

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Richland County
Court of Common Pleas
The Honorable Jean H. Toal, Circuit Court Judge

S.C. SUPREME COURT

Civil Action No. 2023-CP-40-01759
Appellate Case Nos. 2024-000916, 2024-001423, 2024-001497, and 2024-001499
Appellate Case Nos. 2023-002011, 2023-002010, and 2023-002009

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.; 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, Inc.; 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., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers 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 (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) 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 S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC **THIRD-PARTY DEFENDANTS,**

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the **PETITIONERS.**

REPLY OF PETITIONERS CHARTER CONSOLIDATED, LTD., ESAB CORPORATION AND CENTRAL MINING & INVESTMENT TO THE RECEIVER’S RETURN TO THE MOTION TO CERTIFY

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ARGUMENTS¹

Petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (CMIC) file the following Reply to the Return filed by the Receiver Peter D. Protopapas to the Petitions for Writ of Certiorari that Petitioners and others filed in this matter.² Petitioners respectfully request that the Court grant this request for review, vacate the Court of Appeals' decision dismissing the appeals and either remand the matter to the Court of Appeals to address the merits or retain the matters in this Court for a decision on the merits of the issues Petitioners have raised.

The Receiver spends much time in his Return criticizing various attempts to seek appellate review of the circuit court's improper orders appointing the Receiver in violation of applicable statutory and case law. (Return, pp. 1-4). The Receiver describes his appointment in the *Park* case pursuant to S.C. Code Ann. § 15-65-10(5) (2005), but then adds he was appointed

¹ By continuing to prosecute this appeal, Petitioners do not waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction and impropriety of the purported receiverships over CIHL and Cape PLC. As to the impropriety of the purported receiverships, Petitioners adopt and incorporate the factual background, authorities and appendix materials, and argument of Petitioners Mohed Altrad and Altrad Investment Authority, SAS regarding: CIHL and Cape PLC's disclaimer of any authority by the Receiver to bring suit on their behalf (as each are solvent, foreign entities and neither has given the Receiver authority to act on their behalf in pursuing claims with no connection to any assets in South Carolina or that were ever in South Carolina, as is required of any state-court-appointed receiver under the United States Constitution); and the pendency of proceedings before the High Court of Justice of England and Wales pertaining to such matters.

² Pursuant to Rule 208(b)(7), SCACR, Petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation, Ltd. adopt by reference the arguments of the Petitions and any Replies filed by Petitioners Mohed Altrad and Altrad Investment Authority SAS in Appellate Case No. 2024-001499 and Petitioners ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, in Appellate Case No. 2024-001497.

pursuant to “§ 15-65-10(4) in the alternative.” (Return, p. 4-5)³. There is conspicuously no mention of the *Park* Order’s language that the Receiver’s appointment was “in this case.”

The Receiver proclaims:

The issues involved in the attached Supreme Court and Court of Appeals dismissals in *Childers*, *Welch*, *Mitchell*, and *Link* are identical to this appeal – not only with respect to the underlying motions filed in the circuit court and type of order on appeal (refusing to grant motions to dissolve a receivership), but also as to the statutory provision invoked by appellants in an attempt to futilely cloak an interlocutory order with immediate-appealability urgency.

(Return, p. 7). The Receiver contends this Court and the Court of Appeals “have consistently and decisively rejected [Petitioner’s arguments] in this exact scenario – including this appeal.”

(Return, p. 7). These statements misstate the prior unpublished rulings of the appellate court, none of which (other than the matter *sub judice*) addressed the specific arguments proffered here, and certainly not in a manner that is binding precedent. The Receiver adds, without citation to anything, that “[t]he law is – and has been for some time – that an order refusing to dismiss a case and dissolve a receivership cannot be immediately appealed under the scope for interlocutory appeals defined by S.C. Code [Ann.] § 14-3-330 and extensive case law.” (Return, pp. 7-8).

