

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 11 2014

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-in-Equity

SC Court of Appeals

Appellate Case No. 2014-001635

Windswept Villas III Horizontal Property RegimeRespondent,

v.

Elaine Devlin Peery a/k/a Elaine D. Peery.Appellant.

RESPONDENT’S MEMORANDUM ADDRESSING APPEALABILITY

Pursuant to the Court’s request dated August 1, 2014, Respondent Windswept Villas III Horizontal Property Regime (“Windswept”) respectfully submits this memorandum addressing the issue of whether the order challenged on appeal by Appellant Elaine Devlin Peery (“Appellant”) is appealable.

Windswept submits that the order on appeal, in which the master expressly reserves the right to address the issue of contempt and sanctions at a subsequent hearing, is *not* appealable. It is well-recognized that an order adjudicating a party in contempt but reserving the right to award sanctions at a later time is not appealable until sanctions have been imposed. Consequently, this appeal should be dismissed.

Procedural Posture

On October 22, 2013, Windswept, as judgment creditor, initiated supplemental proceedings against Appellant to collect on a judgment against Appellant for \$27,034.02 plus

attorneys' fees, costs of collection, and interest. Ex. A, Order on Judgment Creditor's Mot. for a Rule to Show Cause & Order of Contempt, p.1. By order filed October 31, 2013, the case was referred to the Honorable Mikell R. Scarborough, the Master-in-Equity for Charleston County, South Carolina. Ex. A, p.1. The Order of Reference required Appellant to personally appear at a January 13, 2014 hearing on supplemental proceedings and to provide documents set forth therein. Ex. A, p.1.

Appellant failed to appear at the January 13, 2014 hearing, though her counsel appeared for her, and at a subsequent April 21, 2014 hearing. Ex. A, p.2. Appellant also failed to provide documents as set forth in the Order of Reference. Ex. A, p.2. Consequently, Windswept filed and served a Motion for Rule to Show Cause and for an Order of Contempt. Ex. A, p.2.

On June 20, 2014, the Master held a hearing on Windswept's Motion for Rule to Show Cause and for an Order of Contempt. Ex. A, p.1. On June 30, 2014, the Master entered an order finding Appellant in contempt, but explaining that an additional hearing would be held on August 29, 2014 to address the Motion for Rule to Show Cause and for an Order of Contempt. Ex. A, p.1.

Appellant received written notice of entry of the June 30, 2014 order on July 3, 2014. Ex. B, Notice of Appeal. Appellant served a Notice of Appeal of this order on July 17, 2014. Ex. B.

Law/Analysis

This appeal should be dismissed because the order on appeal establishes that the Master did not address what sanctions to impose and because the Master expressly reserved the right to impose sanctions at a hearing set for August 29, 2014. Simply put, there is more to be done before the order becomes appealable.

“South Carolina case law has established what constitutes an interlocutory appeal.” Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). “If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.” Id. “If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.” Id.; see Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 21 S.E.2d 209, 212 (1942) (judgment is not final if there are unsettled issues of fact as to the particular proceeding or action). Moreover, where, as here, the Master expressly reserves his ruling on an issue, the issue is not appealable because there has been no final adjudication as to such issue. See Brown v. Gaskins, 284 S.C. 30, 34, 324 S.E.2d 639, 641 (S.C. Ct. App. 1984) (“The question of whether the locked gate constitutes an unreasonable interference with Gaskins’s easement was expressly reserved by the master in equity and may not be made a part of this appeal since there has been no final adjudication of the issue.”).¹

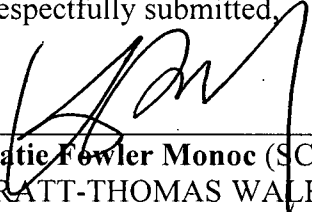
Furthermore, it is well-recognized that an order of contempt is appealable *only after* sanctions have been determined. See Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (“While normally this order would constitute the final judgment, at that time the sanctions issue was still pending against Appellants. Thus, the rights of the parties had not been completely determined until January 17, 1995, when the judge gave his final sanctions order.”); Forschner Grp., Inc. v. Arrow Trading Co., Inc., 124 F.3d 402, 410 (2d Cir. 1997) (“Moreover, an order adjudging a party in contempt unaccompanied by sanctions is not final and therefore is not appealable.”); Don’s Porta Signs, Inc. v. City of Clearwater, 829 F.2d 1051, 1053 (11th Cir.

¹ In Jowers v. Hornsby, 292 S.C. 549, 357 S.E.2d 710 (1987), the Supreme Court of South Carolina disapproved of Brown only because the Court of Appeals in Brown held that the issue of whether an easement exists is an equitable determination.

