 23-25 where the circuit court relies entirely on S.C. Code § 15-65-10(5) and does not reference S.C. Code § 15-65-10(4).

¹⁹ The circuit court stated “Accordingly, the Court finds the evidence of records shows the proper Cape entity was served with process of both the summons and complaint in the *Park* lawsuit, forming the foundation for this Court to exercise jurisdiction over Cape and institute the Receivership” Order, P. 22.

²⁰ This Court must look to the order’s actual effect (all effects) to determine whether it is appealable. *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.”); *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 Contractors, 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 a pre-judgment receivership over a foreign corporation pursuant to S.C. Code Ann. § 15-65-10(5), the receivership is limited to the case in which it was created. Therefore, as a matter of law, the circuit court’s December 2023 Order allowing the *Park* Receiver to act in the *Tibbs* action must have granted a new receivership (regardless of whether that receivership was over Cape or CIHL).

The Receiver argued and the circuit court stated in the December 2023 Order that the receivership appointment in *Park* was pursuant to S.C. Code Ann. § 15-65-10(5), which authorizes a court to appoint a receiver only where “provided by law” or “in accordance with the existing practice.”²¹ Importantly, the “existing practice” cited in the statute is the practice of Courts of Equity prior to passage of the statute in 1870. As the Supreme Court held in *Virginia-Carolina Chem. Co. v. Hunter*, this provision requires an inquiry into what Courts of Equity had jurisdiction to order prior to the fusion of law and equity as part of the 1870 passage of the Code of Procedure (1870 S.C. Acts 423 *et seq.*):

[S]ection 265 of the Code of Civil Procedure of 1902 [now Section 15-65-10(5)] gives the old practice the force of a statute by the enactment that a receiver may be appointed “in such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure.” *The first inquiry* is whether the record shows a case warranting the appointment of a receiver *under the general jurisdiction and practice of the court of equity*, aside from the special provisions of the Code of Procedure. . . .²²

Under the pre-Code “existing practice” a receiver appointed *pendente lite* to hold assets had no authority to act in other cases.²³ In other words, where a receiver was appointed before

²¹ Given that, in the December 2023 Order, the circuit court changed the basis for which the Receiver was appointed in *Park*, from Section 15-65-10(4) to Section 15-65-10(5), the circuit court modified the receivership and Appellants have the right to challenge the appointment on these new grounds.

²² *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (emphasis added).

²³ See *Clinkscales v. Pendleton Mfg. Co.*, 9 S.C. 318, 323 (1878) (where a receivership was issued in a particular case *pendente lite*, “the sole object of the Receivership is to preserve the property,

there was actually a judgment over the company, courts placed reasonable restrictions on the receiver by limiting the receiver's ability to act solely within the particular case in which the receiver was appointed. This pre-Code "existing practice" further conforms with the modern practice associated with pre-judgment receivers under S.C. Code Ann. § 15-65-10 *et seq*, which includes restrictions for pre-judgment receivers to the "cause" in which they were appointed.²⁴

If a receiver could be appointed over a foreign corporation pursuant to S.C. Code Ann. § 15-65-10(5) (which Appellants dispute), the receivership would be limited to the case in which it was created—here, *Park*. Accordingly, the circuit court must have granted a new receivership in *Tibbs* in order for Mr. Protopapas to act. Any grant of a new receivership is immediately appealable under S.C. Code Ann. § 14-3-330(4).

3. The Supreme Court's March 2024 Payne & Keller Order is not precedent and is distinguishable.

The Court should reject the Receiver's argument that the South Carolina Supreme Court's March 27, 2023 memorandum opinion in *Childers v. Davis Mechanical Contractors, Inc., et al.* (hereinafter "*Payne & Keller*") requires dismissal of this Appeal. In *Payne & Keller*, a number of third-party defendant insurers filed a motion for certification of their appeal to the South Carolina

to answer the purposes of a decree, as between the parties to the suit, without affecting the interest of third persons not parties").

²⁴ *See, e.g.*, S.C. Code Ann. § 15-65-50 ("No receiver of the property of any ...corporation shall be appointed before final judgment **in the cause** if the party claiming the property so sought to be placed in the hands of a receiver ...shall offer a bond...to meet and satisfy any decree or judgment or order that may be made **in the cause.**"); S.C. Code Ann. § 15-65-60 ("Whenever the court ... shall appoint a receiver before final judgment **in the cause** there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment **in the cause** the court or judge shall vacate the appointment of such receiver....").

Supreme Court.²⁵ That Motion sought to certify an issue as to whether a continued receivership over Payne & Keller was appropriate in light of the Court's denial of a motion to dissolve.

Thereafter, by signed order, the Supreme Court decided the issue, stating in its entirety:

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.²⁶

This Order has *no* bearing for two simple reasons. *First*, the South Carolina Appellate Court Rules make clear this Supreme Court Order is *not* a precedential opinion. Rule 220(a), SCACR, provides: "The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached." As is obvious, that has not occurred here. Additionally, Rule 220(b), SCACR requires that "[i]n every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case."²⁷ That too has not occurred, particularly where the Supreme Court cited to no authority for its ruling.

