THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Trial Court Case No. 2017CP4202374

Appellate Case No. 2025-002400

Richard Lewis and Walter Lewis
Appellants

v.

Robert M. Errato and Quinnipiac Associates, Inc.
Respondents,

of which Robert M. Errato is the Respondent herein

MOTION TO DISMISS THE APPEAL

Pursuant to Rule 260 and Rule 269 SCACR, Respondent Robert Errato ("Errato") hereby submits this motion to dismiss the appeal in this matter filed by Appellants, Richard Lewis ("Richard") and Walter Lewis ("Walter") (collectively, "Appellants"). In further support thereof, Errato states as follows:

FACTUAL BACKGROUND

This case stems from a business arrangement related to a development project on a parcel of land owned in South Carolina by Quinnipiac Associates Inc, a Connecticut Sub-S Corporation of which Errato is the CEO, President, sole shareholder, the actual party of interest having used his own personal assets to completely fund the operations of Quinnipiac Associates, and only beneficiary of its assets.

In early 1997 (around or about March or April), Errato had discussions with Walter, the father of Richard, to provide certain construction services and construction equipment related to the development project involving this property, known as Notchwoods/Forest Springs (the "Property"). In return for Walter providing development services/equipment to the project, Errato agreed, though his company, Quinnipiac Associates, to provide the funds, in the form of loans to Walter, to support the development of such project.

In July of 1997, using funds provided solely by Errato, Quinnipiac Associates purchased the Property located in Boiling Springs South Carolina. In late (on or about December) 1997, after Quinnipiac had completed most of the necessary permitting and site engineering tasks and the project was moving along toward construction development needs, Walter came to Errato, stating that he wanted to assign a portion of his share of the business arrangement to his son Richard. Walter further stated that Richard was willing to travel to South Carolina to take over the duties and responsibilities of Walter. In December 1997, Walter advised Errato that his son was going to set up an LLC, known as RG Lewis Construction ("RGL"), to fulfill the oral business arrangement to provide development equipment and services for the South Carolina project. This is confirmed by the millions of dollars that Quinnipiac Associates, using the personal assets of Mr. Errato, loaned to RGL from 1998 through 2010.

The verbal agreement between Quinnipiac Associates and RGL, which commenced in January 1998, as confirmed by Richard in his affidavit filed in the trial court, stated how they were to receive a share of profits from the development of the project on the Property owned by Quinnipiac Associates and/or Errato once all loans made by Quinnipiac Associates to RGL for the project's costs were paid in full, along with all advancements and all expenses.

The complaint in this action was filed on July 13, 2017, wherein it stated that "Quinnipiac Associates, Inc. purchased and developed property in Boiling Springs South Carolina…" The Amended Complaint filed on November 17, 2017, stated that *"Mr. Errato and/or Quinnipiac Associates, Inc.* purchased property in Boling Springs, South Carolina…." (emphasis added). The Amended Complaint further stated that "…based upon the agreement with Mr. Errato that the three partners would ultimately split the profits of the development when any loan and cost were paid." In the South Carolina Action, Richard and Walter claimed they were "part owners and operators of Quinnipiac Associates, Inc." Appellants, however, confirmed that they have no document(s) (i.e.: K-1) to support their claim of ownership in Quinnipiac Associates.

In the Amended Complaint, Appellants included a count for Constructive Trust which stated, "Since 1997 Richard Lewis has lived on the Forest Springs property…" and the "case, at its heart is a claim to ownership of real property." The Amended Complaint, included a count for Injunction which also stated, the "case, at its heart is a claim to ownership of real property."

On March 3, 2020, Appellants filed a Motion for Injunction and Constructive Trust. In the motion, Appellants argued that Errato sold the Property for $1 million, keeping the money for himself. Appellants wished to have an injunction issued, as they were concerned that the

Property would be sold without input from all parties, as the case, at its heart, is a claim to ownership of the real property.

On May 14, 2021, the Court denied the Motion and dismissed the Constructive Trust and Injunction counts. The Court stated that this case was not about the ownership of the real property, as the Property was purchased by Quinnipiac Associates.

Errato filed a motion seeking to remove/cancel the Lis Pendens, which motion was granted on February 23, 2023. Appellants then filed a motion for reconsideration related to this court ruling.

In addition, Appellants made another motion for an injunction, which was heard by the trial court on December 12, 2023. The court denied the motion on January 5, 2024, specifically holding that "the current motion is nearly identical to the previous motion filed by Plaintiffs and denied by this court on May 14, 2021. Plaintiffs have failed to show any new or different grounds that would compel another result."