1987) (“[I]mposition of sanctions, however, is a prerequisite for appellate review of a contempt order”); State ex rel. Euclid Plaza Associates, L.L.C. v. Mason, 81 S.W.3d 573, 576 (Mo. Ct. App. 2002) (“There is no right to appeal from an order of civil contempt where a sentence to jail or a fine has not been imposed or executed.”); In re Karlie D., 19 Neb. App. 135, 139, 809 N.W.2d 510, 514-15 (2011) (“Where a court makes findings of contempt but imposes no sanction, there is no final order from which to appeal.”).

For the foregoing reasons, the order on appeal is not final or appealable. Consequently, this appeal should be dismissed and remitted to the Master.

Respectfully submitted,



Katie Fowler Monoc (SC Bar# 78131)
PRATT-THOMAS WALKER, P.A.
16 Charlotte Street (29403)
P.O. Drawer 22247
Charleston, S.C. 29413-2247
(843) 727-2200
Attorneys for Respondent Windswept Villas III
Horizontal Property Regime

August 8, 2014

January 13, 2014 hearing, Peery's attorney, John Cantrell, Esquire, appeared on her behalf that day.¹ At the hearing, it was determined that the base judgment amount owed by Peery (\$27,034.02) had been identified and was being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA. The Court ordered that these Supplemental Proceedings be continued and that those funds held in trust remain in trust subject to this Court's jurisdiction until such further notice and Order from this Court.

Counsel for Windswept then attempted to obtain the discovery ordered in the Court's October 31, 2013 Order to no avail. For this reason, a second hearing on Supplemental Proceedings was held April 21, 2014. Peery was properly noticed yet failed to appear. Because Peery failed to comply with the ordered discovery and failed to appear at Supplemental Proceedings, Windswept filed a Motion for Rule to Show Cause and for an Order of Contempt. Although Counsel for Peery was properly served with Windswept's Motion, Peery was not personally served.

Notwithstanding, this Court has the inherent power to punish for contempt. Such power "is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Ex parte Cannon, 385 S.C. 643, 660-61, 685 S.E.2d 814, 824 (Ct. App. 2009).

Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires

¹ An additional attorney, Vernee Hancock, Esquire, appeared on behalf of Peery on March 20, 2014.

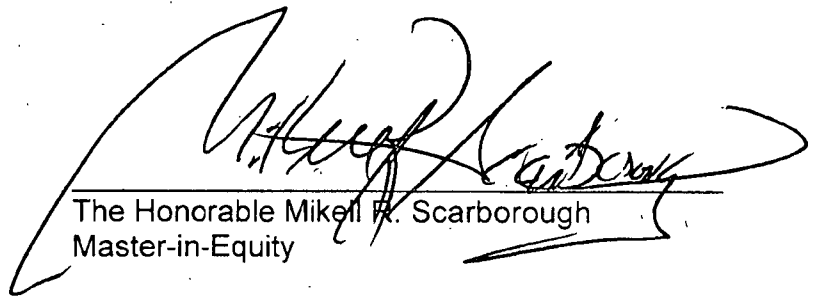


to be done; that is to say, with bad purpose either to disobey or disregard the law.

Id. (internal citations omitted). The record demonstrates that Peery failed to comply with the Court-ordered discovery and failed to personally appear at Supplemental Proceedings to answer questions under oath as ordered by the Court. Nor did she or her counsel cooperate with Windswept's counsel to submit to a deposition. Peery and her counsel specifically failed to do what the law required to be done – namely, to participate in discovery and Supplemental Proceedings. I find that Peery has been on notice of these proceedings and the applicable discovery requests set forth in the Court's October 31, 2013 Order since late 2013 yet has failed to comply with the same and has failed to appear at a single hearing. For these reasons, I find that Peery is in contempt of Court and subject to sanctions; specifically, Peery's contempt provides an additional ground for the Judgment Creditor to recover reasonable attorneys' fees and costs (previously awarded in this Court's Order on Supplemental Proceedings on other grounds).

An additional hearing on the matter shall be set for August 29, 2014 at 10 a.m. The Judgment Creditor is to personally serve the Judgment Debtor, Elaine Peery, with notice of the August 29, 2014 hearing wherein Peery must show cause as to why she failed to appear at these Supplemental Proceedings and respond to discovery as required by the Court's October 31, 2013 Order. Should Elaine Peery fail to appear at the August 29, 2014 10 a.m. hearing, she will be subject to arrest and imprisonment. The Court will at that time also rule on additional attorneys' fees and costs that may be owed by Peery.

