

**IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA**

RICHARD LEWIS and WALTER LEWIS,
Appellants,

v.

ROBERT ERRATO and QUINNIPIAC ASSOCIATES, INC.,
Respondents.

Appellate Case No.: 202-002050

**RESPONDENTS/APPELLANTS' MEMORANDUM IN OPPOSITION TO
APPELLANT/RESPONDENT'S MOTION TO DISMISS APPEAL**

Respondents/Appellants Richard Lewis and Walter Lewis (collectively, "Respondents") respectfully submit this Memorandum in Opposition to Appellant/Respondent Robert Errato's ("Appellant") Motion to Dismiss the Appeal. Respondent's motion mischaracterizes the procedural history of this case and misstates the applicable law. Contrary to Respondent's assertions, this appeal is timely, properly before this Court, and raises legitimate issues that warrant full appellate review. The motion to dismiss should be denied.

PROCEDURAL BACKGROUND

Appellant in this case is retaining and hiding the income and profits of a partnership between the parties in contravention of previous orders and hiding, wasting, or otherwise removing them from South Carolina. South Carolina resident Richard Lewis and his father Walter Lewis filed a Summons and Complaint on July 13, 2017, alleging Breach of Contract, Breach of Contract Accompanied by Fraudulent Act, Breach of Covenant of Good Faith and Fair Dealing, Fraud,

Accounting, Breach of Fiduciary Duty, Dissolution, and Declaratory Judgment against their partner in a residential subdivision in Spartanburg County South Carolina. Plaintiffs amended their Complaint to add causes of action for Unjust Enrichment, Quantum Meruit, Interference with a Contractual Relationship, Constructive Trust, Injunction, and Fraudulent Conveyance. At the time of the filing of the original Summons and Complaint, July 13, 2017, Plaintiffs filed a Lis Pendens on 62 lots in the Forest Springs Subdivision at issue in the case.

In their Complaint, Plaintiffs allege that they have a business relationship with or ownership in Quinnipiac Associates, Inc. and/or with Robert M. Errato (Connecticut residents) for development of the raw land now known as Forest Springs Subdivision in Boiling Springs, South Carolina. In their Complaint, Plaintiffs allege that over the course of 20 years Plaintiffs have designed the subdivision, obtained plats, surveys, and county approvals; installed utilities and infrastructure such as electric, water, sanitary sewer, storm sewer, and roads. In both the Complaint and Amended Complaint, Plaintiffs allege that Robert M. Errato and Quinnipiac Associates, Inc. handled all the financial records of the development and agreed to split the proceeds once the project was completed. Mr. Errato has taken over \$1,000,000 of sales proceeds since the lawsuit was initiated and has failed to account for them.

Mr. Errato was ordered to provide discovery responses repeatedly, including providing an accounting and explaining where the money has gone. To date he has never been able to accurately or fully account for the proceeds of the sale of the properties, where that money is located, or shared where the proceeds of the sale went. Conversely, Respondents hired and paid an independent forensic accountant who produced a report opining that “The Project is profitable, Profits due to Plaintiffs total \$1,287,849.58, and Mr. Errato’s accounting of profit and losses includes incorrect calculations and other errors, improper methodology, failure to incorporate relevant, available

information, and reliance on information without verification or corroboration.” Appellants have no rebuttal expert.

In an Order of May 14th, 2025 Appellants were again ordered to provide accounting information and asset location, which he did not do. Respondents filed yet another Motion to Compel which was granted on June 9th, 2025. In the Honorable Charles J. McCutchen’s June 9th, 2025 Order Mr. Errato was ordered, again, to provide that information:

The Court further finds that Plaintiffs’ Motion to Compel is granted to the extent the discovery requested was not previously provided and to the extent Plaintiff’s discovery requests need to be supplemented as to the recent real estate transaction in Spartanburg County in 2025. Since discovery is ongoing, Defendants have 10 days from the date of this order, or as soon as possible, given the case is set for the June 16, 2025, trial roster, to provide all financial records for 2025 and any documents requested that have not been provided.

Respondent did not comply with that order and the Honorable Judge Knie Ordered Mr. Errato to comply again on September 30th, 2025:

The Court further finds that Plaintiffs’ Motion to Compel is granted to the extent the discovery requested was not previously provided and to the extent Plaintiffs’ discovery requests need to be supplemented as to any recent real estate transactions in Spartanburg County in 2025. Defendants have 10 days from the date of this order, or as soon as possible, given that the case is set for trial for the term of Common Pleas scheduled in Spartanburg County for October 13, 2025, to provide any documents requested that have not yet been provided. It is so ordered.

Respondent never complied with either Order and the funds remain missing. Instead of complying with the Orders Appellant filed a notice of Appeal on October 9th, 2025. Due to Appellant’s continued sales and transfers of the proceeds, Respondents filed a motion for injunction and constructive trust on September 12, 2025 which was denied and is the basis of this appeal.