Instead of appealing the denial of the injunction from May 2021 or from January 2024, the Appellants allowed that time to expire and they continued on with the case at the trial court. On September 17, 2025, Appellants brought another Motion for Injunction and Constructive Trust. This motion is basically identical to the two filed previously. In this new motion, Appellants argued that they were concerned Errato would sell the Property, despite the pending action, depriving Appellants of their rights. Again, the trial court denied the motion. In the most recent denial by the court for Constructive Trust and Injunction on September 30, 2025, the court stated, in part, that this case is a dispute over whether or not the development work on the property led to a profitable project or not, and the court held that the profits would be determined only after Quinnipiac Associates received repayment of all monies loaned/advance to the project.

The court acknowledged that the parties disputed whether or not the project was profitable. The trial court denied the motion, stating: "Given the facts of the case and current procedural posture, the Court finds an injunction regarding the property is too drastic and thus declines to order the same."

Although Appellants filed a motion for reconsideration on October 9, 2025, such motion was also denied on November 3, 2025, wherein the trial court stated: "After careful consideration of the arguments of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered."

In any event, the agreement between the parties ended in 2010, at which time profits, if any, were to be split only after all loans (and all expenses related to the project) were repaid to Quinnipiac Associates. As of 2010, and continuing to date, Quinnipiac Associates' records show that RGL owes over $49,000 (plus interest) in unpaid loans and over $800,000 in advancements.

Despite dismissal of the Constructive Trust and Injunction counts on May 14, 2021, and repeated notice to Appellants regarding the lack of legal authority in the first place when filing said Lis Pendens, Appellants have continued aggressively to maintain the Lis Pendens and made multiple motions to have the Constructive Trust and Injunction counts revived in the Complaint. Appellants did this to cloud the title of the Property. The Lis Pendens, Constructive Trust, and Injunction Counts and subsequent motions were filed maliciously and with knowledge that Appellants lacked any written documentation or legal basis to claim any interest in the Property, as the court found.

Appellants now appeal the denial of the motion for injunction and constructive trust, as well as the denial of the motion for reconsideration of such issue. Appellants are fully aware that

they have no proper legal argument to make in favor of their motion or this appeal. This appeal should have been filed, if at all, upon the first denial of the motion in May 2021. Instead, Appellants continued to file frivolous motions, with no new facts or legal arguments, merely to extend the time for filing this appeal. The motion itself is frivolous and the Appellants have unclean hands in attempting to circumvent the filing deadlines. Errato now asks this Court to dismiss this appeal with prejudice.

ARGUMENT

Appellants have brought frivolous and repetitive motions within the trial court, with no sound basis in fact or law, seeking an injunction in this case where no injunction is warranted. Appellants brought such motion several times, and each time the motion was denied. Each time the motion for injunction was denied, Appellants brought another motion, citing no new facts and no new law and, thus, the additional motions were denied as well. Even though Appellants should have filed this appeal when the first motion for injunction was denied in 2021, Appellants failed to do so. Instead, Appellants filed additional frivolous motions, citing nothing new, as an attempt to extend the date for filing the appeal. Therefore, Errato now argues that this appeal should be dismissed as frivolous, as an attempt to circumvent the filing deadlines.

Errato brings this motion for the Court to dismiss this action, as it is a frivolous argument that was brought merely to delay the proceedings. Pursuant to Rule 269 of the South Carolina Appellate Court Rules, "Where an appeal… is frivolous or taken solely for the purposes of delay,… the appellate court may upon its own motion or that of a party,… impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require…." Pursuant to Rule 260(a),

"Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court…."

I. Appeal Is Untimely And Seeking To Delay This Case, As Appellants Filed Third Motion Only To Circumvent The Rules Regarding Filing Deadlines

The third motion filed by Appellants in 2025 is basically identical to the motions filed in 2020 and 2023, which were denied by the trial court. Appellants filed this third motion merely for the purposes of delay, as it should have filed this appeal, if at all, when the first motion was denied in May 2021. Pursuant to SC Code §14-3-330, "The Supreme Court shall have appellate jurisdiction for… (4) An interlocutory order… refusing an injunction…." Thus, Appellants could have, and should have, filed this appeal after the denial of the first motion for injunction was denied in May 2021. Instead, the Appellants allowed the case to continue for more than four years. At that time, Appellants filed a third motion for injunction, without citing any change in circumstances, new law, or new facts that would force the trial court to reexamine the denial of the first motion. The only reason that Appellants would file this third identical motion was to circumvent the filing deadlines and maintain this current appeal, which Appellants should not be allowed to do.

