

RECEIVED

Jun 17 2024

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. Hesterton 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 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

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

REPLY IN SUPPORT OF THE ALTRAD DEFENDANTS' PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

June 17, 2024

**REPLY IN SUPPORT OF PETITION FOR REHEARING AND SUGGESTION OF
REHEARING EN BANC**

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).

The Receiver has never defended what's happening below. Never. Because it is indefensible. Rather than providing any explanation based in law, the Receiver files papers that are the substantive equivalent of a caption and a signature block, and he counts on those gossamer filings to prompt the Judiciary to look the other way while he perpetuates punitive litigation tactics against foreign defendants that have absolutely no contact with or connection to South Carolina. It is truly unprecedented, and—because the Receiver also purports to be operating as an agent of the court—it is dangerous to the very concept of the Rule of Law.

Even now, in the face of a fully-briefed series of petitions for rehearing from the Altrad Defendants and their co-Appellants, the Receiver refuses to engage. This Court took the extraordinary step of requiring the Receiver to respond to the rehearing petitions, yet he still has not identified a single reason why he believes the Altrad Defendants cannot immediately appeal the circuit court's order. And the reason he has not provided a single argument or explanation to support his position is because there is none. The Receiver's response didn't even mention the governing appellate statute because he knows it requires this appeal to proceed.

The underlying order on appeal unlawfully continued the earlier appointment of a receiver over Cape PLC (a Jersey company), it modified the scope of the initial receivership order to retroactively allow the Receiver to undertake actions outside of the *Park* case from which the

appointment arose, and it further modified that order to grant a new receivership appointment over Cape Intermediate Holdings Limited (a UK company **that is not even a party to this litigation and had no notice of the putative appointment**). (Order on Appeal at 15–25 (Dec. 6, 2023).) And then the order parlayed these unprecedented rulings to sweep away the constitutional requirement of personal jurisdiction over the Altrad Defendants and others by pretending that these unlawful receiverships somehow create an “equitable” basis for the circuit court to disregard Due Process and exercise personal jurisdiction over myriad third parties that have absolutely no connection to or contact with the State of South Carolina. (*Id.* at 28–47.)

The appellate statute expressly vests the Altrad Defendants and the other co-Appellants with the unrestricted right to immediately appeal that order:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) **An interlocutory order** or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or **granting, continuing, modifying**, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

The reason the General Assembly created the right to immediately appeal such a ruling in 1901 and has left it intact for nearly a century and a quarter is because of the potential devastation an unlawful receivership can cause. *See, e.g., Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898) (“While the court of equity, in proper cases, has the power to place a debtor’s property in the hands of a receiver, this power should be exercised with great caution, **lest the injury thereby caused be far greater than the injury sought to be averted.**”) (emphasis added).

The Receiver has no answer to any of this. In fact, he didn’t provide any explanation for why the Court should dismiss this appeal in the first place. And when the Altrad Defendants pointed out these basic errors of law in their Petition for Rehearing and the Court demanded that

the Receiver provide some justification for dismissal, the Receiver ignored the law altogether and didn't address the controlling statute at a single point in his three-paragraph response. The Receiver's sustained silence on the point in the face of the Altrad Defendants practically daring him—and this Court requiring him—to explain his position amounts to an abandonment of his motion to dismiss. *Cf. Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 190, 708 S.E.2d 787, 797 (Ct. App. 2011) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”).

The closest the Receiver comes to providing any argument at all is to passively suggest that the Altrad Defendants “have not identified a point the Court of Appeals overlooked or misapprehended.” (Resp. ¶ 3.) This is not a serious response. The Petition for Rehearing says on the very first page: “Respectfully, the order dismissing this appeal overlooked the controlling statute,” right before quoting South Carolina Code § 14-3-330(4)—the controlling statute, which isn't mentioned anywhere in the dismissal order (or in any of the Receiver's filings, for that matter). (Pet. at 1.) 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.

The Altrad Defendants have already filed their initial brief and designation of matter, and the Receiver should be required to answer for the unlawful receivership activity here, which runs squarely contrary to the United States Constitution, the South Carolina Code of Laws, and Supreme Court precedent. And because the Rule of Law requires that this appeal be reinstated and the circuit court's unprecedented rulings be carefully scrutinized and corrected to conform with Due Process and other controlling constitutional and statutory points, the Altrad Defendants respectfully renew their suggestion that the Court take up this petition and appeal *en banc*.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No. 15063

kevin.hall@wbd-us.com

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

June 17, 2024¹

¹ As before, the Altrad Defendants 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.

Attachment

South Carolina Code § 14-3-330

[S.C. Code Ann. § 14-3-330](#)

This document is current through 2024 Regular Session Act No. 120, not including changes and corrections made by the Code Commissioner.

South Carolina Code of Laws Annotated by LexisNexis® > Title 14. Courts (Chs. 1 — 31) > Chapter 3. Supreme Court (Arts. 1 — 9) > Article 3. Jurisdiction, Duties and Procedure (§§ 14-3-310 — 14-3-450)

§ 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

History

1962 Code § 15-123; 1952 Code § 15-123; 1942 Code § 26; 1932 Code § 26; Civ. P. '22 § 26; Civ. P. '12 § 11; Civ. P. '02 § 11; 1896 (22) § 1; 1901 (23) 623; [1991 Act No. 115, § 2](#), eff June 5, 1991.

RECEIVED

Jun 17 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, 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 the Altrad Defendants' Petition for Rehearing and Suggestion for Rehearing En Banc

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

June 17, 2024