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Aug 07 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge
Trial Court Case No. 2023-CP-10-01512
Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael
Flanagan, Receiver.....Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two
OP Holdings, LLC, and Samuel Goldner.....Appellants.

MOTION AND PETITION FOR REHEARING (WITH CONSENT)

Pursuant to South Carolina Appellate Court Rules 214 and 221, Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC, with the consent of all parties, hereby petition for rehearing and/or reconsideration of the Court’s order entered July 24, 2024, whereby the Court consolidated two pending appeals (*i.e.*, Appellate Case Nos. 2023-001494 and 2024-00723) based upon the misapprehension that the Appellants’ Motion to Consolidate Records on Appeal (the “Records Consolidation Motion”) filed on June 27, 2024 sought to consolidate both appeals. The Respondents wish to note for the Court that the limited relief the Appellants sought by and through the Records Consolidation Motion (relief which the Respondents did not oppose) was simply to allow the parties to consolidate the records on appeal in Appellate Case Nos. 2023-001494 and 2024-00723 rather than to consolidate both appeals in their entirety pursuant to Rule 214.

This Motion is filed with the consent of all parties and seeks to have the cases returned to their separate status based upon the following:

1. On September 19, 2023, a Notice of Appeal was filed by Appellants Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner with this Court. The Office of the Clerk assigned the matter Appellate Case Number 2023-001494 (the “2023 Appeal”). Respondents in the 2023 Appeal are Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver (the “Receiver”).
2. On May 2, 2024, a Notice of Appeal was filed by Appellants Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner. The Office of the Clerk assigned the matter Appellate Case Number 2024-000723 (the “2024 Appeal”). Respondents in the 2024 Appeal are Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver.¹
3. On June 27, 2024, the Appellants submitted a Motion to Consolidate Records on Appeal in an effort “to avoid the unnecessary duplication of materials and printing costs and in the interest of producing and providing this Court with a unified Record on Appeal that will promote the just, speedy, efficient, and inexpensive resolution of these appeals...” (Mtn. to Consolidate Records on Appeal at 2).
4. Via Response filed July 8, 2024, Respondents consented to the use of a single record for both appeals, stating “Without waiving any positions or assenting to any assertions in Appellants’ Motion, these Respondents do not oppose the Motion and consent to the use

¹ Although the Receiver was listed as a Respondent in the 2024 Appeal case caption, the Receiver did not file any pleading in connection with the orders at issue in the 2024 Appeal or take any position with respect to the relief granted therein and, consequently, is, upon information and belief, currently evaluating whether he is a proper Respondent to the 2024 Appeal.

of a consolidated record on appeal in the two above-referenced matters.” (Resp. to Mtn to Consolidate Records on Appeal at 1).

5. On July 24, 2024, this Court entered an Order (the “Consolidation Order”) stating, “Appellants have filed a motion to consolidate the above-mentioned appeal with appellate case no. 2024-000723. Respondents have filed a return, consenting to this motion. This motion is Granted.” (Consolidation Order, dated July 24, 2024, at 1).
6. Respondents assert the Consolidation Order was clearly based upon the misapprehensions that Appellants requested *and* the Respondents consented to consolidation of the 2023 Appeal and the 2024 Appeal. In fact, none of the parties have requested or consented to any change other than the use of a single record on appeal for both appeals. Because of this misapprehension, the Respondents request that the Court vacate or otherwise modify the Consolidation Order to limit the scope of relief to that which Appellants sought in the Records Consolidation Motion.
7. Further, while Respondents acknowledge that Rule 214, SCACR allows the Court, in its discretion, to consolidate two appeals, consolidation is only appropriate “[w]here there is more than one appeal from the same order...or where the same question is involved in two or more appeals in different cases.” (Rule 214, SCACR). Respondents do not believe that either basis required for consolidation is satisfied with respect to the 2023 Appeal and 2024 Appeal.
8. Lastly, the Respondents request that upon entry of any order vacating or modifying the Consolidation Order, that the Respondents be given thirty (30) days from the entry of such order to file their respective initial briefs and designation of matter to be included in the record on appeal in Appellate Case Nos. 2023-001494 and 2024-000723.

WHEREFORE, Respondents request that the Court:

1. Vacate or modify the Consolidation Order to limit the permitted consolidation to only the records on appeal in Appellate Case Nos. 2023-001494 and 2024-000723,
2. Restore the separate dockets for Appellate Case Nos. 2023-001494 and 2024-000723,
3. Allow Respondents thirty (30) days from the entry of such order to file their initial briefs and designation of matter to be included in the record on appeal in Appellate Case Nos. 2023-001494 and 2024-000723; and
4. For such other and further relief as the Court deems just.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

Thomas P. Gressette, Jr. (SC Bar #14065)

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**ATTORNEYS FOR RESPONDENTS CHARLESTON
SC PROPERTY HOLDINGS, LLC AND HANAHAN
SC PROPERTY HOLDINGS, LLC**

WE CONSENT:

/s/ Michael H. Weaver

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**ATTORNEY FOR RESPONDENT
RECEIVER, MICHAEL FLANAGAN**

WE CONSENT:

/s/ Christopher T. Brumback

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GOLDNER CAPITAL MANAGEMENT, LLC, SC

TWO OP HOLDINGS, LLC, AND SAMUEL

GOLDNER

August 7, 2024
Charleston, SC

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v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner.....Appellants.

PROOF OF SERVICE

I certify that on August 7, 2024, I caused Respondents’ Motion and Petition for Rehearing to be served upon counsel of record using the following email addresses:

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SC Court of Appeals

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VIA EMAIL and FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
Via e-filing: ctappfilings@sccourts.org

Re: *Charleston SC Property Holdings, LLC, et al. v. Rittenberg OP, LLC, et al. (1)*
Appellate Case No. 2023-001494

Dear Ms. Kitchings:

Enclosed please find Respondents' Motion and Petition for Rehearing. As indicated, the Motion is filed with the consent of all parties.

Due to the impacts of Tropical Storm Debby, we are not working in the office. However, we will return tomorrow and send via Federal Express a check in the amount of \$50 for the required filing fee.

With kind regards, I am

Sincerely yours,

/s/ *Thomas P. Gressette, Jr.*
Thomas P. Gressette, Jr.

Enclosures

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