THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case Nos. 2024-001063
Circuit Court Case No. 2023-CP-40-01759

RECEIVED
Dec 16 2024
S.C. SUPREME COURT

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; 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.

PETITION FOR A WRIT OF CERTIORARI (CONTEMPT APPEAL)

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

December 16, 2024

TABLE OF CONTENTS

QUESTIONS PRESENTED 1

INTRODUCTION 1

STATEMENT OF THE CASE 3

ARGUMENT 7

I. The circuit court's rulings strike the Altrad Defendants' defense of a general denial. 9

II. The Altrad Defendants obeyed *Davis* as to these contempt rulings. 12

III. The circuit court's sustained refusal to grant the Altrad Defendants' injunction request is immediately appealable. 14

CONCLUSION 16

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that two circuit court orders were not appealable when they strike one of the Altrad Defendants' defenses and together constitute contempt under South Carolina law?

2. Whether the Court of Appeals erred in holding that the continued refusal to issue an injunction to give effect to Rule 205, SCACR, is not appealable?

INTRODUCTION

This is the Altrad Defendants' third petition (out of four) for a writ of certiorari in this same matter. The first involved an appeal of an order that appointed, modified, and continued a receivership over active, solvent European companies with no assets in or connection to South Carolina. (Appellate Case No. 2024-001499.) That order is immediately appealable pursuant to South Carolina Code § 14-3-330(4), yet it was dismissed without explanation by the Court of Appeals.

The second involved an order refusing to enjoin the receivership during the pendency of an appeal of the order appointing/modifying/continuing the receivership despite "exclusive jurisdiction" over matters involving the receivership being with the appellate courts pursuant to Rule 205, SCACR, rather than in the circuit court. (Appellate Case No. 2024-000916.) That order is also immediately appealable pursuant to Section 14-3-330(4), yet that appeal was also dismissed without explanation by the Court of Appeals.

This third one—filed concurrently with a fourth involving a mode-of-trial appeal that was improperly dismissed without explanation—involves orders striking the Altrad Defendants' first defense (their general denial of the factual allegations), effectively holding them in contempt, and again refusing to enjoin the receivership due to the pending appeal. These orders are immediately

appealable pursuant to Sections 14-3-330(2)(c) (striking part of an answer) and 14-3-330(4) (refusing to issue an injunction), as well as *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (contempt is appealable). Yet, like the two before it, this appeal was also dismissed without explanation by the Court of Appeals.

Respectfully, this pattern of ignoring settled South Carolina law in deference to allowing an unlawful receivership to continue unabated at the trial level must come to an end at once.

The entire foundation of the Receiver's litigation strategy here—a "reckoning," as he calls it—is based on allegations that have been deemed false by an English court following a 34-day long trial and a 17-day long appellate process in 1990. *See Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA) (a seminal opinion—the product of an extensive trial and a subsequent extensive appeal in the English courts—finding that Cape Intermediate Holdings Ltd. ("CIHL," *i.e.*, the English entity over which the Receiver now purports to act) is not the alter ego of NAAC; there was no basis to pierce CIHL's corporate veil or impose vicarious liability on it; and CIHL could not be held responsible in the United States for any alleged conduct of NAAC or the sale and distribution of asbestos as performed by others—all findings completely contrary to those now asserted by the Receiver in his "third-party" complaint). This entire litigation is, therefore, illusory.

And another English court—a court that actually has jurisdiction over CIHL, the English company purportedly in receivership—has now deemed the Receiver to be an "impostor" and enjoined him from further pretending to speak on behalf of CIHL. *See Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (reaffirming *Adams*; declaring that this purported Receiver has no authority to act and has committed the tort of "impostor"; and enjoining this purported Receiver—on a worldwide basis, including in South Carolina—from continuing to act, including in this specific *Tibbs* case and in any other legal proceedings here or elsewhere).

