

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

Appellate Case No. 2014-0001780

SEBRINA LEIGH-JONES, *Respondent*,

versus

EVE F. OLASOV, *Appellant*,

And

LUXURY LAND AND HOMES, INC. AND EVE F. OLASOV, *Plaintiffs*,

versus

SEBRINA LEIGH-JONES, CHRIS LEIGH-JONES, LUXURY SIMPLIFIED, LLC, BRIDGE
CHARLESTON INVESTMENTS, LLC, AND LUXURY SIMPLIFIED REAL ESTATE, INC.,
Defendants.

**APPELLANT'S MEMORANDUM SUPPORTING
APPEALABILITY OF CIRCUIT COURT'S ORDER**

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SC Court of Appeals

Appellant Eve F. Olasov (“Olasov”) submits this memorandum addressing the issue of the appealability of the Circuit Court’s Order in this matter. For the reasons stated below, Olasov respectfully submits that the Order is appealable and briefing of the merits should proceed.

The Circuit Court’s Order is appealable under the provisions of S.C. CODE ANN. § 14-3-330. First, the Order constitutes an interlocutory Order that has the practical effect of granting an injunction or appointing a receiver within the meaning of § 14-3-330(4). Second, the Order constitutes an intermediate Order involving the merits within the meaning of § 14-3-330(1). Third, the Order affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken within the meaning of § 14-3-330(2). Finally, this Court should hear this appeal because this case involves a novel issue of law and its resolution will promote judicial economy. At a minimum, the Court should not determine appealability at this juncture based upon a limited record, but should allow the parties to brief and argue the issue once a complete appellate record has been prepared and submitted.¹

BACKGROUND

Olasov has been licensed by the State of South Carolina as a real estate salesperson since 1988 and as a real estate broker since 2003. She became a licensed broker-in-charge (BIC) in 2004. Olasov has served as the BIC for Luxury Land and Homes, Inc. (LLH) for approximately ten years and was the company’s founder and sole shareholder. LLH’s real estate brokerage license is attached to or associated with Olasov’s license. Over the course of many years, Olasov has spent considerable time, effort, and money in building up the business, securing clientele, and creating good will.

In 2012, Sebrina Leigh-Jones (“Sebrina”) and her husband and business partner, Chris Leigh-

¹ Appellant has ordered but not yet received the hearing transcripts from the court reporter.

Jones (“Chris”), expressed an interest to Olasov for Sebrina to become a real estate salesperson, which is an area in which Sebrina had no prior professional experience, and for Sebrina to acquire an ownership interest in LLH. Thereafter, over the course of several months, Olasov and Olasov’s brother (David M. Olasov, Esquire, an attorney licensed in New York) participated in negotiations with Sebrina, Chris, and their attorney (Manning Unger, Esquire, an attorney licensed in South Carolina) involving Sebrina’s agreement to subscribe to purchase shares in LLH.

On October 26, 2012, Olasov, Sebrina, and LLH executed and entered into a “Stock Subscription Agreement” (“Stock Subscription Agreement”) and an “Amended and Restated Shareholders Agreement for Luxury Land & Homes, Inc.” (“Shareholders Agreement”). (App. 0065-0092). Under the Stock Subscription Agreement, Sebrina subscribed to purchase 100 shares of LLH. Paragraph 3 of that contract sets forth specific installment payments to be made by Sebrina as the purchase price for her shares. Sebrina agreed to accept stock in LLH in the amount of 100 shares upon her full payment of the purchase price. Olasov and Sebrina are each certificate owners of 50% of the issued and outstanding shares of LLH, although Sebrina’s shares are held in escrow pursuant to S.C. CODE ANN. § 33-6-210(e) until such time as she pays the full purchase price for her shares, which has not yet occurred.

As part of the Shareholders Agreement, Sebrina and Olasov expressly agreed:

. . . . Unless the Shareholders otherwise agree, [Olasov] shall act as president and broker in charge of [LLH], and shall, in addition to the duties set forth in the By-Laws of the Company, have responsibility for hiring and supervising real estate sales persons operating under [LLH’s] brokerage license and for the management of all of [LLH’s] websites currently on-line. . . .

(App. 0080 ¶ 2.3). Thus, the Shareholders Agreement expressly mandates that Olasov shall have the responsibility for supervising all of LLH’s salespersons, including Sebrina.