²⁵ See C-Track entry dated January 3, 2024 in Appellate Case No. 2023-000727.

²⁶ *Payne & Keller*, S.C. Sup. Ct. Order, dated March 27, 2024 (Appellate Case No. 2024-000005).

²⁷ Rule 220(b), SCACR, has exceptions that either (i) do not apply or (ii) reinforce that this South Carolina Supreme Court Order has no precedential value:

This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, *the Supreme Court determines that a published opinion would have no precedential value* and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which

Second, the relevant facts and procedural posture here are distinguishable from *Payne & Keller* in very meaningful ways. In *Payne & Keller*, the insurer third-party defendants sought appellate review of the circuit court’s applicable ruling denying the receivership dissolution relief sought. In response to the Court of Appeals’ inquiry into appealability, the insurers explained how the circuit court order fit within S.C. Code Ann. § 14-3-330(4), under the specific facts and procedural posture in that case, by arguing: (1) a denial of a motion to dissolve in effect and as a direct consequence thereof necessarily *continues* a receivership; and (2) by permitting the Receiver to act outside of his appointment mandate—to “take any and all steps necessary to protect the interests of Payne & Keller whatever they may be”—through pursuit of a revocation of Payne & Keller’s Texas termination, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership.²⁸

Here, the appealability inquiry as to the circuit court’s December 2023 Order denying the Charter Defendants’ Motion to Dissolve the Cape PLC Receivership is fundamentally and factually different, as the relevant issue at hand concerns the circuit court’s *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (Cape Intermediate Holdings Limited) separate and distinct from that named in the circuit court’s underlying Order of Appointment (in *Park*).²⁹ By

are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

Rule 220(b)(1), SCACR (emphasis added).

²⁸ See Response to Court’s Appealability Inquiry of AIG et al., dated May 15, 2023, at 9–10 (Appellate Case No. 2023-000727); Travelers’ Response Regarding Appealability, dated May 15, 2023, at 5–7 (Appellate Case No. 2023-000727).

²⁹ Cape PLC and Cape Intermediate Holdings Limited (CIHL) were separately named defendants in *Park*; however, the Order of Appointment only named and identified Cape PLC. Now, in its December 2023 Order in *Tibbs*, the circuit court identified CIHL as the entity over which the Receiver has been appointed.

granting an entirely new receivership, relying on the inapplicable doctrine of “misnomer,” the circuit court did more than merely refuse to dissolve a receivership—it *modified* and *continued* a receivership.

Such ruling by the circuit court goes far beyond what transpired in *Payne & Keller* and fits squarely within S.C. Code Ann. § 14-3-330(4), which states the “Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . “[a]n interlocutory order or decree in a court of common pleas . . . *granting, continuing, modifying,* or refusing the appointment of a receiver.”³⁰ In fact, the circuit court’s December 2023 Order was issued following briefing by the Receiver expressly requesting an amendment to the underlying Order of Appointment.³¹

For the reasons stated above (and as applicable from those below), the *Payne & Keller* Order should not be cited for anything more than doing what it did in that particular case. With the nuanced facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other major differences, a three-sentence unpublished Order—devoid of explanation and citation to authority—cannot have bearing on the issues in this case.³²

³⁰ S.C. Code Ann. § 14-3-330 (emphasis added).

³¹ *See, e.g.*, Third-Party Plaintiff’s Omnibus Opposition to Motions to Dissolve, filed October 18, 2023, at p.17, n.13 (“The Court can simply amend the Appointment Order to clarify . . . if the Court finds that appropriate.”) & p.20, n.15 (“The Receiver would have no objection to the Court’s amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g., Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (‘If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment.’); S.C. Code § 33-14-320(c) (permitting amendment of appointment order).”).

³² The same is true with respect to the South Carolina Supreme Court’s April 17, 2024, Order denying the insurers’ petition for rehearing of the Supreme Court’s earlier March 27, 2024 Order, in which the basis for the denial was simply that, per Rule 221(a), SCACR, “Appellants have failed to show this Court overlooked or misapprehended any point in the order.” *Payne & Keller*, S.C. Sup. Ct. Order, dated April 17, 2024 (Appellate Case Nos. 2024-000005 and 2023-000727).

Indeed, where an order, like the December 2023 Order, creates a receivership over a new entity, it is clearly immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4).

4. The Court of Appeals' April 2024 orders regarding factual scenarios and procedural postures more akin to *Payne & Keller* are also inapplicable, distinguishable, and non-dispositive.