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity

This 26th day of June, 2014
Charleston, South Carolina

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

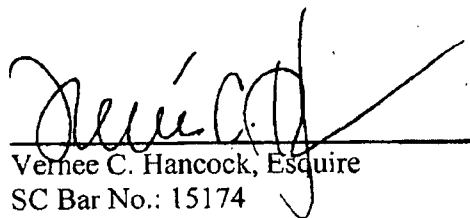
Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

NOTICE OF APPEAL

Elaine D. Peery appeals the written orders and judgment of the Honorable Mikell R. Scarborough dated June 26, 2014. Appellant received written notice of entry of this written order and judgment on July 3, 2014.

July 17, 2014.


Vernee C. Hancock, Esquire
SC Bar No.: 15174
Post Office Box 2276
Summerville, South Carolina 29484
(843) 851-1476
Attorney for Appellant

Other Counsel of Record:
Katie Fowler Monoc
PO Drawer 22247
Charleston, South Carolina 29413-2247
Attorney for Respondent
(843) 727-2244

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JUL 25 2014

SC Court of Appeals

EXHIBIT

B

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)

vs.)

ELAINE DEVLIN PEERY A/K/A)
ELAINE D. PEERY,)

Respondent/ Judgment Debtor.)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO.: 09-CP-10-5799)

FILED
2014 JUN 30 PM 3:14
JULIE J. HATHIS/ROG
CLERK OF COURT

ORDER ON JUDGMENT)
CREDITOR'S MOTION FOR A RULE)
TO SHOW CAUSE AND ORDER OF)
CONTEMPT)

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SC Court of Appeals

This matter came before me on June 20, 2014. Present were counsel for the Petitioner, Katie Fowler Monoc, Esquire, and counsel for the Respondent, John R. Cantrell, Esquire and Vernee C. Hancock, Esquire. Also present was Lydia P. Davidson, Esquire, who represented Petitioner in the underlying matter.

The Petitioner/Judgment Creditor (hereinafter "Windswept") initiated these Supplemental Proceedings by a Motion to the Court on October 22, 2013 wherein Windswept sought to recover on its judgment against the Respondent/Judgment Debtor (hereinafter "Peery") in the amount of \$27,034.02 plus reasonable attorneys' fees, costs of collection, and interest at the legal rate from March 27, 2012, the date of judgment, until such time that all amounts owed are paid in full. An Order of Reference was executed by The Honorable R. Markley Dennis, Jr. on October 28, 2013 and filed on October 31, 2013. The Order of Reference required Peery to personally appear at the January 13, 2014 hearing on Supplemental Proceedings as well as to provide documents set forth in the Order. Although service had not been effected as of the

January 13, 2014 hearing, Peery's attorney, John Cantrell, Esquire, appeared on her behalf that day.¹ At the hearing, it was determined that the base judgment amount owed by Peery (\$27,034.02) had been identified and was being held in trust for Elaine Peery at the law firm of Thurmond, Kirchner, Timbes & Yelverton, PA. The Court ordered that these Supplemental Proceedings be continued and that those funds held in trust remain in trust subject to this Court's jurisdiction until such further notice and Order from this Court.

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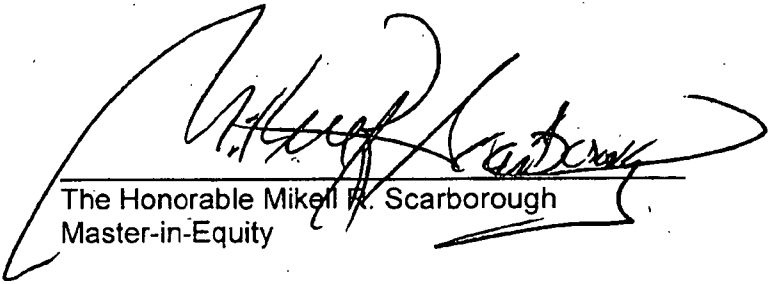
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IT IS SO ORDERED!



The Honorable Mikel W. Scarborough
Master-in-Equity

This ^{26th} day of June, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

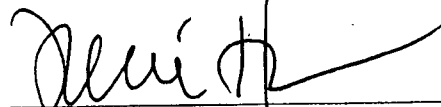
Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Windswept Villas III Horizontal Property Regime and the Clerk of the Trial Court by mailing a copy by first class mail, postage paid to the attorney for Respondent Windswept Villas III Horizontal Property Regime and the Clerk of the Trial Court:

Counsel of Record:
Katie Fowler Monoc
PO Drawer 22247
Charleston, South Carolina 29413-2247
Attorney for Respondent
(843) 727-2244

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston SC 29401



Vernee C. Hancock, Esquire
Post Office Box 2276
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Telephone - (843) 851-1476
Telecopier - (843) 851-0183
hancocklawfirm@gmail.com
Attorney for Appellant