As part of the Shareholders Agreement, Sebrina also requested and agreed to a non-compete provision barring her and Olasov from directly or indirectly owning, investing in, managing, operating, consulting or being employed in a business substantially similar to, or competitive with, the present business of LLH or such other business activity in which LLH may substantially engage. (App. 0087-0088 ¶ 11.2).

When this litigation started, Sebrina was a licensed salesperson associated with Olasov as BIC. After Olasov and Sebrina entered into their business relationship, Sebrina failed to comply with her contractual obligations by, among other things, failing to pay the purchase price for her stock. Additionally, with assistance from her husband (Chris), Sebrina has attempted to circumvent her contractual obligations and has engaged in conduct violating her non-compete agreement. In 2013, LLH and Olasov discovered that Sebrina and Chris had helped organize and fund a real estate brokerage company directly competing with LLH.

On August 14, 2013, in an effort to eliminate LLH's existence to effectively prevent enforcement of the non-compete agreement, Sebrina filed a lawsuit against Olasov in the Charleston County Court of Common Pleas entitled *Sebrina Leigh-Jones v. Eve F. Olasov*, Case No. 2013-CP-10-4798, which seeks to dissolve LLH based on alleged deadlock between Olasov and Sebrina and to render the non-compete agreement unenforceable. (App. 0001-0007).

On October 21, 2013, Olasov filed an Answer & Counterclaims in response to Sebrina's lawsuit. (App. 0008-0092). On that same date, Olasov and LLH also filed a separate lawsuit against Sebrina and Chris and their wholly-owned entities (Luxury Simplified, LLC and Bridge Charleston Investments, LLC) in the Charleston County Court of Common Pleas entitled *Luxury Land and Homes, Inc. and Eve F. Olasov v. Sebrina Leigh-Jones, Chris Leigh-Jones, Luxury Simplified, LLC*,

and *Bridge Charleston Investments, LLC*, Case No. 2013-CP-10-6162. (App. 0093-0142).² The initial Complaint in that action avers, *inter alia*, that the Defendants improperly competed with LLH in violation of the non-compete agreement, breached the terms of the Stock Subscription Agreement and the Shareholders Agreement, misappropriated LLH's trademarks and designs, induced and solicited LLH's agents to leave LLH and to instead work for their own businesses, and usurped and misappropriated LLH's assets, property, and business opportunities. On November 14, 2013, Olasov and LLH filed an Amended Complaint in Case No. 2013-CP-10-6162, the primary purpose of which was to add an additional defendant (Luxury Simplified Real Estate, Inc.). (App. 0143-0193).

On January 9, 2014, Sebrina filed motions in both actions seeking the appointment of a receiver or custodian for LLH to manage LLH's business and affairs pursuant to S.C. CODE ANN. § 33-14-320 based on alleged "deadlock" between Sebrina and Olasov. (App. 0194-0195).

On February 19, 2014, Olasov and LLH filed motions in both actions seeking a temporary restraining order and preliminary injunction against the Defendants to enjoin them from violating the non-compete agreement and misappropriating LLH's trademarks and designs. (App. 0196-0217).

On April 24, 2014, Olasov and LLH filed a memorandum of law opposing Sebrina's motion for appointment of a receiver or custodian. (App. 218-0239). Olasov and LLH argued that the only deadlock presented by Sebrina to support her motion for appointment of a receiver or custodian for LLH involved her refusals to comply with her obligations under her contracts with Olasov and LLH. Olasov and LLH further pointed out that the Court could not appoint a receiver or custodian for LLH as requested by Sebrina without violating the South Carolina licensing laws applicable to real estate brokerages.

² The two actions were later consolidated for discovery purposes. (App. 0240-0241).

Circuit Judge Roger M. Young scheduled a hearing on June 10 and 11, 2014, to take live testimony involving Sebrina's motion for appointment of a receiver or custodian and Olasov's and LLH's motion for a temporary restraining order and preliminary injunction. On June 9, 2014, on the eve of the hearing, Sebrina filed a memorandum in support of her motion for appointment of a receiver or custodian asserting for the first time that she was requesting the appointment of a new BIC pursuant to S.C. CODE ANN. § 40-57-135(C)(3) and alleging that she had a "sales pipeline" of over \$14.5 million in real estate deals that needed to close in the immediate future. (App. 0242-0251 & 0290).

