

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Jul 29 2024**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2024-000874  
(Opinion No.: 6056, S.C. Ct. App, filed April 3, 2024)

The Boathouse at Breach Inlet, LLC, by and through its Member,  
Laurence O. Stoney, Jr., .....Respondent.

v.

Richard S. W. Stoney, Individually and as Member-Manager of  
The Boathouse at Breach Inlet, LLC, and Crew Carolina, LLC,

and

Theodore Stoney, Jr., Individually and as Trustee for Richard Stoney, Jr. and  
Gregory G. Holmes, Third-Party Intervenors,

of whom

Richard S. W. Stoney is .....Petitioner

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**REPLY TO RESPONDENT’S RETURN**

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## ARGUMENTS

I. **Petitioner has not “waived any arguments with respect to the legal analysis applied by the Court of Appeals in considering the standing issue”.** (Reply, in part, to Respondent’s Return Argument II. A, p 13, “Waiver”).

Respondent argues at page 13 of his Return that, because the standing issue was not raised in Petitioner’s petition for rehearing to the Court of Appeals, the argument has been waived. Respondent either misapprehends Petitioner’s arguments, or he mischaracterizes them. The central ruling of the trial court in this case, which was reversed by the Court of Appeals, is that Laurence lacks requisite standing to prosecute this case because, as found by Trial Judge Newman, Laurence was acting out of personal vindictiveness towards Richard (R.p. 23), as well as in pursuit of personal gain, and not in the best interests of the Company. (R.p. 32).

Petitioner’s Argument I in his petition for rehearing, styled under the heading “Witness Credibility” is focused upon the Court of Appeals’ reversal of the Trial Court’s finding that Laurence lacked standing. Judge Newman’s findings and conclusions that Laurence lacks standing to pursue this case are expressly based upon his conclusions of witness credibility: “*Upon consideration of all the evidence, particularly evaluating the credibility of the witnesses, contrary to my preliminary findings, the conduct of Laurence Stoney related to the Company establishes that he does not seek to vindicate a corporate wrong.*” (R.p. 29). (Emphasis added.)

Flowing from this finding, and others, the trial court concluded that Laurence’s true motivations were vindictive, inspired by personal gain, and that Laurence therefore lacked requisite standing to prosecute this case because he “...owes the corporation his undivided

loyalty. The plaintiff must not have ulterior motives and must not be pursuing an external personal agenda. Whether or not such a personal agenda exists is determined by the trial court, and we will not reverse its determination absent clear error... *Blum v. Morgan Guaranty Trust Co.* 539 F.2d 1388, 1390 (5<sup>th</sup> Cir. 1976); see also *Halstead Video Inc, v. Gutillo*, 115 F.R.D.177, 180 (N.D. Ill. 1987)”. *Smith v. Ayres.*, 977 F.2d. 946, 949 (5<sup>th</sup> Cir. 1992).

Rule 242(b) of the South Carolina Appellate Court Rules is clear in its expression that the “character of reasons” which will be considered in granting a petition for writ of certiorari include the reasons set forth in subsections (1) through (5) of the Rule. The Rule, however, expressly provides, as well, “a question presented will be deemed to include every subsidiary question fairly comprised therein.” It is clear and obvious that “standing”, the central issue in this case, is subsumed within Petitioner’s Argument I of his petition for rehearing, contrary to Respondent’s assertion.

Particularly because Laurence’s lack of standing was one of the two central issues decided by the trial judge (the other being dissociation), a petition for certiorari to this court must necessarily seek review of the reversal of the standing issue by the Court of Appeals.

II. **The Court of Appeals’ Opinion conflicts with this Court’s holding in the case of *Lewis v. Lewis* as to Witness Credibility and Standing; Laurence’s vindictive and personal animus disqualifies him from pursuing this action. (Petition, Argument I; Return, Argument I)**

In his Return to the Petition for Certiorari, Laurence argues on page 11 that the Court of Appeals’ opinion “does not shy away from the facts relating to the bad blood between Richard and Laurence”, and it includes an acknowledgment that ‘animosity

certainly exists between the parties’ (See App. at 103)”. (Emphasis added.) Laurence further argues in his Return that the Court of Appeals “faults the Trial Court for reaching its result based solely on its finding that there was personal vindictiveness, and disagrees, based on the preponderance of the evidence and the applicable law, with the trial court’s conclusion that Laurence was acting in pursuit of personal gain.” The Court of Appeals itself categorizes the relation between Laurence and Richard as one of “hostility”. (App. 103) (Emphasis added.)