In the meantime, the Altrad Defendants are being forced to litigate this sham matter while having one appeal after another improperly discarded without explanation. South Carolina law—along with federal Constitutional law and international law—forbids exactly what is happening here. Accordingly, the Court should exercise its certiorari authority, grant this petition (and all others filed by the Altrad Defendants and their co-third-party defendants), and end this case.

STATEMENT OF THE CASE

The Court is well-familiar with the background of this case. To summarize: Nine months after the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, personal injury case was "fully resolved," those plaintiffs moved for the circuit court to appoint Peter Protopapas as a receiver over Cape PLC, an active company in the Bailiwick of Jersey that has no connection at all to the State of South Carolina and against which the *Park* plaintiffs had neither an active judgment nor an active claim.

The circuit court granted that motion without a hearing even though the operative pleadings were never duly served, proper notice or service of a motion seeking a receiver was not given (even though it was statutorily required), and the purported foundations on which a receiver was sought were fraught with inaccuracies and misrepresentations. Rather than attempt to comply with South Carolina law and constitutional due process, the "drastic remedy" of a receiver appointment was sought and made—without a hearing and without taking evidence—in the face of defective service, lack of notice, no provision for the posting of a bond, no judgment, no creditors, and no basis in law for such a receivership.

Notwithstanding these obvious fatal defects, the *Park* Order appointing the Receiver was clear (notwithstanding its unlawful and fictious nature): the Receiver was appointed *only* in *Park* and *only* as to Cape PLC; accordingly, the Receiver had *no authority* outside of *Park*; the Receiver

had *no authority* as to CIHL or any other affiliated entity; and, in all respects, the Receiver was required to "take any and all steps necessary *to protect the interests of Cape* whatever they may be."

Seeking to export his *Park*-only appointment, the Receiver then filed a putative "third-party complaint" in this case against Mr. Altrad (an individual French citizen with no connection to South Carolina), Altrad Investment Authority SAS (a French company with no connection to South Carolina), and dozens of additional "third-party defendants" that also have no connection to South Carolina. However, before filing this pleading, the Receiver and counsel for the *Tibbs* plaintiffs entered into a secret agreement whereby the first-party claims—from which the "third-party" claims supposedly derived—were agreed to be dismissed against Cape PLC/CIHL (the "Dismissal Agreement").

With the Dismissal Agreement hidden, the Receiver—who, based on the very nature of such purported appointment, was to be an "officer of the court" and a "representative of all" and was required to remain "entirely impartial"—filed his "third-party" claims seeking a purported "reckoning" relative to Cape PLC (but not CIHL) for, in the Receiver's words, "billions of dollars of past, present, and calculable future damages."

In response, the Altrad Defendants and others moved to dismiss and to dissolve the receivership on numerous grounds, as it was plainly invalid for a host of reasons. In addition to the circuit court's lack of personal jurisdiction—an objection they have staunchly stood by, and continue to do so—the Altrad Defendants and other third-party defendants also moved to dismiss the third-party complaint on grounds that it was not supported by Rule 14, SCRCP. The third-party defendants argued the Receiver was not attempting to impute any "derivative liability" to them, which is the only instance where Rule 14 allows third-party practice.

In response to the dissolution arguments, the Receiver requested—and the circuit court agreed—to modify the initial Cape PLC receivership and create an entirely new receivership over an entirely different entity: CIHL, another solvent, active English company that also has no connection to South Carolina. The Receiver's concession that he isn't really a receiver for Cape PLC, but instead should be a receiver for CIHL, should have ended this entire charade. CIHL is not even a defendant in this case; how can it possibly assert third-party claims if it isn't a party to this case in the first place? This obvious problem has been ignored by the Receiver and the circuit court, but it underscores the illusory nature of this entire case.

The Altrad Defendants (and all other third-party defendants) appealed the order granting a new receivership over CIHL and modifying and continuing the prior receivership from *Park* to allow it to proceed in this case. (Appellate Case No. 2024-001499.) They also held firm not only to their personal jurisdiction objection, but also to Rule 205's vesting of "exclusive jurisdiction" in the appellate courts over all matters covered by the order on appeal—which includes a challenge to the Receiver's purported authority. The Altrad Defendants sought to enjoin the Receiver from attempting to function while an order challenging his authority was on appeal, but the circuit court refused to enter such an order. (Appellate Case No. 2024-000916.)

