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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
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2024-001446

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.; 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, Altrad Investment Authority S.A.S, Arranco US LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

**REPLY TO APPELLANTS' RETURNS TO
MOTION TO DISMISS AND EXPEDITE**

Before Appellants filed their notices of appeal of a non-appealable, interlocutory scheduling order on August 30, 2024, all parties in this proceeding and the circuit court agreed that this case would be a bench trial. Now, Appellants wish for this Court to overturn a scheduling order based on arguments never presented to the circuit court that the order deprives them of a constitutional right to a jury trial. Appellants rely exclusively on the January 2024 demands included in their answers for a jury trial on all issues so triable to try to persuade this Court to proceed with this appeal in hopes that the December 9 trial will have to be continued. They ignore numerous filings to the circuit court as late as May 2024 where they expressly and repeatedly admit the case should be tried non-jury due to the Receiver's equitable claims. Appellants have submitted nothing to this Court to show that any of these arguments were raised to the circuit court and concede that they submitted numerous filings to the circuit court stating they understood the trial in this matter would be non-jury. Yet, they astonishingly contend they should not be held to their arguments and representations to the circuit court. Appellants cannot take one position before the circuit court—that this matter involves a bench trial on equitable claims—and another position before this Court—that the circuit court's order resetting the bench trial should be overturned. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal.”).

Appellants' Returns show their hand. Their real goal in each of their successive interlocutory appeals is to relitigate the dismissed appeals and have this Court “dismiss the third-party complaint outright.” (Altrad Ret. p. 9.) The Altrad Appellants candidly admit Appellants have appealed every single order issued in this case. (Altrad Ret. p. 13.) Litigants attempting to appeal every ruling of the circuit court is unheard of and contrary to the administration of justice in this state. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000)

(noting South Carolina disfavors piecemeal appeals as they can delay the progress of a case for years). At every turn of this action, Appellants have attempted to stop the case from moving forward. They spend pages of their Returns reasserting their arguments about the impropriety of the receivership. (Charter Ret. pp. 5–10; Altrad Ret. pp. 4–5; Sparrows Ret. pp. 3–8.) However, this Court’s ruling is clear. The circuit court’s order refusing to dismiss the third-party complaint and refusing to dissolve the receivership is not immediately appealable. This Court’s ruling is also clear that receivership actions continue even in the presence of pending interlocutory appeals. *See* September 8, 2023 Order, *Childers v. Davis Mechanical Contractors, Inc., et al*, Appellate Case No. 2023-000727. Faced with unfavorable rulings that the case must proceed to final judgment, Appellants now change-course in an attempt to manufacture an appealable issue despite numerous assertions to the circuit court prior to the June 20, 2024 Order that the case is a non-jury case.

This Court has been here before. As the Charter Appellants note, the Court may look to the contents of the appellate record in other, unrelated cases, especially where, as here, the cases are in “the same procedural posture.” *See Stanley Smith & Sons, Inc. v. Dumas*, 315 S.C. 30, 33, 431 S.E.2d 595, 596 (Ct.App.1993) (the Court of Appeals took notice of the contents of the appellate record in another, unrelated case); (Charter Ret. p. 4.) In *Covil Corporation v. Pennsylvania National Mutual Insurance Company*, Appellate Case No. 2022-001722, Penn National attempted to appeal an order of the circuit court scheduling a non-jury trial in a declaratory judgment action. Penn National did not object to a non-jury trial at the status conference at the case and did not seek reconsideration of the scheduling order. Later, Penn National filed a Motion to Confirm Jury Trial Demand but failed to articulate the factual issues it believed existed in the case that would entitle it to a jury trial. When the circuit court denied Penn National’s motion, they appealed. Penn National also tried to couch its appeal as a mode of trial

appeal. This Court granted the Receiver’s Motion to Dismiss the appeal. February 8, 2023 Order, Appellate Case No. 2022-001722. The Supreme Court subsequently denied certiorari in the case. November 7, 2023 Order, Appellate Case No. 2023-001079. Here, Appellants never contested the Scheduling Order by insisting on their right to a jury trial. Instead, *after* admitting in multiple filings to the circuit court that the case would be tried non-jury, they improperly appealed the Scheduling Order.

This Court and the Receiver should not have to unnecessarily waste resources on a full merits briefing in this appeal. *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (“An issue that was not preserved for review should not be addressed by the Court of Appeals[.]”). First, as discussed in the Receiver’s motion to dismiss, this interlocutory order is not immediately appealable. Second, this Court has regularly ruled on preservation and waiver issues without requiring full briefing on the merits of issues clearly not proper before the Court in the interest of judicial economy. *See Covil Corp. v Penn. Nat’l Mut. Cas. Ins. Co.*, Appellate Case Nos. 2022-001722, 2023-001079 (dismissing appeal of scheduling order and denying certiorari from dismissal of appeal); June 7, 2024 Order, *Goins v. Jenkinsville Water Co., Inc.*, Appellate Case No. 2023-001451 (striking an appellant’s initial brief because it referenced material not presented to the circuit court and directing the appellant to file a new initial brief).

Appellants repeatedly calling their successive interlocutory appeals “valid” does not make them so. Despite Appellants’ insistence that they have the authority to file an appeal from every interlocutory order of the circuit court, this Court has ruled that they do not. The Court should continue to do so and dismiss the newest interlocutory appeals.

Respectfully Submitted,

By: /s/ Jonathan M. Robinson

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Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S, Arranco US LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

PROOF OF SERVICE

I certify that a true copy of the Reply to Appellants' Returns to Motion to Dismiss and Expedite of Peter D. Protopapas, Receiver in this case has been served on the following, this 12th

day of September, 2024, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

Counsel Served: **E-Mail**

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September 12, 2024.

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Subject: Tibbs v Cape PLC, et al. Appellate Case No. 2024-001446
Date: Thursday, September 12, 2024 11:11:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Reply to Motion to Dismiss. 4.pdf](#)

Please find attached for service a copy of the Receiver's Reply to Appellants' Returns to Motion to Dismiss and Expedite that we are filing with the court today.

Thank you,

Dot



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