The Receiver also spends time characterizing the order in the *Park* case as refusing to dissolve the receivership *in that case*, accusing Petitioners of engaging in “semantic games,” a “gotcha” game, or a “dishonest game.” (Return, pp. 8-9). The Receiver claims the circuit court’s order “continued” the *Park* receivership by permitting the Receiver to act in the *Tibbs* matter,

³ Receiver makes this statement despite expressly disclaiming below that he was appointed under Section 15-65-10(4), and the circuit court agreed. Both the court and the Receiver relied solely upon Section 15-65-10(5) below.

encouraging this Court to place the form of the order (declaring expansive rights) over its substance (creating a new receivership, or modifying the existing receivership). (Return, pp. 9-11).⁴

Next, the Receiver accuses Petitioner of engaging in “sky is falling” arguments, and judges the arguments as “misguided” and not worthy of review. (Petition, pp. 11-12). Of course, it is up to this Court, not the Receiver, to determine whether any argument Petitioner has made has merit or is worthy of review.

It is noteworthy what the Receiver *does not* argue in his Return. Petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation, Ltd., contend:

A. Appointment of the Receiver in the *Park* matter pursuant to S.C. Code Ann. § 15-65-10 (2005) does not authorize the Receiver to act in this matter (*Tibbs*) because the Code (and the very order appointing the Receiver in *Park*) limits the Receiver to acting in the case in

⁴ The Receiver cites to a circuit court order in another, unrelated matter as support for the Receiver’s contention that continuing a receivership is common practice. (Return, p. 11). First, “[t]rial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.” *Ford v. Beaufort Cty. Assessor*, 398 S.C. 508, 515 n. 3, 730 S.E.2d 335, 339 n. 3 (Ct. App. 2012). Second, the case cited involved a consent order to continue an interim receivership, also initially created by consent, over a South Carolina company with property in South Carolina and verified proof of insolvency, including actions by the South Carolina Department of Revenue against the company. See *Wilmington Trust National Assoc., etc. v. Piedmont Center Owner, et al.*, 2019-CP-23-000913 (Order of March 1, 2019). The order before this Court involves a receivership entered in the *Park* case that is being used in the *Tibbs* matter to assert new claims involving a solvent and ongoing foreign company. Finally, the Receiver attempts to distinguish what happened in that case (continuing a temporary consent receivership) with what has happened here, characterizing those orders as immediately appealable (since the initial consent receivership had expired) while the order here (denial of dissolution) is not. This is a distinction without a difference since the circuit court’s order in this matter actually changes the original order of appointment, much in the same way as the order in *Wilmington Trust*.

which he was appointed (*Park*). The Return makes no argument regarding this point.

- B. The only way the Receiver who was appointed in *Park* may act in *Tibbs* is for the trial court to enter a new order appointing the Receiver, or modifying the *Park* order to include *Tibbs*; either order would be immediately appealable under S.C. Code Ann. § 14-3-330(4) (2017). Again, the Return does not address this argument.
- C. Because the *Park* case is resolved, the pre-judgment appointment of the Receiver for Cape in the *Park* case was dissolved as a matter of law (or rendered moot). The Return does not address this argument.
- D. The pre-judgment appointment of the Receiver for Cape PLC in the *Park* case is void because of the circuit court's failure to comply with the mandatory bond provisions of S.C. Code Ann. §§ 15-65-50 and -60 (1976 & Supp. 2023), as set forth in *Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) ("The provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void."). The Return fails to address this argument.
- E. The effect of the order in this case is to grant, continue, or modify an order appointing a receiver since the order continued and/or modified the original appointment of the Receiver over Cape, PLC in the *Park* case to an appointment over both Cape PLC and CIHL in the *Tibbs* case; the order is therefore immediately appealable under Section 14-3-330(4). The Return does not address this argument.
- F. Neither Cape PLC nor Petitioners were afforded an opportunity to challenge the appointment of the Receiver to raise these defects; this is a violation of the bare

rudiments of due process.⁵ The Return does not address this argument.

None of the prior unpublished rulings the Receiver attached to his Return address the merits of any of the arguments contained within the Petition, yet the Receiver contends all issues have been conclusively resolved against Petitioners. This simply is not so. Instead of directly addressing the arguments, the Receiver hides behind a smokescreen of his own creation.

