

Dec 05 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

KEITH W. PARK, individually and as the
Personal Representative of the Estate of
ISABELLA PARK,

Plaintiffs,

v.

ARMSTRONG INTERNATIONAL, INC.,
et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-02727

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER GRANTING RECEIVER'S
MOTION TO CLARIFY ORDER
APPOINTING A RECEIVER FOR
CAPE PLC**

This matter comes before the Court by way of the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape") Motion to Clarify Order Appointing a Receiver for Cape, issued by this court on March 17, 2023. The Receiver's Motion is hereby GRANTED.

On June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the "Third Party Action"), to adjudicate the parties responsible for Cape's historical liabilities and the duties owed by those entities to Cape. Certain Third Party Defendants moved to dissolve the receivership and/or dismiss the Third Party Action on the grounds that the Receiver was not authorized to initiate such actions, and that the Receiver's attempts to marshal assets outside of South Carolina exceeded the scope of his authority. This Court denied those motions in an order dated December 6, 2023. Certain Third Party Defendants continue to disagree with South Carolina and Federal court rulings confirming the application of the Barton Doctrine and the authority of the Receiver and Receivership Court. *See Protopapas v. Zurich Am. Ins. Co.*, 2023 WL 2206640, at *2 (D.S.C. Feb. 24, 2023) (Coggins, J.), *appeal dismissed sub nom., Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351 (4th Cir. 2024). *See, e.g., Pipe & Boiler Insulation, Inc. v. Cont'l Ins. Co. et al.*, No.

3:21-cv-03033-SAL, ECF No. 153, at 4–9 (D.S.C. Mar. 9, 2023) (remanding receivership matter because “the *Barton* doctrine prevents Defendants from removing this matter, filed *by* a Receiver, to federal court,” while also considering judicial economy in light of the fact that any “settlement agreement is not final until the *Receivership Court* approves the settlement”); *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (D.S.C. Feb. 24, 2023) (remanding receivership case because “*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver,” such that allowing removal “would directly interfere with the exclusive jurisdiction of the receivership court over this dispute”); *see also S. Insulation, Inc. v. OneBeacon Ins. Grp., Ltd.*, No. 3:22-cv-01308-MGL, ECF No. 46, at 4–6 (D.S.C. Nov. 8, 2022) (remanding receivership case on other basis). *see also, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); *Childers v. Davis Mechanical Contractors, et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal), *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13,

2024) (remanding the case to the circuit court on August 13, 2024 based on the Barton Doctrine).

Recent events, including an expert report by retired jurist William W. Wilkins, warrant further clarification of the Appointment Order. This Order hereby clarifies that the Receiver's Order of Appointment entered on March 17, 2023, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. This Order also clarifies that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc ,
defendant, et al
Case Number: 2021CP4002727
Type: Order/Other

So Ordered

Jean H. Toal