THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case Nos. 2024-001065
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. 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

Charter Consolidated Ltd.; ESAB Corporation; and Central Mining & Investment Corporation Ltd. are the ..... Appellants.

PETITION FOR A WRIT OF CERTIORARI (CONTEMPT APPEAL)

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December 16, 2024

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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 Charter 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 Charter Defendants' third petition (out of four) for a writ of certiorari in this same matter.[1] All of the petitions ultimately relate to the improper appointment(s) of a pre-judgment receiver. This case is the latest in a string of improper appointments of the same receiver (Mr. Protopapas) at the request of the same plaintiffs' counsel over active foreign (UK and

[1] By continuing to prosecute this appeal, Charter Defendants 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/or Cape PLC. As to the impropriety of the purported receiverships, Charter Defendants 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 Judgement of the High Court of Justice of England and Wales pertaining to such matters. See Cape Intermediate Holdings Limited v. Protopapas [2024] EWHC 2999 (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). See Supplement to Altrad Defendants' Petitions for a Writ of Certiorari and Supplemental Appendix (C-Track entries dated November 25, 2024 in Appellate Case Nos. 2024-000916 and 2024-001499).

Further, pursuant to Rule 208(b)(7), SCACR, Charter Defendants adopt by reference the arguments of the Petitions and any Replies filed by Petitioners Mohed Altrad and Altrad Investment Authority SAS in Appellate Case Nos. 2024-001499, 2024-001446, and 2024-001063.

Canadian) entities that have no ties or assets or ties to South Carolina.[2] Charter Defendants' first petition involved an appeal of the order that allowed Mr. Protopapas to expand an appointment order issued in Park (where he was appointed over Cape PLC) to this case (Tibbs) where he was appointed over Cape Intermediate Holdings Ltd. The order granted, modified, and/or continued a receivership over solvent, active 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 petition 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.)

[2] 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, and then consolidated them. 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.

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. The remittitur has still not been returned in the first appeal.

This petition (the third) —filed concurrently with a fourth involving a mode-of-trial appeal that was improperly dismissed without explanation—involves orders striking the Charter 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.

In the meantime, the Charter Defendants are being forced to litigate a sham matter brought by a Receiver who – not withstanding knowledge that his appointment(s) over Cape PLC and CIHL are based on inaccurate statements, in a case that had already been resolved, and that is void on its face - has taken every possible step to grasp power over Cape and to avoid appellate scrutiny. Accordingly, the Court should exercise its certiorari authority, grant this petition (and all others filed by the Charter 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 (specifically) 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. As there was no actual controversy between Cape and Park, the circuit court was without authority to appoint a receiver and thus the appointment is void. [3]

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 judgment, no creditors, and no basis in law for such a receivership over a foreign corporation.[4]

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[3] It is a well-established rule that in order to authorize the appointment of a receiver it is essential that there be at the time of the appointment a suit pending in which relief other than the mere appointment of a receiver is sought. *Porter v. Brown*, 149 S.C. 151, 146 S.E. 810 (1929)("A receiver may only be appointed in a pending case. A suit does not lie for the sole purpose of appointing a receiver, but the Court must have jurisdiction of the suit on some other ground before it can make the appointment. There is, of course, no such thing as an action brought distinctively for the mere appointment of a receiver. Such an appointment, when made, is ancillary to or in aid of the action brought. Its purpose is to preserve the property pending the litigation so that relief awarded by the judgment, if any, may be effective. The authority conferred upon the Court to make the appointment necessarily presupposes that an action is pending before it, instituted by someone authorized by law to commence it….If the Court is without jurisdiction to appoint a receiver the order is void and may be attacked or disregarded whenever it comes collaterally in question. If it appears upon the face of the proceedings that a Court's order appointing a receiver was without authority of law, and, therefore, void, the order may be assailed collaterally and with impunity by anybody.") (internal quotations and cites omitted).

[4] The only provision of South Carolina law that authorizes appointment of a receiver to manage the affairs of a corporation (corporate receiver) is found in Title 33 (Corporations), and the statute explicitly excludes any "foreign corporation" from its scope. S.C. Code Ann. §§ 33-14-320(a) & 33-1-400(4) (2005).

Moreover, the *Park* Order appointing the Receiver was defective on its face and is void for failure to comply with the condition precedent set forth in S.C. Code Ann. § 15-65-60 (1976 as amended). *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928) (interpreting the provision under the previous receivership statute containing substantively identical language to Section 15-65-60 and holding that "[t]he 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.")