The Altrad Defendants' reliance on Rule 205's plain language and the unambiguous directive of cases interpreting it—namely, that the circuit court loses jurisdiction over all matters affected by an appeal—required them to resist moving forward with any litigation below. That objection included resisting the Receiver's suffocating, oppressive, and without-authority discovery attempts. Any other litigation choice would have exposed the Altrad Defendants to accusations of having waived their Rule 205 objections—and, even worse, their ironclad personal jurisdiction objections.

In response to their reliance on unambiguous law, the Altrad Defendants have been branded "recalcitrant," and the circuit court entered a series of orders aimed at punishing them for objecting to the Receiver's misconduct while an appeal challenging his authority is pending. In particular, on March 12, 2024, the circuit court directed the Altrad Defendants and others "to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days."

But in *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014), this Court—in an opinion authored by then-Chief Justice Toal—instructed: "However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." Accordingly, the Altrad Defendants and others continued to maintain their objections, prompting the Receiver to seek punitive sanctions by way of "adverse inferences" and "preadmission" of 2,538 exhibits[1] that were never even presented to the Altrad Defendants as part of the Receiver's discovery requests.

The circuit court granted the Receiver's motions, "preadmitted" all 2,538 exhibits without any inquiry at all as to what they actually were[2] and imposed a series of "adverse inferences" as to

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[1] Because they were not presented to the Altrad Defendants through any discovery request, it is impossible to know what, exactly, is in the Receiver's sea of "preadmitted" exhibits. But, his list does include a video—Exhibit 2,524—posted on YouTube by a content creator with the username "Cradle of Anal." This YouTube user appears to be located in Sweden, and his or her other online postings including videos titled "Angela Lansbury's Fitness and Positive Moves" and "Have You Heard of Puerto Rico," as well as playlists titled "Pimp" and "Loop Beats." *See* YouTube.com, at https://www.youtube.com/@cradleofanal/playlists. In addition to the obvious hearsay problem, no matter what the substance of this user's videos purports to be, there is no way the Receiver can authenticate the video's content without deposing "Cradle of Anal" and inquiring as to whether he or she altered the posted videos in any way. None of that mattered to the circuit court.

[2] The circuit court memorialized in writing its failure to fully examine these unauthenticated materials prior to their supposed "authentication" and subsequent "preadmission." (*See* Order Preadmitting Exhibits at 6 n.4 (filed May 23, 2024) ("[T]he Court has not studied all of the pre-admitted and now authenticated trial exhibits.").)

the ultimate facts and elements of the Receiver's claims, thereby striking the Altrad Defendants' first defense ("General Denial"). As required by *Davis* and authorized by South Carolina Code § 14-3-330(2), the Altrad Defendants promptly appealed those rulings because they triggered at least three appellate rights:

1. **Striking of a Defense.** The circuit court's contempt orders strike the Altrad Defendants' first defense of a general denial, rendering it immediately appealable under South Carolina Code § 14-3-330(2)(c). That statute allows immediate review of "an order affecting a substantial right made in an action when such order strikes out an answer or any part thereof or any pleading in any action." *Id*. (emphasis added). The dismissal order never references this statute.

2. **Contempt.** In South Carolina, when a party disputes the content of a discovery ruling, it has two choices: comply and waive its appellate rights, or refuse and appeal the subsequent order. *See Davis*, 409 S.C. at 280, 762 S.E.2d at 543 ("However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."). That is precisely what has happened here, but the dismissal order never references this process or rule.

3. **Continued Refusal to Enjoin.** When a party seek an injunction to which it is entitled as a matter of law, yet the circuit court refuses to enter that injunction, the circuit court's refusal is immediately appealable. *See* S.C. Code Ann. § 14-3-330(4) (allowing immediate appeal of "an interlocutory order or decree in a court of common pleas . . . refusing an injunction"). The dismissal order never references this statute.