The hearing on the pending motions proceeded on June 10 and 11. However, the hearing did not finish and Judge Young rescheduled it to resume on August 18, 2014. When the hearing was adjourned at the end of the day on June 11, Sebrina had not yet completed the presentation of her case and Olasov and LLH had not yet had the opportunity to present their rebuttal or response witnesses. Although Olasov and LLH had not yet presented their case, Sebrina argued to Judge Young at the conclusion of the second day's testimony that it was urgent and necessary for the Court to immediately appoint a new BIC to supervise her because Olasov allegedly had refused to do so (which was untrue) and Sebrina allegedly had a "sales pipeline" of over \$14.5 million in real estate deals that needed to be closed in the immediate future.³

³ On June 12, 2014, the next day, Olasov's counsel requested that Sebrina provide information and documentation to support her representation to the Court that the immediate appointment of a BIC was necessary because of her pipeline of impending real estate transactions. In response, Sebrina refused to provide any of the requested information or documentation. (App. 0288-0289). Olasov and LLH submit that there were no exigent circumstances justifying the appointment of a new BIC and that Sebrina wholly manufactured the alleged emergency necessitating the appointment of a new BIC so that she could rid herself of Olasov's supervision and conduct real estate transactions without Olasov's knowledge, oversight, or consent.

Based on Sebrina's allegations that she could no longer work with Olasov and that she had several real estate transactions which she needed to close in the immediate future, Judge Young ruled from the bench on the second day of testimony that he would divest Olasov of her supervisory authority over Sebrina and appoint a new BIC for Sebrina under S.C. CODE ANN. § 33-14-320, which authorizes the appointment of a receiver or custodian for a corporation. Judge Young stated that he felt such an Order was necessary to "protect the public" because he did not want innocent non-parties to be harmed by delaying their real estate closings (even though Sebrina submitted no evidence of impending closings). Although Judge Young did not expressly appoint either a receiver or a custodian *for LLH*, he advised the parties that he would rely upon § 33-14-320 to appoint a new BIC to supervise Sebrina despite Olasov's objections and notwithstanding Olasov's argument that the Court lacked authority to appoint a new BIC for Sebrina except for the limited reasons stated in S.C. CODE ANN. § 40-57-135(C)(3), which Sebrina clearly did not satisfy.⁴

On June 23, 2014, pursuant to his oral comments at the hearing, Judge Young entered an Order formally appointing Charles F. Middleton as the new BIC for Sebrina to serve for an indefinite period of time "until relieved by further Order of the Court." (App. 0252-0255). The Order also divests Olasov "of her supervisory authority and responsibility over [Sebrina]" while at the same time holding that "[Sebrina] shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olasov." (App. 0254-0255). The Order directs the new BIC not to deposit the fees or compensation earned by LLH from Sebrina's listings into LLH's operating account, but instead directs him to deposit the funds into a separate bank account that he and Sebrina will own

⁴ Section 40-57-130(C)(3) allows for the appointment of an interim BIC for a salesperson for up to six months only when the existing BIC dies or is medically incapacitated. S.C. CODE ANN. § 40-57-130(C)(3).

(and in which LLH has no ownership) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. (App. 0254). As justification for appointing a new BIC for Sebrina, the Order states that “[Sebrina] and Olasov have irreconcilable differences as to management issues and an irreparable working relationship.” (App. 0253).

On July 1, 2014, in response to a letter sent by Sebrina’s counsel requesting the Court to modify its prior Order appointing a new BIC for Sebrina, Judge Young entered a written Order amending his prior Order as requested by Sebrina’s counsel. (App. 0256-0262).

On July 2, 2014, Olasov and LLH moved to alter and/or amend the Circuit Court’s Order appointing a new BIC for Sebrina. (App. 0263-0285). On July 15, 2014, without conducting oral argument, Judge Young entered an Order denying Olasov’s and LLH’s motion to alter or amend. (App. 0286-0287).

On August 15, 2014, Olasov and LLH timely served Notices of Appeal in both actions. By letter dated August 29, 2014, the Clerk of Court for the Court of Appeals subsequently requested the parties to submit memoranda addressing the appealability of the Circuit Court’s Order.

ARGUMENTS

The Circuit Court’s Order is immediately appealable under the provisions of S.C. CODE ANN. § 14-3-330. “The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. CODE ANN. § 14-3-330.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6-7, 630 S.E.2d 464, 467 (2006); *see also Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (“Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within S.C. CODE ANN. § 14-3-330.”).