Thus, the several characterizations of Laurence’s relationship with Richard, by Laurence and the Court of Appeals, describe that relationship with the milder adjectives of “bad blood” “animosity” and “hostility”.

On the other hand, Judge Newman, who was the judge of the facts and of the credibility of the witnesses at trial, characterizes Laurence’s animus towards Richard in harsher terms: “vindictive” (R.pp. 23, 32-33); and not without reason: Laurence had demeaned the credit standing of the Boathouse at Breach Inlet (“BHBI”) to its creditors; behind Richard’s back, and without the knowledge of other members, he surreptitiously sought to buy the property on East Bay Street where Boathouse on East Bay (“BHEB”) was situated, knowing that Richard was seeking to buy it to protect the interests of the Boathouse restaurant there; he testified in Richard’s divorce case that he would support an award of BHBI to Richard’s wife; he also testified in the same proceeding that he would support the engagement of a competing restaurateur, Bill Hall, to manage BHBI. Although Respondent argues that these facts are not “directed towards the Company”, the facts are clearly evidence of Laurence’s vindictive animus, and of the impracticability of his continuing as a member of BHBI, LLC with Richard.

And the culminating event in the litany of Laurence’s vindictive agenda was his direct threat against Richard, uttered to Ted shortly before he filed this case: “*I’m going to get Richard. I’m going to turn his world upside down.*” (R.p. 1023, line 5 to R.p. 1024, line 15; R.p. 1028, line 5 to R.p. 1029, line 5.)

The facts and the evidence, accordingly, prove an animus far greater than merely “bad blood”, “hostility” or “animosity”. Instead, the evidence clearly proves a vindictive animus, as concluded by Judge Newman. It is obvious that the distinction between the softer characterizations argued by Respondent and that concluded by the Court of Appeals, and the “vindictive” conclusion reached by Judge Newman, on the other, are significant under the standing criteria articulated in *Davis v. Comed* , 619 F2d 588 (5th Cir. 1980).

At the very least, under the precepts of *Lewis v. Lewis*, 392 SC 381, 709 SE 2d 650 (*S.Ct.* 2011), as argued in the Petition here before the Court, the Court of Appeals was required to articulate reasoning for so dramatically departing from the informed conclusions reached by the trial judge who, as previously argued, personally observed, heard and studied Laurence Stoney and Richard Stoney through extended hours of testimony.

The legal authority most squarely addressing Plaintiff’s vindictive motivations, also cited by Judge Newman, is the case of *Smith v. Ayres*, 977 F.2d. 946 (U.S. 5<sup>th</sup> Cir. 1992). Although cited by Judge Newman, the Court of Appeals does not mention the case, and Respondent seeks to dismiss it “because the parties have stipulated that no other members are similarly situated to Laurence”. (Return at p. 17.)

However, in *Smith v. Ayres* the Plaintiff, Smith, sought to qualify as a “class of one” in a shareholder derivative lawsuit. (See 977 F.2d at 948), but the District Court, as well as

the 5<sup>th</sup> Circuit Court of Appeals, concluded that Plaintiff's vindictive motivations precluded him from prosecuting the case on behalf of the company, because he lacked the requisite standing to do so, concluding that: "A plaintiff in a shareholder derivative action owes the corporation his undivided loyalty. The plaintiff must not have ulterior motives and must not be pursuing an external personal agenda. Whether or not such a personal agenda exists is determined by the trial court, and we will not reverse its determination absent clear error. In deciding this question, the court may properly consider the amount of the plaintiff's stake in the corporation as balanced against his interest and how the litigation may affect his external interest. *Blum v. Morgan Guaranty Trust Co. of New York* 536 F.2d 1388, 1390 (5<sup>th</sup> Cir. 1976); see also *Halstead Video, Inc., v. Guttilo*, 115 F.R.D. 177, 180 (N.D. Ill. 1987)". *Smith, supra*, 977 F.2d at 950. (Emphasis added.)