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.* The *Park* Order clearly stated: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law..." Additionally, S.C. Code Ann. § 15-65-10 et seq. only allows appointment of a receiver in a single "cause." [5]

Not only was Mr. Protopapas' appointment under the *Park* Order limited to the *Park* case, the Order only limited Mr. Protopapas to act as receiver over only Cape PLC. Therefore, in order

[5] SC. Code Ann. §§ 15-65-50 and 15-65-60 demonstrate the clear intent for a receiver appointed pursuant to Title 15 to be limited to the cause in which he was appointed. The statutes repeatedly limit the appointment of a receiver to "the cause" (singular) and refer to "before final judgment" (again referring to a single case). First, the receivership statute that allows a party to avoid a pre-judgment appointment of a receiver by providing a bond sufficient to satisfy a judgment clearly demonstrates that an appointment is limited to a single cause. S.C. Code Ann. § 15-65-50 ("No receiver of the property of any ...corporation shall be appointed before final judgment in the cause if the party claiming the property so sought to be placed in the hands of a receiver ...shall offer a bond...to meet and satisfy any decree or judgment or order that may be made in the cause.") It is undisputed that the receivership(s) at issue are pre-judgment. Second, the receivership statute that allows a party to vacate a pre-judgment appointment of a receiver by providing a bond also demonstrates that an appointment is limited to a single case. S.C. Code Ann. § 15-65-60 ("Whenever the court ... shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver....")

to bring a third-party complaint in *Tibbs*, Mr. Protopapas had to obtain a new order (in *Tibbs*) appointing him as receiver over CIHL – which he did. Even though CIHL is **not** a defendant in *Tibbs*. Even though Mr. Protopapas is not a defendant in *Tibbs*. And while *Tibbs* plaintiffs never served Cape PLC (or CIHL), and neither Cape PLC nor CIHL have answered or otherwise made an appearance in the *Tibbs* case. And, importantly, there was no request for a receivership by the *Tibbs* plaintiffs, there was no order in the *Tibbs* case appointing a receiver, and there was no order otherwise allowing Mr. Protopapas leave to file the third-party complaint. Notwithstanding the above, Mr. Protopapas claimed to be the Receiver and filed a putative "third-party complaint" in this case against dozens of "third-party defendants" that also have no connection to South Carolina.

In response, the Charter Defendants and others pointed out that Mr. Protopapas was not a receiver in the Tibbs case. They also moved to dismiss and to dissolve any alleged 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, the Charter 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 arguments regarding lack of a proper receivership appointment, Mr. Protopapas requested—and the circuit court agreed—to grant a receivership in the *Tibbs* case over CIHL (even though Plaintiff Tibbs did not request a receivership.) Accordingly, the circuit court granted a new receivership appointment in *Tibbs* – to allow Mr. Protopapas to seek assets from third-party defendants.

Just as the *Park* Receiver Order is defective on its face because it appoints a pre-judgment receiver but does not provide the *mandatory* "clause fixing the value of the property for which the

bond may be given, as prescribed in Section 15-65-60" *S.C. Code Ann.* § 15-65-60, the Order granting the receivership in Tibbs likewise omits this crucial statutory condition precedent to the appointment of a receiver. This statutory right has been in place for over one hundred years and has been upheld by the South Carolina Supreme Court. *Truesdell v. Johnson*, 144 S.C. 188, 197, 142 S.E. 343, 348 (1928). The *Truesdell* court first fully quoted Subdivisions 8 and 9 of *Section 524* of the Code of Civil Procedure (1922), which are substantively identical to *S.C Code Ann.* § 15-65-60 and 15-65-50. The court then reasoned as follows:

> The appellant urges that these subdivisions are applicable in all cases where a ***receiver*** is appointed before final judgment in the cause, that they are intended to assure to the person claiming or in possession of the property sought to be placed in the hands of a ***receiver*** the right to retain or to replevy the same, and that the provision in Subdivision 9 for the insertion in the order appointing the ***receiver*** of a clause fixing the value of the property is mandatory. The respondent contends that it was a condition precedent to the insertion in the order of a clause fixing the value of the property that the person in possession should "offer" the bond before the order appointing the ***receiver*** was granted, and that, as the appellant did not "offer" the bond at the hearing on the application for appointment of a ***receiver***, he cannot now complain of the omission of the clause fixing the value of the property.
>
> We do not agree with the respondent's position. The appointment of a ***receiver***, as we have said, is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a ***receiver*** is sought....
>
> Nor do we agree with the respondent that the order of the Judge directing the ***receiver*** to make an inventory of the assets of the company was equivalent to a clause fixing the value of the property. All other considerations aside, the law does not provide for vacating the appointment of the ***receiver*** upon the filing of a bond with penalty fixed according to the *inventory value* of the property, and the appointment of the ***receiver*** would not be vacated upon a bond with penalty so fixed--the penalty must be double the value of the property *as fixed in the order appointing the* ***receiver***. 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.