Pursuant to § 14-3-330, the following types of Orders are appealable:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. CODE ANN. § 14-3-330; *see also Edwards*, 369 S.C. at 93-94, 631 S.E.2d at 530. “While [§] 14-3-330 states it applies to ‘law cases,’ [our Supreme Court] ha[s] recognized it as applicable in equity cases as well.” *Kriti Ripley, LLC v. Emerald Investments, LLC*, 404 S.C. 367, 379, 746 S.E.2d 26, 32 (2013) (citation omitted).

Statutes and rules of court should be construed liberally in favor of the right of appeal. *Stroup v. Duke Power Co.*, 216 S.C. 79, 84, 56 S.E.2d 745, 747 (1949); *Haughton v. Order of United Commercial Travelers of Am.*, 108 S.C. 73, 74-75, 93 S.E. 393, 394 (1917); *O'Rourke v. Atl. Paint Co.*, 91 S.C. 399, 403, 74 S.E. 930, 931 (1912). When there is a single Order that is appealable in part, the entire Order should be considered upon the appeal. *Rice Hope Plantation v. S. Carolina Pub. Serv. Auth.*, 216 S.C. 500, 511, 59 S.E.2d 132, 136 (1950), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

1. Orders Granting an Injunction or Appointing a Receiver.

The Circuit Court's Order has the practical effect of granting an injunction or appointing a receiver within the meaning of § 14-3-330(4). Sebrina's motion filed on January 9, 2014 originally sought the appointment of a receiver or custodian for LLH pursuant to the statutory authority granted in S.C. CODE ANN. § 33-14-320. However, at the hearing conducted on the motion, Sebrina requested the appointment of a new BIC pursuant to S.C. CODE ANN. § 40-57-135(C)(3). Although the Circuit Court's Order does not expressly appoint either a receiver or custodian *for LLH*, it appoints a new supervising BIC *for Sebrina*, enjoins and restrains Olasov from supervising Sebrina or acting as her BIC, and has the effect of appointing a receiver for real estate listings and commissions that belong to LLH.

A licensed BIC and her licensed salespersons are governed by and subject to Chapter 57 of Title 40 of the South Carolina Code. Section 40-57-30(4) defines a "broker-in-charge" as "the broker who is designated as having responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for any real estate trust accounts." S.C. CODE ANN. § 40-57-30(4). "Trust account" means "an escrow account or properly designated bank account established and maintained by a broker-in-charge . . . to safeguard funds belonging to parties to a real estate transaction." *Id.* § 40-57-30(16). A "broker" is the individual "who for a fee, salary, commission, or other valuable consideration . . . or who with the intent or expectation of receiving compensation . . . negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements thereon [and] offers to act as an agent representing a principal in a real estate transaction." *Id.* § 40-57-30(3). "Associated licensee" means "a licensee who is affiliated with a broker-in-charge . . ." *Id.* § 40-57-30(1). A "salesman" is "a

licensee associated with a broker-in-charge” *Id.* § 40-57-30(15). South Carolina law is clear that a real estate salesperson or licensee cannot engage in real estate transactions except under a licensed BIC.

As BIC, Olasov is required to “adequately supervise employees or associated licensees to ensure their compliance with this chapter and maintain real estate trust accounts when required by law,” to “maintain adequate, reasonable, and regular contact with [her] associated licensees engaged in real estate transactions so as to prevent or curtail practices by a licensee which would violate any provision of this chapter . . . ,” to “instruct employees and associated licensees on the proper handling of trust funds,” and to “ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts.” *Id.* § 40-57-135(A)(1), (3), (4), (6). The statute further requires the BIC to maintain records for the real estate trust accounts, imposes specific requirements on when funds must be deposited into the company’s trust account and when they can be disbursed from the account, and requires the BIC to render an accounting involving the trust funds. *Id.* § 40-57-135(B)(4) & (7). The statute also states that the BIC “shall establish and *maintain control of and responsibility for an active real estate trust account* so designated in the company name for which the respective broker-in-charge’s . . . license is issued” *Id.* § 40-57-135(8)(B)(1)(A) (emphasis added). Only a BIC can supervise a trust account. (App. 0291 ¶ 3).

In addition to the above-referenced statutory obligations, the Shareholders Agreement executed by Sebrina and Olasov expressly states that Olasov “shall act as president and broker in charge of [LLH], and shall, in addition to the duties set forth in the By-Laws of the Company, have responsibility for hiring and supervising real estate sales persons operating under [LLH’s] brokerage license” (App. 0080 ¶ 2.3). The Shareholders Agreement requires Olasov to have the

responsibility for supervising LLH's salespersons, including Sebrina.