SUMMARY OF FACTS

In approximately 2015 Richard Lewis was approached with a \$1,000,000 offer to purchase

the remaining lots unbuilt in the subdivision, effectively ending the partnership and triggering the profit-sharing agreement. Richard Lewis shared the offer with Robert M. Errato who refused to respond to that offer and otherwise indicated that he was not interested. As alleged in their Complaints, Plaintiffs became concerned that Mr. Errato and/or Quinnipiac Associates was not going to honor the relationship and agreement between the parties and filed the present Summons and Complaint and placed the Lis Pendens on the property to prevent Mr. Errato from selling the property without consulting with, meeting with, or compensating his partners.

Respondents' concerns were born out when it was discovered that Errato began communicating with the purchaser directly without either Richard Lewis or Walter Lewis. Respondents also learned that Appellant contracted to sell the remaining unbuilt lots without informing Respondents. This litigation ensued, albeit slowly due to Appellants' delays, obfuscation, and repeated refusal to comply with court orders. Ultimately, in 2025, Appellant was able to get the lis pendens lifted at which time he immediately sold all remaining property without notice to, inclusion of, or profit sharing with his partners and transferred the sale proceeds out of state. On March 6th, 2025 Appellant sold the remaining property for \$975,000. During the pendency of the action, Appellant Errato sold over \$1,000,000 of the property and had not disclosed those sales, updated his discovery responses, put the proceeds in escrow or trust, revised his accounting, complied with orders on motions to compel, or disclosed the location of the proceeds to Respondents, his partners. Appellants have a history of obfuscation, waste, and illicit transfers. In 2016 Mr. Errato gave a deposition in his divorce proceeding in Connecticut referring to this subdivision, the agreement between the parties, and his failure to disclose his profits and ownership in South Carolina:

Q. Do you recall withdrawing \$950,000 -- \$953,227, to be exact, from your UBS account in 4 December of 2017?

A. It was transferred to Merrill Lynch.

Q. Did that have anything to do with Quinnipiac Associates?

A. It doubt it. Quinnipiac Associates didn't have that kind of money in its accounts.

(Errato Deposition, p. 32, lines 2-9)

Q. What have you done with the money that you received from the sale of those three lots?

A. Spent it on expenses -- alimony, health insurance, mortgage, taxes, insurance, living. I don't know -- those mundane things.

(Errato Deposition, p. 57, lines 16-20)

Q. Now, you have an account named Quinn with UBS. Is that correct?

A. I did. It was just labeled UBS -- I mean, it was just label Quinn.

Q. So you transferred an additional \$303,000 out of that account in January of 2018.

A. Yeah. It went to Merrill Lynch.

(Errato Deposition, p. 33, lines 5-16)

A. Quinnipiac Associates has a 50/50 partnership on the building and sale of homes once Quinnipiac receives all of its money back plus interest. That's what has been disclosed. That's the deal.

(Errato Deposition, p. 42, lines 20-25, p. 43, lines 1-3)

A. And once all the money was returned to Quinnipiac Associates, any -- the profit -- 50 percent of the profit on any houses we built would be theirs after Quinnipiac received all of its money, including capital, the works.

(Errato Deposition, p. 10, lines 13-25)

Q. Do you know how much you made from the sale of the 30 existing homes or 60 existing homes?

A. Well, I paid phantom income on all of them because the money that was coming out from the sales was going back in

to keep the development going, like most developments.
That's how they work.
Q. Has it been a profitable project?
A. Not yet, but I pay taxes on 60 some-odd houses.

(Errato Deposition, p. 15, lines 6-14)

ARGUMENT

I. THIS APPEAL IS TIMELY AND PROPERLY BEFORE THIS COURT.

Appellant's primary argument is that this appeal is untimely because Respondents failed to appeal the first denial of an injunction in May 2021. This argument fails as a matter of law for two independent reasons.

At issue in this appeal is the trial court's denial, on September 25, 2025, of Respondents' most recent motion for injunctive relief and constructive trust, as well as the denial of their motion for reconsideration on November 3, 2025. Respondents timely filed their Notice of Appeal within thirty days of the denial of their reconsideration motion. The appeal is therefore timely and properly before this Court.

Appellant argues that this appeal is untimely because Respondents failed to appeal the first denial of an injunction motion in May 2021. That argument, however, ignores the well-settled principle that each successive denial of interlocutory relief constitutes a separately appealable order, and that Respondents are entitled to appeal the most recent order denying relief. The fact that Respondents chose not to seek interlocutory review in 2021 does not bar them from appealing the 2025 order now.

First, Appellant confuses the concept of interlocutory appellate jurisdiction with a mandatory obligation to appeal. South Carolina Code § 14-3-330(4) provides that the Supreme

Court (and by extension, the Court of Appeals) shall have jurisdiction over interlocutory orders refusing an injunction — but that provision grants permissive jurisdiction, not a requirement that such an appeal be immediately taken. A party is not required to seek interlocutory appellate review; a party may always wait for a final judgment and appeal at that time. Because the denial of an injunction is not a final order, Respondents were not obligated to appeal in 2021, and their failure to do so does not waive their appellate rights.