Plaintiff Smith, as concluded by the 5<sup>th</sup> Circuit Court of Appeals, "has an unmistakable personal and professional dispute with Ayres. His brief is peppered with vituperative epithets, pugilistic metaphors, and descriptions of Ayres as 'satanic' and 'evil'". Also, "for example Andrew (Smith) has stated that he is committed to 'ruin 10 years of (Ayres) life, because I am going to be sure that Pat Holloway prevails...and he-if he thinks this is even the end of the tenth round, I mean we're - we're not even in the first round.'" 977 F.2d at 949.

The threats by Smith "to ruin 10 years of Ayres life" are eerily reminiscent of the testimony in this case, where Laurence pledged to Ted that he was "going to get Richard. I'm going to turn his world upside down." (R.p.1023, line 10 to R.p. 1024 line 15; R.p.1028 line 5 to p.1029 line 5).

The point to be made here is that Laurence owed to the Company his undivided loyalty, without ulterior motives or an external personal agenda; and, that, “whether or not such a personal agenda exists is determined by the Trial Court, and we will not reverse its determination absent clear error.” *Smith*, supra 977 F2d at 949. (Emphasis added.)

Accordingly, this Court should grant certiorari to review the decision of the Court of Appeals in this case, because it departs from the precedent of *Lewis*.

**III. Witness Credibility: This case presents to this Court for review, under the standards of *Lewis v. Lewis*, the juxtaposition between the appellate court’s “constitutionally authorized *de novo* review” in the context of the trial evidence, with that of Respondent’s burden “to satisfy the appellate court” that the preponderance of the evidence is against the findings of the trial court; and whether, therefore, the Court of Appeals incorrectly reversed Judge Newman’s deliberate and carefully formed findings and conclusions. (Petition, Argument I; Return, Argument I)**

Respondent does not address at all in his Return Petitioner’s Argument I that the central basis for Judge Newman’s deliberate and carefully informed conclusions, were that court’s conclusions that Laurence’s motivations for prosecuting this case were his personal vindictiveness towards Richard (R.pp. 23, 32-33) and his motivation for personal benefit, whereby the Company could execute against Richard’s 60% LLC interest, thereby removing Richard, disabling the management of the LLC (See Judge Newman’s Order at R.pp. 31-32); and also thereby increasing Laurence’s own percentage of membership interest in the LLC.

And what was Judge Newman’s central basis for so ruling? In the Trial Judge’s order, he finds: “*The Court preliminary ruled that Laurence Stoney could adequately*

*defend the vindication of a corporate interest as representative of the derivative shareholder suit and should be given the chance at trial to do so. Having now conducted the trial, it is clear to the Court that Laurence Stoney did not seek to vindicate a corporate wrong as originally presented, but rather was acting through personal vindictiveness. The preliminary ruling of the Court finding that Laurence Stoney has standing to bring this action is reversed based on the findings and conclusions contained in this Order. The Court further grants the relief seeking to dissociate Laurence Stoney from the Company.”* (R.pp. 23, 32-33) (Emphasis added.)

And Judge Newman further concludes: “*Upon consideration of all the evidence, particularly evaluating the credibility of the witnesses, contrary to my preliminary findings, the conduct of Laurence Stoney related to the Company establishes that he does not seek to vindicate a corporate wrong.*” (R.p. 29.) (Emphasis added.)

Although Petitioner clearly argues in his Petition for Writ of Certiorari the superior role of the trial court as to making credibility determinations, and the centrality of witness credibility in making those determinations, the argument seems to have fallen on deaf ears, because Respondent makes no response to it. And neither does the Court of Appeals recognize or acknowledge that superior role of the trial court in deciding witness credibility, other than to pay lip service to the principle, acknowledging: “Therefore, this Court may find facts in accordance with our own view of the preponderance of the evidence... However, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility.” (App. pp. 98-99, “Standard of Review”), citing *Straight v. Goss*, 353 SC 180 at 192, 678 S.E.2d at 449. Nevertheless, the Court of Appeals does not further discuss or attempt to reconcile

the principle with its own conclusions; and neither does the Court acknowledge the “superior role” of the trial court in making credibility findings.