In other words, not only have the circuit court and the Receiver ignored Rule 205's unambiguous instruction and the body of case law enforcing it, the circuit court is now holding litigants in contempt (while avoiding specifically saying so) for relying on this unambiguous rule and the unbroken line of authority that leave no doubt that both the circuit court and the Receiver lack jurisdiction to proceed *while the issue itself is on appeal*.

ARGUMENT

As listed above, the circuit court issued orders that are appealable for three separate reasons, each of which provides an independent basis for appealability.

First, an order that "strikes out an answer or any part thereof or any pleading in any action" is immediately appealable. S.C. Code Ann. § 14-3-330(2)(c).

Second, the law is settled that "a finding of contempt is immediately appealable." *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009); *see Davis*, 409 S.C. at 280, 762 S.E.2d at 543 ("However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.")

Third, the circuit court continues its refusal to grant injunctive relief despite the *unavoidable* applicability of Rule 205 and its "exclusive jurisdiction" provision. *See* S.C. Code Ann. § 14-3-330(4) (authorizing appeals of an "an interlocutory order or decree in a court of common pleas . . . refusing an injunction").

The law is clear on each of these three points, yet the Court of Appeals wrongly ignored each. And in light of the other appeals that now require the Altrad Defendants to seek this Court's engagement (including Appellate Case Nos. 2024-000916 and 2024-001499), the clear errors of law permeating every aspect of this case, and the fact a foreign court has now ruled definitively that this "receivership" is improper and the Receiver has breached the English tort of "impostor," this Court should step in to prevent further constitutional violations and unlawful activity from continuing in the circuit court.

What's more, the Court of Appeals' errors constitute decisions, now repeatedly, "in conflict with a prior decision of the Supreme Court." The Court of Appeals has now ignored the proper avenue for conducting an appealability analysis repeatedly; has rendered Rule 205, SCACR, essentially meaningless; and has allowed action to continue unimpeded that a foreign court with competent authority has deemed illegal and warranting worldwide injunction. Rule 242(b)(3), SCACR.

Similarly, findings of contempt, especially when intertwined with an illegal receivership, implicate obvious constitutional concerns. Rule 242(b)(4), SCACR. These findings are being used as a springboard to attempt to take "billions of dollars" and thus, implicates the Due Process, Equal Protection, Commerce, Dormant Commerce, Takings, Import-Export, and Supremacy Clauses and the various decisions of the Supreme Court interpreting them due to the ongoing refusal to enjoin the proceedings below. Rule 242(b)(3)-(4), SCACR.[3] Certiorari review is necessary accordingly.

I. The circuit court's rulings strike the Altrad Defendants' defense of a general denial.

In addition to the absence of personal jurisdiction, the Altrad Defendants' chief defense to the "third-party complaint" is a general denial. (*See* Altrad Defs.' Ans. at 48 ("Any allegation not specifically admitted above is denied.").) And that's because all of the "facts" alleged in the third-party complaint were thoroughly exposed as false in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). This entire case is built on an illusory premise and cannot even pass a Rule 11 analysis.

Nevertheless, the only paragraphs of the third-party complaint that even allege "facts" specifically involving the Altrad Defendants are Paragraphs 25, 29, and 116 through 119, and the Altrad Defendants have denied all such allegations. (Altrad Defs.' Ans. ¶¶ 116–19.) But as part of its contempt order, the circuit court issued "adverse inferences" against the Altrad Defendants that

[3] In addition, the adverse inferences and now "authenticated" and "preadmitted" exhibits evidence a clear intent on the part of the circuit court to invade the province of the jury in violation Article V, Section 21 of the South Carolina Constitution. *See* S.C. Const. art V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *State v. Howell*, 28 S.C. 250, 5 S.E. 617, 620 (1888) ("[W]hile trial judges may state the testimony, and so arrange it as to enable the jury to apply it to the legal points involved, yet that they cannot convey to the jury, either expressly or impliedly, their opinion as to the force and effect of said testimony upon any question of fact at issue between the parties. In other words, that the jury must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammeled by any intimation from the judge as to whether a certain fact at issue has been proved or not.").

deem all of the Receiver's allegations (and dozens of "facts" that were never even alleged) to be true. (Order Granting Motion for Sanctions and Motion for Adverse Inferences at 27–31.)

