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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 Nos. 2023-002006 and 2024-000524
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.

**REPLY IN SUPPORT OF CHARTER CONSOLIDATED LTD.; ESAB CORPORATION;
AND CENTRAL MINING & INVESTMENT CORPORATION LTD.'S PETITION FOR
REHEARING**

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REPLY IN SUPPORT OF PETITION FOR REHEARING

Appellants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining,” and collectively, “Appellants”) hereby respectfully submit this Reply In Support of Petition for Rehearing. Like their co-Appellants, the Appellants filed a petition for rehearing and set forth several points of law that the Court overlooked and/or misapprehended when dismissing this appeal.

The Receiver filed a “Return To Petitions For Rehearing” which was approximately 1.5 pages and purported to address all arguments raised in Appellants’ Petition and two (2) other petitions. In the face of fully-briefed series of petitions for rehearing from the Appellants and their co-Appellants, and after this Court required the Receiver to respond, the Receiver failed to provide a substantive response. The Receiver’s response did not even mention the governing appellate statute.

The closest the Receiver comes to providing an argument is his statement that the Appellants “have not identified a point the Court of Appeals overlooked or misapprehended.” (Resp. ¶ 3.) This response suggests that the Receiver failed to read Appellants’ Petition as Appellants clearly set forth ten (10) specific and numbered points that the Court “overlooked and/or misapprehended.” (Petition pp. 1-3)

The Receiver failed to address the ten (10) points, and further has never addressed the following issues:

- The Receiver has never addressed whether an “interlocutory order . . . granting. . . the appointment of a receiver” is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4).
- The Receiver has never addressed how he can act in *Tibbs* when he was appointed in *Park*.

- The Receiver has never addressed why he did not bring his third-party action in the *Park* case (where he was appointed) instead of the *Tibbs* case (where he had no appointment).
- The Receiver has never addressed why Appellants should not be entitled to the pre-judgment statutory protections afforded by S.C. Code Ann. § 15-65-60 which specifically require (with the use of “shall”) a clause in an appointment order fixing the value of the property being sought to be placed in the hands of the receiver, such that the party in possession of the assets may submit a bond which vacates the receiver appointment.
- The Receiver has never addressed why the receivership is not void. The South Carolina Supreme Court has interpreted this section as being a condition precedent to the appointment of a receiver: “[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.” *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928).
- The Receiver has never addressed why the order on appeal is not the grant of a new receivership in *Tibbs* or the modification of the *Park* Receivership Order.
- The Receiver has never addressed how he can assert third-party claims for Cape Intermediate Holdings Limited in *Tibbs*, when Cape Intermediate Holdings Limited is not a defendant in *Tibbs*.

The Appellants have demonstrated why this Court should grant their petition. The Receiver has failed to provide a substantive response. Appellants respectfully request that this Court grant their Petition for Rehearing.¹

¹ As before, the Appellants incorporate by reference all arguments and authorities presented in their prior filings in this appeal, and they join and adopt by reference all submissions, arguments, and authorities presented by their similarly-situated co-Appellants.

Respectfully submitted,

Dated: June 17, 2024

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PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Sculls Mansukhani LLP, attorneys for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation 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): Reply in Support of Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.'s Petition for Rehearing

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