On the other hand, the standard set by this Court in the case of *Lewis v. Lewis*, 392 SC 381, 709 SE 2d 650 (S.Ct. 2011), as argued in Petitioner’s Petition, requires more. *Lewis* holds: “*We reiterate that appellate deference to factual findings in an equitable action is not mandatory. We do not, however, perceive any conflict between our authority to make findings of fact and our tendency to sustain family court (i.e. a court of equity’s) factual findings when the appellant fails to satisfy the appellate court that the preponderance of the evidence is against the finding of the family court. This juxtaposition of the constitutionally authorized de novo review and our tendency, after review, to uphold family court findings is seen in the expression that the appellate court is not required to disregard the findings of the trial judge who was in a superior position to make credibility determinations.*” *Lewis v. Lewis, supra*, 392 S.C.at 391, footnote 7 (Emphasis and parenthetical note added.)

The corollary to the proposition from *Lewis*, that the burden was imposed on Laurence to satisfy the Court of Appeals that the preponderance of the evidence is against the findings of the trial court (*c.f.*, *Lewis*, 392 SC at 391), must necessarily mean, and must be, that it was in this case incumbent upon the Court of Appeals to at least acknowledge that Laurence had met that burden. However, the opinion of the Court of Appeals as to “credibility” is silent as to the issue; as is Laurence’s Brief to that Court. (See App. p. 1-33). This silence is particularly relevant to the question whether this Court should grant review on certiorari, because the point presents a clear instance of conflict between the Court of Appeals opinion in this case, and this Court’s holding in the case of *Lewis v.*

*Lewis*. Rule 242(b), SCACR generally requires that there be “special and important reasons” to issue a writ of certiorari; and enumerates examples of the “character of reasons” which will be considered. Included as a character, or type, of reason to issue a writ is subsection 242(b)(2): “*Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.*”

In this respect, the opinion of the Court of Appeals in this case is in conflict with the standards articulated in *Lewis*, for appellate review from a trial in an equitable action; such as in the case presently before the Court. Because the opinion of the Court of Appeals conflicts with *Lewis*, a decision of this Court, the Petition should be granted.

IV. **Dissociation: Respondent fails to respond to Petitioner’s argument that Laurence’s conduct, combined with his own testimony, invited the equitable remedy of dissociation, and a buy-out of Laurence’s interest for “fair value”; and neither does the Court of Appeals address it.**

The evidence in this case overwhelmingly proves Laurence’s vindictive animus, most clearly expressed in his pre-suit threat that, “*I’m going to get Richard. I’m going to turn his world upside down*” (R.p. 1023 line 10 to p.1024 line 15; R.p. 1028 line5 to p. 1029 line5); and culminating with his candid trial concessions that he “*does not want to be in the restaurant business with Richard*” (R.p. 702 lines 17-25); that it is “*not reasonably practicable*” for them to continue in the LLC together (R.p.703 lines 10-16); and that a buyout of his interest at “*fair value*” is “*a viable solution*”, that “*just hasn’t happened*”. (R.p. 703 line 17 to p.705 line 4.) The statutory standard for judicial dissociation of a member’s interest in an LLC includes, where the member “(iii) *engaged in conduct relating to the company’s business which makes it not reasonably practicable to carry on*

*the business with the member*". Section 33-44-601(6)(iii) of the South Carolina Code of Laws. (Emphasis added.)

In his Return to Richard's Petition for Certiorari, Respondent does not reply, or even attempt to do so, to Richard's argument that Laurence's conduct, and his own testimony as discussed previously in this Reply and immediately above, presented Judge Newman with an invited, equitable remedy.

Having heard the same evidence, Judge Newman concluded that Laurence was motivated, not only by a vindictive animus to "get Richard", but by a personal agenda to squeeze Richard out from the LLC altogether, thus increasing his own share value. Accordingly, Judge Newman properly concluded that Laurence lacked requisite standing, as previously argued.