Critically for purposes of this petition, these "inferences" do not go away if the Altrad Defendants ultimately decide to participate in discovery.[4] Instead, the circuit court has deemed these inferences to be "rebuttable inferences that are subject to evidentiary challenge by these parties in these proceedings should these recalcitrant Third-Party Defendants elect to participate in these proceedings, as they are required to do by our rules and the orders of this Court." (*Id*. at 16.)

By making these inferences "rebuttable," the circuit court has stricken the Altrad Defendants' defense of a general denial. In South Carolina, as everywhere else, the party pleading a fact has the burden of proving it. *See O'Neal v. Carolina Farm Supply, Inc.*, 279 S.C. 490, 493, 309 S.E.2d 776, 779 (Ct. App. 1983) (acknowledging that "the burden of presenting evidence of a fact was on the party pleading it"). But in making these adverse inferences merely "rebuttable," the circuit court has shifted the burden of "disproof" to the Altrad Defendants. Rather than forcing the Receiver to prove his allegations against the Altrad Defendants in the face of their denial of the same, the circuit court has eliminated the Altrad Defendants' "general denial" defense and is now forcing the Altrad Defendants to prove that they did not do the things alleged. And, as referenced above, the Receiver seeks to leverage these so-called rebuttable presumptions into dispositive rulings in a case that was void from the outset.

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[4] Of course, that is not a realistic option for a party in South Carolina when there is zero basis for personal jurisdiction. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016) (holding that defendant who "continued to participate in litigation and discovery" "gambled that it could argue personal jurisdiction," and thus "waived its personal jurisdiction defense").

The burden-shifting the circuit court imposed through contempt is only appropriate as to affirmative defenses, not for general denials:

> In other words, it [an affirmative defense] assumes all elements of the plaintiff's case have been established. Because the plaintiff is taken to have proved a good cause of action, the burden of proof shifts to the defendant to show he is not liable. On the other hand, where the defendant pleads special matter that denies an element of the plaintiff's cause of action, the defense is not affirmative and the burden of proof remains on the plaintiff to establish his case.

Id. at 494, 309 S.E.2d at 779.

Accordingly, by shifting the burden of "disproof" to the Altrad Defendants, the circuit court necessarily eliminated the Altrad Defendants' defense that denied the Receiver's allegations and forced the Receiver to prove his allegations. The Receiver even acknowledged this burden-shifting in his motion to dismiss with the Court of Appeals: "Moreover, as explained above, the circuit court specifically explained that the adverse inferences are simply rebuttable presumptions that Appellants can refute through evidentiary challenge." (Receiver's Mot. to Dismiss at 13.) Yet, the Receiver has now moved for summary judgment before the circuit court as to all claims against the Altrad Defendants and others based on the alleged "rebuttable presumptions." (*See* Supp. App. at 554–634 in Appellate Case Nos. 2024-000916 and 2024-001499 (attaching the Receiver's motion for summary judgment filed against the Altrad Defendants so that the Court would be aware of the Receiver's efforts to preempt the Altrad Defendants' appeals and the proceedings against him in England).)

The circuit court's sanction of striking the Altrad Defendants' defense that denies the Receiver's allegations must be reversed, as a matter of law, as the circuit court has no jurisdiction to issue such a sanction in the first place. Because South Carolina allows appeals of "an order affecting a substantial right made in an action when such order strikes out an answer or any part

thereof or any pleading in any action," the Court of Appeals should have allowed this appeal to proceed. S.C. Code Ann. § 14-3-330(2)(c).