Truesdell v. Johnson, 144 S.C. 188, 203-204, 142 S.E. 343, 348 (1928)(emphasis in original). Accordingly, as the *Park* Receiver Order does not contain the mandatory clause, it is void.

Likewise, with regard to the December 2023 Order in *Tibbs* allowing Mr. Protopapas to act as receiver of Cape PLC and CIHL (granting the new receivership), the circuit court has failed to provide the *mandatory* "clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-60." S.C. Code Ann. § 15-65-60. As Appellants are the "part[ies] claiming the property so sought to be placed in the hands of a receiver," they are entitled to know the amount "for which the bond may be given" so that they have the opportunity to file "such bond ... **before final judgment in the cause** [to] vacate the appointment of such receiver...." *S.C. Code Ann.* §§15-65-50 -15-65-60. As the mandatory clause does not exist in an appointment order in *Tibbs*, any such receiver appointment in *Tibbs* is also void. *Truesdell v. Johnson*, 144 S.C. 188, 203-204, 142 S.E. 343, 348 (1928).

The Charter 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. 2024-001423.) 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 Charter 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 Charter 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 Charter 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 Charter 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 Charter 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 Charter 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[6] that were never even presented to the Charter 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[7] and imposed a series of "adverse inferences" as to the ultimate facts and elements of the Receiver's claims, thereby striking the Charter Defendants'

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[6] Because they were not presented to the Charter Defendants through any discovery request, it is impossible to know what, exactly, is in the Receiver's sea of "preadmitted" exhibits.

[7] *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.").

first defense ("General Denial"). As required by *Davis* and authorized by South Carolina Code § 14-3-330(2), the Charter 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 Charter 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 "impostor" 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 Charter 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 is an "impostor," this Court should step in to prevent further constitutional violations and unlawful activity from continuing in the circuit court.

Further, the Court of Appeals' errors constitute multiple decisions, "in conflict with a prior decision of the Supreme Court." The Court of Appeals has now ignored repeatedly the proper avenue for conducting an appealability analysis; has rendered Rule 205, SCACR, essentially meaningless; and has allowed an action to continue unimpeded which 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.[8] Certiorari review is necessary accordingly.

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

In addition to the absence of personal jurisdiction, the Charter Defendants' chief defense to the "third-party complaint" is a general denial. (*See* Charter Defs.' Ans. (Any allegation not specifically admitted is denied.)) Indeed, all of the "facts" alleged in the third-party complaint were thoroughly exposed by CIHL to be false in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA), and the purported Receiver may not now reverse CIHL's former factual assertions for his own benefit as Receiver.

Nevertheless, the Charter Defendants have denied all such allegations in the third-party complaint. (Charter Defs.' Ans. Generally) But as part of its contempt order, the circuit court issued "adverse inferences" against the Charter Defendants that 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.)

[8] 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.").

Critically for purposes of this petition, these "inferences" do not go away if the Charter Defendants ultimately decide to participate in discovery.[9] 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 Charter 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 Charter Defendants. Rather than forcing the "impostor" Receiver to prove his allegations against the Charter Defendants in the face of their denial of the same, the circuit court has eliminated the Charter Defendants' "general denial" defense and is now forcing the Charter Defendants to prove that they did not do the things alleged. And, as referenced above, the "impostor" Receiver seeks to leverage these so-called rebuttable presumptions into dispositive rulings in a case that was void from the outset.

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

[9] 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").

> 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 Charter Defendants, the circuit court necessarily eliminated the Charter 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 Charter 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 Charter Defendants so that the Court would be aware of the Receiver's efforts to preempt the Charter Defendants' appeals and the proceedings against him in the United Kingdom).)

The circuit court's sanction of striking the Charter 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 Charter Defendants obeyed *Davis* as to these contempt rulings.

This appeal is also proper because the Charter 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 Charter 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 Charter 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. *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 Charter 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 Charter Defendants can reasonably take under these extreme circumstances, so they followed the *Davis* process for seeking review of the prior decision. The Charter 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 Charter 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 Charter Defendants' objections under *Davis* and *Maybank*. (*Id*. at 16.)

In other words, the circuit court used the exact terminology ("willful disobedience") 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 Charter Defendants' injunction request is immediately appealable.

To enforce Rule 205's grant of "exclusive jurisdiction" to the appellate courts, the Charter 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 Charter 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.

CONCLUSION

The orders on appeal are readily appealable for several reasons: they strike a defense, they hold the Charter 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. The Court of Appeals did not distinguish, address, or even acknowledge any of these bases 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 Charter Defendants' filings in Appellate Case Nos. 2024-000916 and 2024-001423.

Signature Page Attached

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