The Receiver also incorrectly relies on three recent South Carolina Court of Appeals decisions; however, each of those decisions are distinguishable in very meaningful ways to the December 2023 Order here which created a new receivership over a new entity. Specifically, on April 12, 2024, the South Carolina Court of Appeals issued three Orders denying appeals brought pursuant to S.C. Code Ann. § 14-3-330(4), finding each Order not immediately appealable.³³ Two of those appeals (*Welch* and *Mitchell*) were brought by insurers under the same or similar *Payne & Keller* argument that by denying a motion to dissolve a receivership, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership.³⁴ The *Link & Donaghy* appealability argument—while flowing from the circuit court's order denying the Receiver's motion to terminate representation of the active-and-solvent-entity- in-receivership's counsel of choice and directing such directly engaged counsel to cooperate with the Receiver—stems from the same basis, *i.e.*, that the effect of such ruling was to *continue* the underlying receivership.³⁵

For the same reasons set forth above regarding the *Payne & Keller* Orders, these separate Court of Appeals' Orders are inapplicable, distinguishable, and non-dispositive to, and a far cry from, the factual scenario and procedural posture existing in this case, wherein the circuit court (in

³³ See *Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; and *Welch*, Appellate Case No. 2024-000337.

³⁴ See Travelers' Response Regarding Appealability in both *Mitchell* and *Welch*, each dated March 25, 2024, at 6–9 (Appellate Case Nos. 2024-000341 & 2024-000341).

³⁵ See Appellants' Memorandum on Appealability in *Link & Donaghy*, dated March 25, 2024, at 6 (Appellate Case No. 2024-000342).

Tibbs) granted an entirely new receivership over a legal entity separate and distinct from that which the circuit court (in *Park*) appointed the Receiver: CIHL. Here, the circuit court’s December 2023 Order—under the specific facts and posture in this case—is immediately appealable. Importantly, the appellate courts’ determination of the appealability of the December 2023 Order must be made anew, not based on these prior unrelated unpublished orders in unrelated cases.³⁶

B. The December 2023 Order Denying Appellants’ Motion To Dismiss Is Immediately Appealable As A Companion Issue.

The Court should also reject any suggestion in the Receiver’s Motion that the Court cannot immediately consider the circuit court’s denial of Appellant’s Motion to Dismiss. Under South Carolina law, the trial court’s denial of Appellants’ Motions to Dismiss for Personal Jurisdiction is immediately appealable to this Court, as a companion matter to the denial of Appellants’ Motions to Dissolve. This Court has discretion to review “interlocutory orders not ordinarily appealable when they are companion to reviewable issues.”³⁷ Here, the trial court’s denial of Appellants’ Motions to Dissolve are immediately reviewable.³⁸ Accordingly, this Court has discretion to simultaneously review the circuit court’s denial of Appellants’ Motions to Dismiss for Personal Jurisdiction.

³⁶ See *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) (“By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.”).

³⁷ See *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 371, 628 S.E.2d 902, 918 (Ct. App. 2006); see also *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (“Courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable.”); *Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319, 338-39, 574 S.E.2d 502, 511-12 (Ct. App. 2002); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

³⁸ See S.C. Code Ann. § 14-3-330(4).

In determining whether to exercise discretion to review an issue that typically would not be subject to immediate appeal, courts primarily consider (1) the relationship between the two “companion” issues, and (2) whether granting review would promote judicial economy by narrowing the issues or avoiding unnecessary litigation.³⁹ Both of these considerations weigh heavily in favor of this Court’s immediate review of the circuit court’s ruling on personal jurisdiction.

Importantly, this Court’s review of all issues may eliminate the need for further proceedings, regardless of forum. If the Court determines that Respondent failed to establish personal jurisdiction over Appellants was proper and, therefore, Appellants’ Motions to Dismiss should have been granted, there are no issues to further litigate. This result would save resources for all parties, would promote judicial economy by avoiding needless prosecution and defense of claims against a party over which the South Carolina courts have no jurisdiction, and would further assure that this Court would not have to entertain these exact issues again in a subsequent appeal.

For these reasons, the circuit court’s denial of Appellants’ Motions to Dismiss for Personal Jurisdiction is properly before this Court, and the Court should exercise its discretion to hear and decide the issues presented.

CONCLUSION

For the reasons set forth herein, Appellants respectfully request this Court deny the

³⁹ See *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (entertaining an appeal “in an effort to avoid another appeal in the future and potentially narrow the issues for trial”); *Brown*, 366 S.C. at 362 n.5, 622 S.E.2d at 538 n.5 (finding motions to dismiss unreviewable because they lacked a sufficient “nexus or companionship” to the reviewable issue to justify the exercise of immediate appellate review); *Morris v. Anderson Cnty.*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (acknowledging the court’s ability to “consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation”); *Pitts*, 352 S.C. at 338-39, 574 S.E.2d at 511-12 (entertaining an appeal from a denial of summary judgment because it was so closely connected to other issues properly before the court).

Receiver's Motion to Dismiss and resume the briefing timeline to determine the merits of the appeal of the December 2023 Order.⁴⁰

Dated: May 6, 2024

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⁴⁰ Per Rule 208(b)(6), SCACR, Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bido (US) Inc., and Sparrows Offshore, LLC.

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SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants Charter Consolidated Ltd., 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): RETURN OF APPELLANTS CHARTER CONSOLIDATED, LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. TO MOTION TO DISMISS “INTERLOCUTORY APPEALS”

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