II. The Altrad Defendants obeyed *Davis* as to these contempt rulings.

This appeal is also proper because the Altrad Defendants followed this Court's ruling in *Davis* to seek review of improper discovery rulings. In *Davis*, this Court held that a litigant waives its ability to challenge an adverse discovery ruling if it complies with that ruling in any way. *See* 409 S.C. at 280–81, 762 S.E.2d at 543 (explaining that by partially complying with "the circuit court's formulation of discovery," the appellant had bound himself to those prior discovery rulings as "law of the case"). Rather than any form of compliance, "to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." *Id*. at 280, 762 S.E.2d at 543.

That is precisely the procedure the Altrad Defendants have followed here. The circuit court's prior ruling regarding discovery—in which the circuit court wrongly refused to enjoin both itself and the Receiver due to the pendency of an appeal regarding the unlawfulness of his very appointment—instructed the Altrad Defendants "to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days." They did not, and instead held fast to their myriad objections, including the complete lack of personal jurisdiction of a South Carolina state court over them—an individual French citizen with zero connection to South Carolina, and a French company with zero connection to South Carolina. *See Maybank*, 416 S.C. at 565–66, 787 S.E.2d at 510–11 (outlining personal jurisdiction consequences to foreign entities who participate in South Carolina litigation).

The orders now on appeal are the result of the Altrad Defendants' reliance on their prior objections. If they participate in discovery in any way, *Davis* and *Maybank* deem those objections

irreparably waived. That is not a risk the Altrad Defendants can reasonably take under these extreme circumstances, so they followed the *Davis* process for seeking review of the prior decision. The Altrad Defendants do not suffer contempt lightly, but it is the only path this Court has charted for seeking review of discovery rulings.

The Receiver sought dismissal—and the Court of Appeals granted it—ostensibly, because the orders on appeal do not use the exact word "contempt," but this is a superficial and meaningless argument. As this Court knows, the substance of an order, not its "nomenclature," controls the appealability analysis. *See Spalt v. S.C. DMV*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) (explaining that "[t]he label given to the order is not determinative of its immediate appealability" and holding that the substance of the order" is what controls); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature"); *Thornton v. SCE&G Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability . . . .").

This Court describes "contempt" as the natural result of "willful disobedience of a court order," and it further explains that "the record must clearly and specifically reflect the contemptuous conduct." *Ex parte Cannon*, 385 S.C. at 660–61, 685 S.E.2d at 824 (quoting *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001)). And the purpose of contempt is "to coerce the defendant to do the thing required by the order for the benefit of the complainant." *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998).

Here, the circuit court determined that it was "authenticating" and "preadmitting" 2,538 exhibits that it had not examined and that had never been the subject of discovery "as a sanction for the persistent and baseless refusal of the Altrad Third-Party Defendants and the Charter Third-

Party Defendants to participate in the discovery process." (Order Granting the Receiver for Cape PLC's Motion to Pre-Admit Exhibits at 6 (May 23, 2024).) It determined that it was going to effectively decide this case on its "merits" through a series of "adverse inferences" because most of the "third-party defendants" "continue to refuse any effort at compliance with the Court's orders and the discovery rules of this State." (Order Issuing Adverse Inferences at 15 (May 23, 2024).) It continued: "The Court finds that this continued discovery misconduct on the part of these Third-Party Defendants amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court's management of its docket." (*Id*.) And it explained that the goal of these sanctions is to prompt these litigants into participating in discovery—activity that, of course, would result in a waiver of the Altrad Defendants' objections under *Davis* and *Maybank*. (*Id*. at 16.)

In other words, the circuit court used the exact terminology and framework of "contempt" to describe why it issued the orders it did. This is precisely what *Davis* requires to bring appellate scrutiny to the circuit court's rulings. This appeal is entirely proper, and the appeal should have proceeded—rather than being improperly dismissed by the Court of Appeals—for this second independent reason. *See Ex parte Cannon*, 385 S.C. at 660, 685 S.E.2d at 823 ("Additionally, the finding of contempt is immediately appealable.").

