

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-06319

Shaw Funding, LLC, Build A  
House, LLC d/b/a Multifamily  
Products, Builders Design  
House, LLC, Builders First  
Mortgage, LLC, Builders First  
Funding, LLC, Investor  
Funding, LLC, Total Stone,  
LLC, American Lighting Co.,  
Contract Supply, LLC, Global  
Solution, and MS Mechanical  
Solutions, LLC,

Respondents,

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SC Court of Appeals

v.

Multifamily Products, LLC,  
and Paul Tayler, as a member  
of Build A House, LLC and  
individually,

Appellants.

FINAL BRIEF OF APPELLANT

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**FINAL BRIEF OF APPELLANT**

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### **STATEMENT OF ISSUES ON APPEAL**

1. Did the trial court err in issuing a temporary restraining order which did not comply with S.C.R.C.P. Rule 65 stating, by its terms, that it shall expire within ten days.
2. Did the trial court err in issuing an order appointing a receiver, *ex parte*, and without any notice or opportunity to be heard by the Defendant in violation of Section 15-65-20 of the *South Carolina Code of Laws*.

### **STATEMENT OF CASE**

At 4:17pm on October 2, 2012, the Plaintiff/Respondent filed a Summons and Complaint; Motion and Order for Case Assignment to the Business Court; Application for *Ex Parte* Temporary Restraining Order and Motion for Temporary Restraining Order; and a Motion to Appoint a Receiver and proposed Order Appointing a Receiver. By letter dated October 2, 2012, addressed to the Appellant/Defendant Paul Taylor sent certified mail return receipt requested the aforesaid documents were attached advising the Appellant/Defendant of a hearing scheduled for 2:00pm October 3, 2012

in Pickens County, South Carolina.

Appellant, not having received notice of the hearing, did not appear and on October 4, 2012 the Honorable Edward W. Miller executed an order granting a temporary restraining order and an order appointing receiver both of which are the subject of this appeal.

Appellant received written notice of entry of these orders on October 11, 2012 and this appeal timely followed on October 23, 2012.

## **ARGUMENT**

### **I. The *ex parte* temporary restraining order on its face violates the provisions of S.C.R.C.P. Rule 65(b)(e).**

S.C.R.C.P. Rule 65 states in part “Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk’s office and entered of record; shall be served, together with a summons and complaint, in the event no summons and complaint have previously been served in the action, upon the adverse party in accordance with the provisions of Rule 4; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after injury, not to exceed ten days, as the court fixes,...”.

Obviously, the order contains no such term dissolving the order within ten days as required by the Rule. Just as obviously, no attempt whatsoever was made to give any notice to the Defendant of the hearing nor did the Respondent make any effort to schedule or go forward with a hearing on the temporary injunction.

Likewise, the entire purpose of the temporary restraining order was to suspend the business operation of Multifamily Products, LLC and any *ex parte* restraining order or injunction to accomplish that purpose may never be had pursuant to S.C.R.C.P. Rule 65(e).

### **II. The Court erred in issuing an order appointing a receiver without notice.**

Respondents filed a motion to appoint a receiver at 4:17pm on October 2, 2012 pursuant to South Carolina Code Annotated Section 15-65-10 in the Court of Common Pleas for Greenville County. At 2:00pm the following day, October 3, 2012, a hearing was held in Pickens County before the Honorable Edward W. Miller without service or notice of the complaint or motion upon the

Appellant.

South Carolina Annotated Section 15-65-20 states, "No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of the receiver and to any party of the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days notice of the application must be given, unless the court shall, upon it being made to appear the delay would work in justice, prescribe a shorter time."

No application was made nor was an order entered prescribing a shorter time. The hearing was held less than 24 hours after the filing of the complaint. No notice whatsoever was provided to the Defendants of the application for hearing.

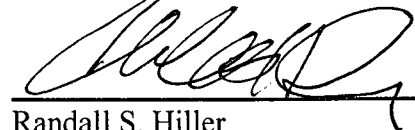
There is no provision either in Section 15-65-10, et seq. for any *ex parte* proceeding to occur for the appointment for a receiver. There has never been a case decided in South Carolina authorizing the appointment of a receiver in an *ex parte* proceeding.

The Appellant was statutorily entitled to, notwithstanding any other due process argument, to an opportunity to appear at the hearing and contest the appointment of the receiver as a matter of law.

#### CONCLUSION

The temporary restraining order failed to include the expiration mandated by Rule and thus must be set aside in its entirety. When the order appointing a receiver was granted *ex parte* and in direct violation of the statutory provisions upon which it was based it should be voided, *ab initio*.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

September 10, 2013



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PROOF OF SERVICE

I certify that I have served three copies of the Final Brief of Appellant on Shaw Funding, et al by depositing a copy of it in the United States Mail, postage prepaid, on September 3, 2013, addressed to his attorney of record, D. Randle Moody, II, Esq., Post Office Box 10529, Greenville, South Carolina 29603.

September 3, 2013



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