“In determining what constitutes an injunction subject to interlocutory review the court should look to the substance of the order rather than its form.” *Jordan v. Officer*, 508 N.E.2d 1077, 1079 (Ill. App. Ct. 1987). “An order—including a postjudgment order—is properly characterized as an ‘injunction’ when it substantially and obviously alters the parties’ pre-existing legal relationship.” *Jones-El v. Berge*, 374 F.3d 541, 544 (7th Cir. 2004).

In this case, the Circuit Court's Order clearly alters the parties' legal relationship. Notwithstanding statutory and contractual obligations to the contrary, the Order appoints Charles F. Middleton as the new BIC for Sebrina to serve for an indefinite period of time and divests Olasov “of her supervisory authority and responsibility over [Sebrina]” while at the same time holding that “[Sebrina] shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olasov.” (App. 0259-0262). The Order expressly permits Sebrina to continue to deposit or withdraw funds and direct transactions from LLH's trust account while at the same time specifically barring Olasov from controlling or supervising Sebrina or her transactions involving the LLH trust account. It further directs the new BIC not to deposit the fees or compensation earned by LLH from Sebrina's listings into LLH's bank account, but instead directs him to deposit the funds into a separate bank account that he and Sebrina will own (and in which LLH has no ownership) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. (App. 0261). The Order has an indefinite duration and does not state it will terminate once the litigation ends. The Order does not state when or if the new BIC's appointment will end, when or if his authority over LLH's commissions will terminate, or when or if Olasov will ever resume her supervisory responsibilities over Sebrina and the listings and commissions belonging to LLH.

The practical effect of the Circuit Court's Order is to grant injunctive relief because it enjoins or restrains Olasov from supervising Sebrina or having any authority over the listings or commissions that Sebrina generates even though Olasov is a 50% owner of LLH and is supposed to be Sebrina's BIC by statute and under the parties' contracts. The Order effectively restrains Olasov from operating her real estate brokerage business. Numerous cases have held that similar Orders restraining a party are immediately appealable. *See, e.g., Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 (1956) (Order of circuit court restraining master from delivering deed to successful bidder at partition sale was appealable); *Williams v. Jones*, 62 S.C. 472, 40 S.E. 881 (1902) (holding that an interlocutory Order restraining a defendant from operating her ginnery was immediately appealable); *Eldridge v. City of Greenwood*, 308 S.C. 125, 417 S.E.2d 532 (1992) (Order prohibiting landowners who brought suit to determine ownership of railroad right-of-way from contacting potential members of plaintiff class unless city first contacted them was injunction that was immediately appealable.); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (observing that Order of reference which enjoined property owners from erecting any buildings on their property during pendency of action to enforce subdivision covenants was immediately appealable); *Ex parte McFarlin*, 2007 WL 8326605, *2 (S.C. Ct. App. 2007) (An order freezing accounts is in the nature of an injunction.); *see also Jordan*, 508 N.E.2d at 1077 (trial court's Order postponing city election was appealable by successful candidates because it was restraint upon successful candidates that was essentially injunctive in character); *In re Marriage of Granger*, 554 N.E.2d 586 (Ill. App. Ct. 1990) ("gag order" restraining parties and their attorneys from making extrajudicial comments about pending civil matter was construed as injunction; therefore, Order was appealable under rule authorizing interlocutory appeals as of right from Orders granting, modifying, refusing, dissolving, or refusing to

dissolve or modify an injunction); *Williams v. Nw. Sec. Life Ins. Co.*, 307 S.C. 462, 463-64, 415 S.E.2d 809, 809-10 (1992) (Order denying motion to dismiss, which had the effect of refusing an injunction, was appealable under § 14-3-330(4)).

The Circuit Court's Order also effectively disposes of LLH's commissions or property without Olasov's consent. The commissions generated by Sebrina's real estate listings are owned by LLH (the brokerage) and constitute its property. (App. 0279-0281). South Carolina law specifically requires that "[a]ll cash monies or certified funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge . . . immediately must be delivered to the broker-in-charge . . . , except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge . . . as soon as the sales or lease agreement is ratified by both parties." S.C. CODE ANN. § 40-57-135(8)(B)(8).

