

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Jun 19 2024

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2024-000916

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.; Lowserve 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,

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.; Anglo 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

Of which Mohed Altrad, Altrad Investment Authority SAS, ArranCo US, LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

RETURN TO MOTION TO STRIKE AND STAY

The Receiver requests the Court deny Petitioners' Motion to Strike and Stay Deadline for Reply. On June 3, 2024, Petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd. filed a twenty-two-page Petition for Writ of Certiorari

with this Court. The same day, Petitioners ArranCo US, LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Mohed Altrad, and Altrad Investment Authority S.A.S filed a twenty-three-page Petition for Writ of Certiorari with this Court. The Receiver was entitled to file a twenty-five-page Return to each Petition. Instead of filing two twenty-five-page returns, the Receiver consolidated his response to both Petitions and filed one thirty-one-page return to both Petitions.¹ The Receiver's Return is not improper. Petitioners' motion is another attempt to delay this matter and further illustrates the frivolous nature of the appellate filings in receivership cases and the need for affirmative relief to curtail the continued abuses of process.

Appellants have made clear they do not agree with the trial and appellate courts' rejections of their attempts to appeal interlocutory orders denying Motions to Dismiss or Dissolve Receiverships and, as such, continue to use the appellate process to pursue non-meritorious claims which are improperly delaying proceedings and overrunning courts with filings. Put simply, rather than abide by this Court's precedent, Appellants boldly assert their interpretation of S.C. Code Section 14-3-330 is correct and the courts are wrong. Just in the last week, Petitioners have filed additional briefs in support of Petitioners for Rehearing and for Rehearing En Banc arguing the Court of Appeals should ignore this Court's pronouncement in *Childers* and other precedent finding that an interlocutory order denying a motion to dissolve a receivership did not fall under the exceptions listed in section 14-3-330. *See* Petitioners Arranco Us, Llc; Hawk Bidco (Us) Inc.; And Sparrows Offshore, Llc's Reply In Support Of Petition For Rehearing And Suggestion For Rehearing En Banc, Appellate Case No. 2023-002007, p. 4 ("When the General Assembly passed Section 14-3-330, it codified, as a matter of public policy, that when a circuit court takes nearly

¹ The first five pages of the Receiver's Return are the caption of the case, table of contents, and table of authorities, which do not count toward the page limit.

any action as to receivers—either a granting, modification, or continuation—the drastic and severe nature warrants *immediate* and prompt review by an appellate court.”) Like their co-petitioners, Petitioners Mohed Altrad and Altrad Investment Authority SAS continue to file briefs asserting that orders such as the one in *Childers* are immediately appealable and rather than accept the decisions of the courts on this issue, they defiantly assert the courts are just getting it wrong. *See Reply In Support Of The Altrad Defendants’ Petition For Rehearing And Suggestion For Rehearing En Banc*, Appellate Case Nos. 2023-002006 and 2024-000524, p. 1 (“Like their co-Appellants, the Altrad Defendants filed a petition for rehearing and a suggestion for rehearing *en banc* that laid bare the points of law that the Court overlooked when dismissing this appeal. There is no getting around it. Everything that has happened below in this matter shocks the conscience, and the order creating and sustaining this unlawful situation is immediately appealable as a matter of right. S.C. Code Ann. § 14-3-330(4).”) and p. 5 (“To ensure that neither the Court nor the Receiver continue to overlook this statute and its unmistakable applicability here, a highlighted copy is attached. It controls appealability, and the Court should rehear and reinstate this appeal without further delay.”). Just yesterday, the Court of Appeals denied rehearing in three of the five appeals brought by Petitioners from the circuit court’s order denying the motions to dissolve the receivership and dismiss. *See* June 18, 2024 Orders, Appellate Case Nos. 2023-002009, 2023-002010, and 2023-002011.

The vexatious nature of these continued appeals of issues already decided by this Court is improper and, absent affirmative relief, will continue to improperly delay proceedings and waste court and litigant resources. The Court should deny Petitioners’ motion.

(Signature page follows)

Respectfully Submitted,

By: /s/ Jonathan M. Robinson

Jonathan M. Robinson

G. Murrell Smith, Jr

Shanon N. Peake

SMITH | ROBINSON, LLC

3200 Devine Street

Columbia, SC 29205

jon@smithrobinsonlaw.com

murrell@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

(803) 254-5445

John T. Lay, Jr., SC Bar No. 64526

Lindsay A. Joyner, SC Bar No. 77437

Gallivan, White & Boyd, P.A.

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

(803) 779-1833

June 19, 2024