

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Deadra L. Jefferson, Circuit Court Judge

Case No. 2009-CP-10-0553

Emerald Investments, LLC.....Appellant

v.

Ashley River Properties II, LLC; and Kriti Ripley, LLC.....Respondents

REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

I. THE SUPREME COURT OF SOUTH CAROLINA'S OPINION IN *KRITI RIPLEY, LLC V. EMERALD INVESTMENTS, LLC AND STUART LONGMAN*, 404 S.C. 367, 746 S.E.2D 26 (2013) DEALT WITH LEGAL ISSUES NOT AT ISSUE IN THE PRESENT JUDICIAL DISSOLUTION ACTION AND SHOULD NOT CONTROL ITS OUTCOME.

ARP-II observes in the Preliminary Statement of its Brief that “[t]his case and *Ashley River Properties, II v. Ashley River Properties, I*, a companion case that was tried at the same time as this case, are hopefully the last of what the South [Carolina] Supreme Court described as “a pattern of abusive litigation” engaged in by the Respondent, Emerald Investments, LLC and its principal, Stuart Longman.” *Kriti Ripley, LLC v. Emerald Investments, LLC and Stuart Longman*, 404 S.C. 367, 369, 746 S.E.2d 26, 27 (2013).” This observation is partially misleading and should not control the outcome of this appeal for the reasons set forth below.

Actually, *Ashley River Properties, II v. Ashley River Properties, I* (Case No. 2005-CP-10-2434) was a case maintained by ARP-II against ARP-I (an entity owned by Longman) not the other way around (although ARP-I did assert defenses and counterclaims therein). That being said and with all candor to this Court, there is no question that the parties to this appeal have engaged in years of litigation and arbitration against one another. However, Emerald respectfully submits that the present judicial dissolution action on appeal is different because it seeks to once and for all sever all business ties and allow the parties to go separate ways. As the 2010 Arbitration Award stated, “dissolution may be in the best interests of all parties.” (2010 Award, p. 3) This is all that Emerald seeks at this point – a fair buy-out of its 70% interest in ARP-II and closure once and for all.

II. THE CIRCUIT COURT ERRED BY HOLDING THAT THE ARP-II OPERATING AGREEMENT'S DISSOCIATION AND DISSOLUTION PROVISIONS MIRRORED THE STANDARDS FOR JUDICIAL DISSOLUTION FOUND IN THE LLC ACT.

Emerald's arguments as to why the 2010 Arbitration Award, which was restricted to analyzing claims arising out of the Operating Agreement, did not encompass or address the differing standards for judicial dissolution found in the LLC Act (so as not to render dispositive the outcome of Emerald's judicial dissolution action) are outlined in great detail in Appellant's Brief. However, one observation needs to be made to address a point raised by ARP-II in its Brief.

ARP-II states that "the Circuit Court made its own findings that Emerald's evidence did not establish wrongful conduct so as to be entitled to judicial dissolution." Whether this is the case or not, the problem is that Emerald was prevented from introducing the vast majority of evidence it had planned to offer in support of its judicial dissolution case because the circuit court ruled that such material was irrelevant since it had been presented at the 2010 Arbitration. However, given the aforementioned distinction between the dissolution standards in the Operating Agreement and the LLC Act, Emerald needed to refer to much of the same material presented at the 2010 Arbitration in order for this evidence to be analyzed in the new context of judicial dissolution under the LLC Act – something the arbitrators did not or could not have done. As set forth in greater detail in Appellant's Brief, the focused of judicial dissolution (unlike dissolution under the LLC Act) is wrongful conduct towards the petitioning member – not the company itself.

Given the foregoing, the circuit court's failure to acknowledge the distinction between dissolution under the Operating Agreement and LLC Act as well as its refusal to

allow Emerald to introduce the evidence necessary to prove its judicial dissolution case are both errors of law. Therefore, Emerald believes this case should be remanded for another trial on the judicial dissolution action – one that correctly discerns and accounts for the differences between the Operating Agreement and the LLC Act.

III. THE CIRCUIT COURT ERRED BY RESTRICTING ITS ANALYSIS REGARDING POTENTIAL EQUITABLE REMEDIES TO THE SALE OF THE ARP-II PROPERTY.

Although the circuit court cited case law confirming it possessed broad powers to shape equitable remedies in judicial dissolution actions, its analysis demonstrates that it exercised this power too narrowly by focusing only on the perceived inefficacy of ordering the property sold. The circuit court observed that “in light of the decline in real estate values and depressed real estate market the Court cannot justify arbitrarily forcing the parties to place this valuable real estate on the market at what would most certainly result in a substantial loss to the parties.” (Order p. 11) However, this option is just one of many possessed by the court and has been implemented in past cases. *See Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 741 S.E.2d 528 (Ct. App. 2012). In addition to a judicial sale, the circuit court could have also considered evaluating and ordering a fair buy-out of Emerald’s 70% interest in ARP-II, a company that he has essentially no control over.

Given the foregoing, Emerald believes that this Court should reconsider and rebalance the equitable factors in this case, particularly since that the 2010 Arbitration Award found that “dissolution may be in the best interests of all parties.”

CONCLUSION

Given the foregoing, Emerald respectfully requests that this Court reverse the

circuit court's denial of Emerald's judicial dissolution claim and order this cause of action remanded for a new trial consistent with this Court's guidance on the applicable law.

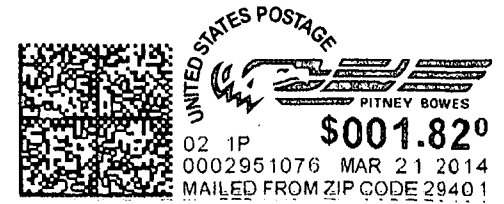
March 21, 2014

Respectfully submitted,



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