The rules of court apply to all parties equally, and each side should be forced to abide by the filing deadlines as set forth therein. *See, e.g., Valentine v. James Davis, Paul Davis Sys. of Columbia*, 319 S.C. 169, 173 (Ct. App. 1995) ("The Valentines would have this court circumvent the rules governing the practice of law in the name of equity and fairness. However, the rules of procedure, like statutes, should be given their plain meaning…. We are unwilling to torture the rules in such a way to correct possible mistakes in the filing of motions or misjudgments in strategic procedural decisions. To do so would jeopardize the

continuity and uniformity that is essential to the orderly administration of the legal system.") This Court should not bend the rules to allow Appellants to file an identical motion over four years later just to try to regain the appellate rights that it lost by failing to file an appeal in 2021. To do so would jeopardize the orderly administration of the legal system.

The first ruling from the court in May 2021 disposed of this matter entirely, with no new facts or law raised subsequently. A party may not use subsequent motions to create new appeal deadlines for issues decided previously. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 3 (Ct. App. 1999) (dismissing the appeal because "a second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration"). Appellants had the ability to file an appeal in May 2021, but failed to do so. Appellants should not now be allowed to circumvent those filing deadlines by renewing the exact same motion, especially when the trial court never heard any new meritorious arguments on the issue, but instead heard the same arguments that had already been denied twice by the court. Thus, this appeal should be dismissed.

II. Motion For Injunction Was Frivolous

In addition, Errato asks this Court to recognize that the third motion, upon which this appeal is based, was filed with a frivolous intent. Appellants raised no new arguments. Appellants merely restated exactly what was raised four years prior. The trial court denied the prior motions, stating that this case was not about property ownership, as it is clear that the Property was always owned only by Quinnipiac Associates. The case is about whether or not the project was profitable, which was to be determined only after all loans and advancements were paid in full to Errato. Only then would Errato be obligated, if the

Appellants where able to prove the project had any profit supported by audited financial documentation, to make any payment to Appellants. Thus, the trial court ruled that an injunction and constructive trust were not warranted, as the Property was clearly not owned by Appellants. Without providing any new facts or law, showing why the trial court erred in its ruling from May 2021, the Appellants moved again for an injunction and constructive trust. Appellants have no valid legal basis for making such a claim, and the trial court was correct in its ruling to deny all filed motions.

In order to prove that Appellants should be entitled to an injunction, they would have needed to show the following: "(1) [they] will suffer immediate, irreparable harm without the injunction; (2) [they have] a likelihood of success on the merits; and (3) [they have] no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366 (2011). Appellants fail in this argument, as they cannot prove any of these elements.

Appellants do not have an immediate irreparable harm without the injunction, and there is no likelihood of success on the merits, because Appellants have no ownership rights in the Property. The Property is owned by Quinnipiac Associates, which has been admitted to by the Appellants in their own complaint. Appellants may argue, as they have in the past, that they are entitled to a share of the profits of the project. First, however, they would only be entitled to a share after they prove, by audited financial documentation, that they have repaid all outstanding loans and advancements received from Quinnipiac Associates and they have proved that all expenses were paid. At this point, Appellants have not and cannot prove that they are entitled to a share in the profits. They also have not proved that they have the right to *interfere with and stop* the sale the Property. Without any right to ownership in the Property, they are not entitled to stop the sale of such Property. Thus, there is no ownership

interest and there is no likelihood of success on the merits. Without those elements, Appellants cannot show that they would be entitled to an injunction. This is what the trial court ruled when it denied the motion in 2021, 2024, and 2025. Without a change in circumstances, Appellants refiled the motion, and the trial court, again, correctly ruled that Appellants are not entitled to an injunction.

Thus, Appellants filed this motion for frivolous reasons and only seek to delay this case. Appellants are attempting to assert control over property, over which they have no rights. This Court should dismiss this Appeal, with prejudice, as Appellants have filed this motion well-beyond the filing date, which has passed by more than four years, and for frivolous reasons, without any basis in fact or law.

CONCLUSION

For the foregoing reasons, Robert Errato requests that this Court dismiss this appeal as frivolous, as an attempt to circumvent the filing deadlines as dictated by the South Carolina Appellate Court Rules. This appeal should be dismissed with prejudice.

January 6, 2026

s/ Robert M. Errato
Robert M. Errato
3000 Whitney Avenue, PMB 109
Hamden, CT 06518
(203) 494-5141
Pro Se

Other Counsel of Record:
Jason M. Imhoff
37 Villa Rd Ste 420
Greenville, SC 29615
(864) 412-1984

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I certify that I have served the MOTION TO DISMISS THE APPEAL on RICHARD LEWIS, et al by depositing a copy of it in the United States Mail, Certified postage prepaid and/or e-mail, on January 6, 2026, addressed to the attorney of record, JASON M. IMHOFF, 37 VILLA RD STE, 420 GREENVILLE, SC 29615.

January 6, 2026

s/ Robert M. Errato
Robert M. Errato
3000 Whitney Avenue, PMB 109
Hamden, CT 06518
(203) 494-5141
Pro Se