July 22, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2010-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Windswept Villas III Horizontal Property Regime and the Clerk of the Trial Court by mailing a copy by first class mail, postage paid to the attorney for Respondent Windswept Villas III Horizontal Property Regime and the Clerk of the Trial Court:

Counsel of Record:
Katie Fowler Monoc
PO Drawer 22247
Charleston, South Carolina 29413-2247
Attorney for Respondent
(843) 727-2244

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston SC 29401



Vernee C. Hancock, Esquire
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Telecopier - (843) 851-0183
hancocklawfirm@gmail.com
Attorney for Appellant

July 22, 2014



Vernee C. Hancock

Telephone: (843) 851-1476

Attorney at Law

Fax: (843) 851-0183

Post Office Box 2276, Summerville, South Carolina 29484

Vernee C. Hancock, Esq.

E-Mail: hancocklawfirm@gmail.com

July 17, 2014

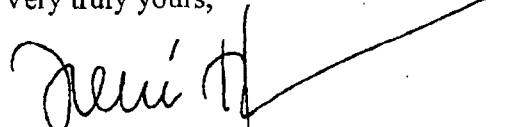
Katie F. Monoc, Esquire
Pratt-Thomas Walker
P.O. Drawer 22247
Charleston, SC 29413-2247

Re: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery a/k/a Elaine D. Peery
Case No. 2010-CP-10-5799

Dear Katie:

Enclosed please find the Notice of Appeal in the above matter which I hereby serve upon you.

Very truly yours,


Vernee C. Hancock

VCH/nac
Enclosures (as stated)

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by U.S. Mail, emailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 17th day of July, 2014

Law Office of Vernee Hancock

BY:



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JUL 25 2014

SC Court of Appeals



Vernee C. Hancock

Attorney at Law

Post Office Box 2276
Summerville, South Carolina 29484

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E-Mail: HVERNEE@aol.com

July 22, 2014

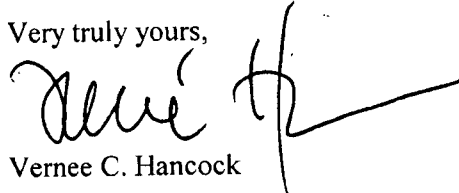
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post office Box 11629
Columbia SC 29211

Re: Windswept Villas III Horizontal Property Regime vs. Elaine Devlin Peery
Case No.: 2009-DR-10-5799

Dear Ms. Kitchings:

Please find enclosed the original and two (2) copies of Proof of Service, Notice of Appeal and Certificate of Service dated July 17, 2014, and served upon Katie Fowler Monoc as attorney for Windswept Villas III Horizontal Property Regime. Also enclosed is our check for the filing fee of \$100.00, along with the following Orders regarding this case: Order on Judgment Creditor's Motion for Rule to Show Cause and Order for Contempt, and Order on Supplemental Proceedings. An Order on Judgment Debtor's Motion to Vacate should be enclosed, but it apparently has not been signed and/or filed, and has not been provided by opposing counsel, as of this date. That Order will be forthcoming when it has been served upon me by Katie Fowler Monoc. Please file the original and return two (2) stamped copies to me in the enclosed envelope.

Very truly yours,



Vernee C. Hancock

VCH/nac
Enclosures – as stated.

Cc: Katie Fowler Monoc, Esq. (w/encl.)
Hon. Julie J. Armstrong (w/encl.)

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JUL 25 2014

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Respondent's Memorandum Addressing Appealability by mailing a copy, United States First Class, to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 8th day of August, 2014:

Vernee C. Hancock, Esq.
P.O. Box 2276
Summerville, SC 29484



Chris Morrow
Paralegal to Katie Fowler Monoc

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SC Court of Appeals

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
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E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

August 8, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery
Appellate Case No. 2014-001635

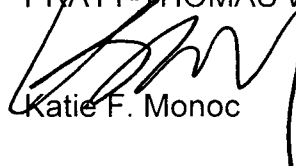
Dear Ms. Ms. Kitchings:

Please find enclosed the original and one copy of the Respondent's Memorandum Addressing Appealability in the above referenced matter. Please return a file stamped copy in the enclosed envelope.

Please contact me if you have any questions. Thank you for your many courtesies in these regards.

Yours very truly,

PRATT-THOMAS WALKER, P.A.



Katie F. Monoc

KFM\cam
Enclosure
cc: Vernee C. Hancock, Esq. (w/encl.)

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SC Court of Appeals

PRATT-THOMAS | WALKER

ATTORNEYS AT LAW

**16 CHARLOTTE STREET
CHARLESTON, SC 29403**

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