Second, and critically, the order being appealed here — the September 25, 2025 order and the November 3, 2025 order on reconsideration — is a new, independent ruling by the trial court based upon additional facts, conduct, and sales by Appellant. Here Appellant failed to respond to discovery Ordered by the courts, made sales of the South Carolina property secretly, and has hidden the proceeds of those sales. Respondents timely filed their Notice of Appeal within thirty days of the denial of the motion for reconsideration, in accordance with Rule 203(b)(1) SCACR. Appellant cites no authority for the proposition that a timely appeal from a subsequent denial of injunctive relief must be dismissed simply because the movant previously sought and was denied the same or similar relief and did not seek interlocutory review at that time. The cases cited by Appellant, do not support Appellant's position in the context of successive interlocutory orders. Those cases involve finality and reconsideration of final judgments — not the right to appeal successive interlocutory orders denying injunctive relief.

Accordingly, this appeal was timely filed and is properly before this Court.

II. THE APPEAL IS NOT FRIVOLOUS AND SHOULD NOT BE DISMISSED UNDER RULE 269 SCACR.

Appellant asks this Court to dismiss the appeal as frivolous pursuant to Rule 269 SCACR. The standard for dismissing an appeal as frivolous is a high one.

Respondents' motion for injunction and constructive trust raised colorable and legitimate legal arguments grounded in the ongoing dispute between the parties. The trial court itself acknowledged that the profitability and distribution of the profits of the development project remains a disputed factual issue. The question of whether an injunction or constructive trust is appropriate pending resolution of that dispute — particularly given concerns about the sale of the Property and transfer of the proceedings to the detriment of Respondents' alleged contractual rights — is a legitimate legal question that is not frivolous.

The fact that the trial court denied the motion is not evidence of frivolousness. Parties regularly appeal adverse interlocutory rulings, and doing so cannot, standing alone, support a finding of frivolousness. See Rule 269 SCACR (sanctions appropriate only where appeal is frivolous "or taken solely for the purposes of delay"). Respondents have a genuine interest in preserving their rights in the development and its profits during the pendency of this litigation, and pursuing appellate review of the trial court's denial of such relief is a legitimate exercise of their rights.

Furthermore, Appellant's allegation that Respondents filed successive motions "merely to extend the time for filing this appeal" is pure speculation and is not supported by any evidence in the record. Respondents filed successive motions because circumstances continued to evolve — including Appellant's own actions with respect to the Property and profits — and because the underlying dispute remained unresolved. The trial court's most recent ruling offers additional grounds for appellate review, including its statement that the case is fundamentally a dispute over project profitability, which itself raises questions about what legal remedies are available to Respondents pending resolution of that dispute.

III. RESPONDENTS SATISFY THE ELEMENTS FOR INJUNCTIVE RELIEF AND HAVE A COLORABLE MERITS ARGUMENT.

Appellant argues that Respondents cannot satisfy the elements required for an injunction. However, this argument goes to the merits of the underlying motion — not to whether the appeal itself is properly before this Court. Whether Respondents can ultimately succeed on the merits of their injunction motion is the very question this appeal presents, and it should be resolved on full briefing, not on a motion to dismiss.

Nevertheless, Respondents submit that they have, at minimum, a colorable argument on the merits. The parties entered into an oral business arrangement under which Respondents provided substantial development services over more than two decades, with the understanding that they would share in the profits of the project. The Property — the subject of that arrangement — remained the central asset at issue until Respondent sold and it and transferred the proceeds. Respondents have a legitimate concern that the sale of the Property and secret transfers of the proceeds without judicial oversight could effectively render any future judgment in their favor uncollectable or unenforceable. These concerns support a colorable claim for both injunctive relief and constructive trust pending final resolution of the parties' contract dispute.

Additionally, the trial court's own acknowledgment that the profitability of the project is genuinely disputed demonstrates that there are factual and legal issues of substance yet to be resolved. An injunction preserving the status quo pending that resolution is a recognized and appropriate form of equitable relief under South Carolina law.

IV. SANCTIONS ARE NOT WARRANTED.

Appellant's request for sanctions pursuant to Rule 269 SCACR should also be denied. Rule 269 authorizes sanctions only where an appeal is frivolous or taken solely for delay. As demonstrated above, this appeal is neither. Respondents are pursuing legitimate appellate rights in a case that has been actively litigated for nearly a decade, involving a substantial and unresolved

contractual dispute. The imposition of sanctions in these circumstances would be improper and would chill the legitimate exercise of appellate rights.

CONCLUSION

For all of the foregoing reasons, Respondents Richard Lewis and Walter Lewis respectfully request that this Court deny Appellant's Motion to Dismiss Appeal in its entirety. Appellant's motion is premised on a misreading of the applicable rules and case law, and this appeal is timely, non-frivolous, and raises legitimate questions of law that warrant full briefing and consideration by this Court.

Respondents further request that this Court deny Appellant's request for sanctions.

Respectfully submitted,

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March 23, 2026