The Circuit Court's Order diverts to the new BIC and Sebrina funds that belong to LLH from Sebrina's listings and allows those funds to be deposited into a separate account owned by the new BIC and Sebrina and in which LLH has no ownership. The Order further authorizes the new BIC to dispose of LLH's commissions generated by Sebrina subject to his exclusive discretion or judgment without any involvement, consent, oversight, or control by Olasov or LLH. The Order does not require Sebrina or the new BIC to hold LLH's commissions or to refrain from disbursing those funds. These provisions of the Order violate state law requiring that the funds be delivered to LLH.

Although the Circuit Court labeled the appointment as a new BIC rather than a "receiver," the label utilized by the Circuit Court is not dispositive. The reality is that the new BIC could exercise the same type of authority and powers which are typically given to receivers. *U.S. v. Sylacauga Properties, Inc.*, 323 F.2d 487, 490 (5th Cir. 1963) ("A receiver by any other name, or by no name, is

still a receiver.”); *Piambino v. Bailey*, 610 F.2d 1306, 1327 (5th Cir. 1980) (appeal could be taken from order appointing lead counsel as “trustees” of the defendant’s real and personal property with instructions to liquidate the property within six months in a commercially reasonable manner; court stated “[w]e have no doubt that this was in effect an appointment of a receiver and was an order appealable” under 28 U.S.C. § 1292(a)(2)).

It is anticipated that the Respondents will rely upon this Court’s decision in *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004), to argue that the Circuit Court’s Order is not appealable. In *Shapemasters*, this Court held that an Order appointing a custodian—as contrasted with one appointing a receiver—was not appealable under the facts of that case. *Id.* at 479-80, 602 S.E.2d at 87. The trial court’s Order in that case held that “a *prima facie* case [was] made to justify the appointment of a custodian to marshal and protect [the company’s] assets until final adjudication of this case on the merits” *Shapemasters Golf Course Builder, Inc. v. Shapemasters, Inc.*, 2002 WL 34454088 (S.C. Com. Pl. July 15, 2002). On appeal, this Court observed that the custodian in that case “was appointed specifically for the purposes of ‘overseeing ongoing projects and to allocate man and machinery among the proposed projects to maximize profits.’” *Id.* at 479-80, 602 S.E.2d at 87. This Court in *Shapemasters* found that the custodian did not have the powers of a receiver—which include the power to dispose of the corporation’s assets—thus making that case distinguishable from the present case. In contrast to the custodian in *Shapemasters*, the new BIC appointed in this case is *not* ordered to marshal or protect LLH’s assets until a final adjudication of this case is made on the merits. Instead, he is given full authority over LLH’s commissions to the extent generated by Sebrina and is authorized to unilaterally make management or operational decisions on LLH’s behalf and to dispose of LLH’s

commissions or property without the consent of Olasov or LLH.

The fact that the new BIC has the powers of a receiver makes the Circuit Court's Order appealable. In *Razin v. A Milestone, LLC*, 67 So.3d 391 (Fla. Ct. App. 2011), the Florida appellate court held that the appointment of a custodian was immediately appealable under a statutory provision allowing for the review of an interlocutory order granting the appointment of a receiver even though the trial court labeled the appointment as "custodian" because "the reality" was that the appointed person could "exercise the same type of authority and powers which are typically given to receivers," including "the authority to cast a deciding vote on any management or operational decision when [the plaintiff and defendant] cannot agree on the particular matter." *Id.* at 395-96. Similarly, in the present case, the new BIC is given the authority to unilaterally make management or operational decisions on LLH's behalf and to dispose of LLHs' commissions or property to the extent they involve Sebrina or her real estate listings without the consent of Olasov or LLH.

2. Orders Involving the Merits.

The Circuit Court's Order also constitutes an intermediate Order involving the merits within the meaning of § 14-3-330(1). "An order 'involves the merits,' as that term is used in Section 14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 (citations & footnote omitted); *see also Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) ("To involve the merits, an order 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense'" (quoting *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). "An order usually will be deemed interlocutory and not immediately appealable

when there is some further act that must be done by the trial court prior to a determination of the parties' rights." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 468.