III. The circuit court's sustained refusal to grant the Altrad Defendants' injunction request is immediately appealable.

To enforce Rule 205's grant of "exclusive jurisdiction" to the appellate courts, the Altrad Defendants and others moved for an injunction of all litigation activity by the Receiver due to the absence of jurisdiction below. That motion was filed on February 16, 2024. It was renewed on April 9, 2024. To date, the circuit court has refused to rule on these motions. While it has resolved

motion after motion that the Receiver has filed, these motions to enforce Rule 205 have been ignored for nearly a year.

The law does not allow this sustained refusal to issue a requested injunction—that is required as a matter of law, not as a matter of the circuit court's equitable discretion—to remain idle with the circuit court. The General Assembly has specifically given immediate appellate rights over "an interlocutory order or decree in a court of common pleas . . . refusing an injunction." S.C. Code Ann. § 14-3-330(4).

Critically, the Legislature does not force a litigant in the Altrad Defendants' position to wait until their injunction request is outright "denied"; instead, it chose the word "refusing" to indicate that even a passive failure to enter a requested injunction is appealable, just like it does under the federal appellate statute. *See* 28 U.S.C. § 1292(a)(1) (creating appellate jurisdiction for interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions"); *In re Fort Worth Chamber of Com.*, 100 F.4th 528, 533 (5th Cir. 2024) ("[I]f a district court does not timely rule on a preliminary-injunction motion, it can effectively deny the motion. We have accordingly recognized that simply sitting on a preliminary-injunction motion for too long can effectively deny it." (citing 16 Wright & Miller, Federal Practice & Procedure § 3924.1 (3d Ed.))); *Gray Line Motor Tours, Inc. v. City of New Orleans*, 498 F.2d 293, 296 (5th Cir. 1974) ("If, for example, an action has the effect of denying the requested relief without actually making a formal ruling, then the refusal of the district court to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable.").

Accordingly, the Receiver's argument on this point—that the requests for injunctive relief "continue to remain pending" after nearly a year on the docket (Receiver's Mot. to Dismiss at 14)—confirms precisely why they are immediately appealable, as the circuit court's refusal to

grant relief required by Rule 205 of the South Carolina Appellate Court Rules is immediately reviewable under Section 14-3- 330(4).

Nor is it even unusual for courts to review the denial of an injunction request on an interlocutory basis. *See, e.g.*, *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 124, 857 S.E.2d 4, 6 (2021) (reviewing on immediate appeal the propriety of the denial of an injunction required as a matter of law); *Williams v. Nw. Sec. Life Ins. Co.*, 307 S.C. 462, 464–65, 415 S.E.2d 809, 810 (1992) (deciding otherwise-unappealable denials of Rule 12(b) motions were immediately appealable because, as here, they denied injunctions that the defendants sought as a matter of law, rather than as discretionary injunctions under the traditional multi-part "equitable" test). The alleged Receiver's motion to dismiss the appeal should have failed for this third reason, but the Court of Appeals appears to have entirely ignored the substance of the circuit court's orders—and, indeed, the full scope of what's been happening below—when wrongly dismissing this appeal.

CONCLUSION

The orders on appeal are readily appealable for several reasons: they strike a defense, they hold the Altrad Defendants in contempt for failing to abide by a faulty discovery ruling, and they refuse to issue an injunction required as a matter of jurisdictional law. Yet, the Court of Appeals did not distinguish, address, or even acknowledge any of these in its summary dismissal order.

Accordingly, this Court should reverse the Court of Appeals' dismissal and reinstate this appeal; order briefing and resolve the merits of this mode-of-trial order; and further vacate the receivership and dismiss this matter, as explained in the Altrad Defendants' filings in Appellate Case Nos. 2024-000916 and 2024-001499.

Pursuant to Rules 208(b)(6) and 240, SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-

situated parties. Finally, by submitting this petition, the Altrad Defendants do not waive, but continue to specifically preserve their objection to personal jurisdiction.

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

December 16, 2024