CONCLUSION

The issues in this case are significant and will evade appellate review if the Court does not grant this writ to review the Court of Appeals' decision to dismiss this appeal.⁶ The circuit court orders are fatally defective for numerous reasons stated in the Petition and this Reply, and not addressed by the Receiver's Return. The Court should grant review of the Court of Appeals' order dismissing this appeal and permit briefing and oral argument. The Court should either remand the matter for the Court of Appeals to address the merits of the issues on appeal, or should retain the case and explain the appropriate procedure for appointing a receiver in South

⁵ Cf. *Thornton v. Alford*, 274 S.C. 1, 3-4, 260 S.E.2d 179, 181 (1979) (reversing an order and admonishing the trial court for "its failure to observe the barest rudiments of substantive or procedural due process").

⁶ The Court has the authority to grant a discretionary writ even if it determines the order on appeal is not immediately appealable under Section 14-3-330. See, e.g., *State v. Price*, 441 S.C. 423, 433, 895 S.E.2d 633, 638 (2023) (Court issued a discretionary writ to review circuit court order reducing sentence of convicted felon without complying with statutory mandates; Court stated it may use authority under article V, § 5 of the South Carolina Constitution to issue a "common-law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority"); *State v. Hill*, 314 S.C. 330, 444 S.E.2d 255 (1994) (Court held an order admitting capital defendants to bond was not immediately appealable; however, Court issued a discretionary writ of review, reversed, and remanded the matter to the circuit court with instructions).

Carolina.⁷ Specifically:

1. The Court should declare, as it did in *Truesdell*, that the order appointing the Receiver without the bond provision under Section 15-65-60 is void (meaning any action based upon that void order is also void).⁸
2. The Court should construe Section 15-65-10(4) and hold, under its plain language, that the Code Section does not permit the appointment of a receiver over a foreign company that is not defunct.
3. The Court should explain the meaning of the language “in accordance with the existing practice” within Section 15-65-10(5);

⁷ There are presently two other appeals pending before this Court involving active foreign companies where (like the present matter) (1) the foreign company was named as a defendant in a South Carolina asbestos matter, (2) the foreign company has no contacts with, assets in or creditors in South Carolina, (3) the asbestos plaintiff (all represented by the same law firm) made a pre-judgment motion to appoint a pre-judgment receiver over the active foreign entity (entities’ assets), (4) the circuit court issued almost identical orders appointing Peter Protopapas as Receiver, (5) the appointment orders appointed the receiver pursuant to Section 15-65-10(4) and Section 15-65-10(5), (6) the appointment orders do not contain the mandatory bond provision under S.C. Code Ann. § 15-65-60 (and are thus void), (7) the appointment orders state that the receiver is appointed “in this case” only; and (8) notwithstanding appeals of the orders granting the appointment of a receiver, the purported receiver is actively pursuing actions brought in matters other than the one in which he was appointed (unrelated to the party who made the motion to appoint a receiver). This Court has recently certified each of the above referenced appeals pursuant to Rule 204(b), SCACR. These appeals include Appellate Case No. 2023-001461 (originating from the same lower court as the present Petition – Tibbs v. 3M) and Appellate Case No. 2023-001096. The Respondent for all three appeals is the same – Peter Protopapas. All three appeals involve the defective grant of the appointment of a receiver over an active foreign entity. The Court recognized the significance of the issues involved in appointing a receiver over an active foreign entity by certifying the above reference appeals, further supporting the grant of the present motion to certify. Petitioners further suggest that the Court consolidate these three appeals.

⁸ E.g., *Turner v. Malone*, 24 S.C. 398, 401 (1886) (“There is no doubt that a void judgment, or decree, in whatever tribunal it may be entered, is, in legal effect, nothing. All acts performed under it, and all claims flowing out of it, are void.”).

4. The Court should also explain that the appointment of a receiver under Section 15-65-10(4) *or* (5) is only for the case in which the appointment is made, and any other authority to act must derive from a new (or modified) order which is immediately appealable under Section 14-3-330(4).

Respectfully submitted,

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