The Circuit Court's Order fully adjudicates the parties' rights involving Sebrina's requests to rid herself of Olasov's supervision, to have a different BIC supervise her, and that she be allowed to complete real estate transactions without Olasov's supervision or involvement. As discussed above, Sebrina argued to Judge Young at the June 11 hearing that it was urgent and necessary for the Court to appoint a new BIC to supervise her because Olasov allegedly had refused to do so (which was untrue) and she allegedly had a "sales pipeline" of over \$14.5 million in real estate transactions that needed to be closed in the immediate future. Sebrina has since refused to provide any information or documentation regarding these real estate transactions (although requested by Olasov), but presumably Sebrina has completed them given that three months have expired since the hearing took place. (App. 0288-0289). The Circuit Court's Order directs the new BIC not to deposit the fees or compensation earned by LLH from Sebrina's listings into LLH's bank account, but instead directs the new BIC to deposit the funds into a separate bank account that he and Sebrina will own (and in which LLH has no ownership) and further authorizes the new BIC to "make all decisions on disbursement of all funds from that" bank account. (App. 0261). *Although issued based on alleged exigent circumstances, the Order is not limited in time, nowhere states it is temporary, and does not indicate it will terminate once the litigation ends or at any point in the future.*

There is nothing left for the Circuit Court to do involving Sebrina's request to rid herself of Olasov's supervision as BIC despite the contrary statutory and contractual obligations or the disbursement of LLH's commissions and assets generated by Sebrina's listings. Instead, Judge Young has already decided those matters. His Order does not require Sebrina or the new BIC to hold

LLH's commissions in escrow or to refrain from disbursing those funds pending some further determination by the Court, but allows Sebrina and the new BIC to immediately disburse and dispose of LLH's commissions or assets without any involvement, consent, oversight, or control by Olasov or LLH. Because no further action is required in the Circuit Court to determine the parties' rights, the Circuit Court's Order is appealable. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7-8, 630 S.E.2d at 468 ("No further action is required in the family court to determine the parties' rights; therefore, the order is immediately appealable under Section 14-3-330(1).").

3. Orders Affecting a Substantial Right.

The Circuit Court's Order also affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken within the meaning of § 14-3-330(2). "A 'substantial right' is 'a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right.'" *Barnes v. Kochhar*, 633 S.E.2d 474, 479 (N.C. Ct. App. 2006) (citation omitted).⁵ "A substantial right involves the idea of a legal right, one which is protected by law." *Union Camp Corp. v. Whitman*, 375 N.E.2d 417, 419 (Ohio 1978).

"An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a)." *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). "Immediate appeals under [§ 14-3-330(2)] have been allowed in situations where the substantial right could not be vindicated on appeal after the case." *Breland v.*

⁵ In *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008), this Court pointed out that North Carolina's statute involving appealability of orders affecting a "substantial right" is similar to our § 14-3-330(2).

Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

As discussed above, because of the Circuit Court's appointment of a new BIC and the other provisions in the Order, Sebrina and the new BIC have been allowed to conduct real estate transactions and closings on LLH's behalf without Olasov's knowledge, supervision, or control and without providing Olasov with any information or documentation involving these transactions. As the BIC for LLH, Olasov has a substantial right—indeed, a statutory duty and contractual right—to supervise, account for, and be responsible for the real estate activities of LLH's salespersons (including Sebrina) and to protect and preserve LLH's commissions and property. *Barnes*, 633 S.E.2d at 480 (plaintiffs who were 50% shareholders in company established a substantial right to preservation of what they alleged to be the company's assets and corporate opportunities). The Shareholders Agreement specifically requires Olasov to have the responsibility for supervising LLH's salespersons, including Sebrina. (App. 0080 ¶ 2.3). The Circuit Court's Order effectively vacates this contractual provision, without making any determination of breach by Olasov or any finding of a likelihood of success on the merits by Sebrina. The Order obviously adversely determines substantial contractual and statutory rights belonging to Olasov.

Even if this Court should later determine that the Circuit Court erred in appointing a new BIC for Sebrina and in allowing the real estate transactions to proceed without Olasov's supervision or involvement, it will be impossible to undo the particular transactions that have already taken place under the Circuit Court's Orders. The transactions will have already occurred and there is nothing this Court could do to rectify the Circuit Court's improper rulings. In short, if these real estate transactions are allowed to continue under the Circuit Court's Order, this Court will not be able to provide an effective remedy to Olasov or LLH if they have to wait until the entire controversy is

disposed of before they can appeal the Order. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 8, 630 S.E.2d at 468 (agreeing that order unsealing family court records was immediately appealable because no appellate remedy is likely to repair any damage done by an improper disclosure).⁶

4. Deciding Novel Issues in the Interest of Judicial Economy.

Even if the Court should find that this case does not fit within § 14-3-330, the Court should still decide the novel issues in this appeal in the interest of judicial economy. In *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005), the South Carolina Supreme Court found that the trial court’s Order was not immediately appealable, but nevertheless addressed the novel issue raised in the appeal in the interest of judicial economy. *Id.* at 14, 625 S.E.2d at 208 (“Although we dismiss the order as not immediately appealable, we address this novel issue in the interest of judicial economy.”); *see also Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471-72, 674 S.E.2d 154, 160-61 (2009) (allowing appeal from discovery order when it involved a novel question of law in a matter that was the subject of numerous claims in state and federal courts and a decision by the Court would best serve the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008) (allowing appeal from class certification order based in part on finding that the issue presents a novel question of law which should be addressed at this time in the interest of judicial economy and guidance to the bench and bar).