Moreover, when presented with the testimony from Laurence that it was "*not reasonably practicable*" for him and Richard to continue together as members of the LLC; and Laurence's own declaration that "*he didn't want to be in the restaurant business with Richard*"; and his concession that a "*fair value*" buyout was a "*viable solution*", Judge Newman formulated the fair and equitable resolution granted by his Order here on appeal, to dissociate Laurence from the LLC and to compensate him for his membership interest at "fair value" as provided by the statute.

The "Fair Value" calculation. Respondent argues at page 19 of his Return that "Nothing in this definition (in Code Section 33-44-702) allows the trial court to impute funds and value wrongly siphoned from the company". Respondent's argument makes a quantum leap of logic. In the first place, the Code Section says nothing at all as to the issue of imputing equitable factors into the fair value calculus. Secondly, the Code Section

provides for the appointment of an appraiser by the court; thirdly the issue is an equitable one, affording to the hearing court the broad discretionary powers associated with equitable review. An appraiser appointed by the court under Code Section 33-44-702(1) would be empowered to act in accordance with the court's "plenary and exclusive jurisdiction", *c.f.* Section 33-44-701(d). In the circumstances the authority of the court and its appraiser would be constrained only by the court's equitable, plenary and exclusive jurisdiction. Respondent's arguments to the contrary are misplaced.

**V. Laurence's ulterior motives, to "squeeze-out" Richard's member interest in the LLC, must not be ignored, much less sanctioned by the Court.**

At about the same time that Laurence uttered his threat to Ted that he was going to "get Richard" (R.p.1023, line 10 to R.p. 1024 line 15; R.p.1028 line 5 to p.1029 line 5), he had also emailed Richard to "make your best offer" (R.p. 114) to buy him out. All of this uttered by Laurence prior to filing this case.

Laurence, himself, concedes that Richard does not have the capability to pay the four-million-dollar liability owed by Crew Carolina to the LLC. To the extent Richard's personal liability can be proved, Richard's only meaningful asset is his ownership interest in the BHBI restaurant. (R.p. 701 line 25 to R.p.702 line 16.) The pathway Laurence attempts to clear through the mechanism of this case is for the company to obtain judgment against Richard personally, who cannot pay it; then to execute that judgment against Richard's membership interest in BHBI, thereby "get(ting) Richard" by ousting him as a member, as Laurence had threatened to do; and at the same time profiting Laurence by increasing his own percentage membership interest in the Company.

Judge Newman reached the same conclusion, as a conclusion of law. See R.pp. 31-32.

However, Laurence's pathway will not benefit or profit the Company one whit, because there will be no four million dollars to deposit into its coffers. And it will likely cause harm to the Company because it will eliminate the creative talents of Richard Stoney, the single person who conceived, built, and operates the Boathouse restaurant, which substantially enhances the success, and therefore the value, of the restaurant. Even Laurence concedes this. (R.p. 723 lines 5-24; R.p. 277 line 18 to p. 728 line 4.)

### **CONCLUSION**

Notably, this case was assigned to Judge Newman as trial judge in December of 2016 under this Court's popular and successful "Business Court" program. The Program was intended, among other things, to provide institutional and focused trial management, and a more deliberative forum for resolving business disputes than former, traditional methods of trial assignments.

It would be understatement to suggest that Judge Newman's attention to the adjudication of the case was careful, deliberate, and extraordinary. As reported in the record and in the Briefs, Judge Newman presided over two extended hearings. The first, a two-day hearing, on Petitioner's motion that Respondent lacked standing to prosecute this case, which the trial court preliminarily denied; and the second, an extended three-day trial on the merits of the case.

As concluded in his order, after hearing the complete evidence in the case, Judge Newman reversed his preliminary ruling and filed his order here on appeal, that Laurence Stoney lacks the requisite standing to prosecute the case; because, Judge Newman

concluded, Laurence was not credible in his representations in the two hearings that he was acting for the benefit of the company. Simply put, Judge Newman did not believe Laurence's testimony.

Instead, and Laurence's demeanor as a witness bore out Judge Newman's conclusions in this respect, Laurence's motivations were sinister and vindictive, to "turn Richard's world upside down"; and to force Richard out of the LLC altogether; a result that would substantially benefit Laurence by increasing his percentage membership interest in the LLC.

In the full circumstances, this Court should issue its Writ of Certiorari to review the decision of the Court of Appeals.

Respectfully,

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