This present appeal involves the novel issues of whether the Circuit Court is authorized to replace an existing BIC and appoint a new BIC to supervise a real estate salesperson for an indefinite

⁶ The Circuit Court’s Order fails to require Sebrina to give a bond or otherwise indemnify the Appellants for any loss they may sustain if it should finally be determined the Order was improperly entered.

period of time based on a finding that the salesperson and her existing BIC “have irreconcilable differences as to management issues and an irreparable working relationship” when the parties’ contract specifically requires the existing BIC to supervise the salesperson and the statutes governing real estate brokers allows for the appointment of an interim BIC for up to six months only when the existing BIC dies or is medically incapacitated. *See* S.C. CODE ANN. § 40-57-130(C)(3).

Because of the Circuit Court’s appointment of a new BIC and the provisions in the Circuit Court’s Order, Sebrina and the new BIC have been allowed to conduct real estate transactions and closings on LLH’s behalf without Olasov’s supervision or control and without providing Olasov with any information or documentation involving these transactions. It is more economical to decide the novel issues raised in this appeal at this juncture before additional real estate transactions are completed under the Circuit Court’s Order, instead of waiting until the entire controversy is decided at which point any relief this Court may grant to Olasov and LLH would be a hollow gesture because the transactions will already have been completed and cannot be undone.

CONCLUSION

For the forgoing reasons, Appellant respectfully requests this Court to find that the Circuit Court’s Order is appealable.

Respectfully submitted,

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By: 

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ATTORNEYS FOR APPELLANT

September 8, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

Appellate Case No. 2014-0001780

SEBRINA LEIGH-JONES, *Respondent*,

v.

EVE F. OLASOV, *Appellant*,

And

LUXURY LAND AND HOMES, INC. AND EVE F. OLASOV, *Plaintiffs*,

v.

SEBRINA LEIGH-JONES, CHRIS LEIGH-JONES, LUXURY SIMPLIFIED, LLC, BRIDGE
CHARLESTON INVESTMENTS, LLC, AND LUXURY SIMPLIFIED REAL ESTATE, INC.,
Defendants.

PROOF OF SERVICE

I certify that I have served (a) the Appellant's Memorandum in Support of Appealability of Circuit Court's Order and (b) Appendices in Support of Appealability of Circuit Court's Order on the Respondent by hand-delivering copies thereof to her attorneys of record on August 15, 2014 addressed as follows:


Wm. Howell Morrison, Esquire
Stafford J. McQuillin, III, Esquire
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134 Meeting Street, Third Floor
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RECEIVED

SEP 10 2014

SC Court of Appeals

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September 8, 2014

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September 8, 2014

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

Re: *Sebrina Leigh-Jones v. Eve F. Olasov*
Court of Common Pleas Case No. 2013-CP-10-4798
Appellate Case No. 2014-0001780

Dear Ms. Kitchings:

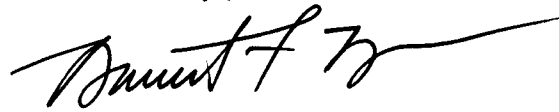
Enclosed for filing in the above case are the following:

- [1] The original and one copy of the Appellant's Memorandum in Support of Appealability of Circuit Court's Order,
- [2] The unbound original and one bound copy of the Appendices in Support of Appealability of Circuit Court's Order, and
- [3] The original and one copy of the Proof of Service.

We would greatly appreciate your filing these on our behalf. Thank you for your assistance with this matter.

With kind regards, I am

Sincerely yours,



Daniel F. Blanchard, III

DFB/db
Encls.

Cc: Wm. Howell Morrison, Esquire (w/ encls.) (via hand-delivery)
Stafford J. McQuillin, III, Esquire (w/ encls.) (via hand-delivery)

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SEP 10 2014

SC Court of Appeals