

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000366

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MAY 12 2015

SC Court of Appeals

Spartanburg Buddhist Center of South Carolina, Inc.,

Respondent,

v.

Ron Ork and Luke Dong,

Appellants.

Ron Ork and Luke Dong,

Third Party Plaintiffs,

v.

Chivin Sun, Robert Pek, Sakhan Sok, Sambo Khieav,
Sophay Pres, and Tommy Ong,

Third Party Defendants.

REPLY BRIEF OF APPELLANTS

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TABLE OF CASES

South Carolina Cases

Rule 651, 2

ARGUMENT

The Respondent is not truly the Spartanburg Buddhist Center, but rather it is two individuals, a registered agent and former president, who the Buddhist Center members did to not vote into office on April 20, 2014. Those two individuals brought the underlying lawsuit in the name of the Buddhist Center, but whether they had any right to do so after members voted into office a new board and president is an issue that has not been determined by the lower court.

The underlying lawsuit is not about a construction agreement that the Head Monk, among others, signed in 2013. It is about two people trying to invalidate an election that did not favor them.¹ Hence, the Respondent filed its Complaint the day after the election, not during months of previous construction, and the Complaint does not mention any construction agreement. Complaint.

However, this Court's task is not to discern the facts of the underlying dispute. The lower court has not held a merits-based hearing. This appeal concerns errors that the lower court made when issuing two Temporary Injunctions and a Contempt Order.

The First Temporary Injunction dated April 21, 2014.

The Respondent claimed that the Temporary Injunction dated April 21, 2014 “operated more like a temporary restraining order” than a temporary injunction and therefore, did not require notice per SCRCR Rule 65(a). The Respondent's claim contradicts

¹ The Respondent's Brief sets out inconsistent theories for the underlying litigation at different points in its Brief. (“The underlying litigation in the matter is at its core a dispute among Respondent's Board members as to the construction of a new building and related expenditures of Respondent's funds.” Respondent's Brief, p. 2 ¶ 2; “In fact, the ‘election issue’ remains the heart of the underlying litigation,” Respondent's Brief, p. 10 ¶ 2). The Appellants agree with the latter theory.

the language of the Temporary Injunction itself and the lower court's interpretation. First Temporary Injunction ("during the pending litigation of this matter"); Contempt Order p. 6 ("without conceding under any theory of law the April 21, 2014 written order expired after ten days"). The Respondent cites a 1931 case for a purpose that is not clear to the Appellants. Respondent's Brief p. 8. However, Rule 65 of the South Carolina Rules of Civil Procedure, which distinguishes between temporary injunctions and temporary restraining orders, did not exist at the time the case was decided.

The Respondent further explains that the lower court did not have to comply with Rule 65 because there were no adverse interests at stake when the court issued the Injunction. Over 100 members of the Buddhist Center voted for a new board of directors on April 20, 2014. The Temporary Injunction, which invalidated the election, was adverse to those voting members and the new board of directors, which included the Appellants.

The Respondent argues that the Temporary Injunction set forth the reasons for its issuance and thus complied with SCRCF Rule 65(d). However, in support of its position, the Respondent cited language in the Temporary Injunction that merely cites two necessary elements for a temporary injunction, "irreparable harm...no adequate remedy at law." Respondent's Brief, p. 11 ¶ 2. The court neither described the irreparable harm nor why there was no adequate remedy for the harm at law. Had the lower court actually described the irreparable harm, the Appellants could address the court's finding through a motion to reconsider and appeal if necessary.

The Second Temporary Injunction dated May 16, 2014.

The Respondent suggests that the lower court's failure to specify the "irreparable harm" referred to in the Injunction dated May 16, 2014 can be excused because there were "affidavits filed discussing the withdrawal of \$61,000 in member donations and a potentially unauthorized election." The Order itself, which is at issue here, did not specify the irreparable harm or refer to any language in an affidavit that could give the Appellants guidance as to what the irreparable harm could be. The Respondent is guessing that the irreparable harm to which the lower court was referring was related to a withdrawal of \$61,000, which any member of the Buddhist Center could have recovered by filing an derivative suit for conversion.

The Contempt Order dated January 7, 2015.

The Respondent ignores the lower court's reasons for holding the Head Monk in contempt in favor of a theory involving the Head Monk changing the account signatories. Respondent's Brief, p. 11. The lower court's reasoning, albeit confusing, makes no mention of changing account signatories. Contempt Order, pp. 5 and 6; The lower court believed three checks that the Head Monk wrote to pay invoices from a construction company violated the First Temporary Injunction dated April 21, 2014, possibly an email dated May 2, 2014, and the Second Temporary Injunction dated May 16, 2014, although the three checks predated the Second Injunction. Had the lower court cited the changing of signatories in the Rule to Show Cause, the Appellants could have presented evidence during the Rule to Show Cause hearing that the Head Monk changed signatories before receiving notice of the First Temporary Injunction and the change of signatories did not

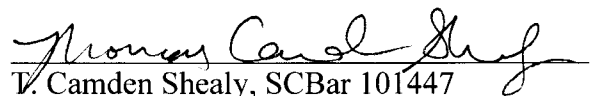
violate the demands of the First Injunction because the Buddhist Center still owned the bank account after the change.

The Respondent incorrectly assumes that the cashier's checks donated by the Head Monk's supporters belong to the Head Monk. The supporters issued those cashier's checks to the Spartanburg County Clerk of Court in case this Court chose to order the Head Monk to post a bond for the Writ of Supersedeas. This Court did not order the Head Monk to post a bond and the Appellants' attorneys, who were holding the checks, returned those checks to the issuers.

CONCLUSION

For the foregoing reasons, the Appellants respectfully submit that this Court should vacate the First Injunction, the Second Injunction, and the Contempt Order in their entirety. The Appellants' counsel respectfully requests that this Court require the lower court, which unjustifiably implied that the Appellants' attorneys were dishonest during the Contempt Hearing, to take reasonable steps to repair and prevent any damage to those attorneys' reputations.

Respectfully submitted,



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May 7, 2015

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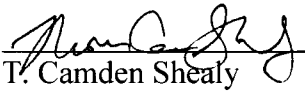
PROOF OF SERVICE

I, the undersigned attorney for the Appellants do hereby certify that I have served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action with a copy of the Reply Brief of the Appellants and a Proof of Service by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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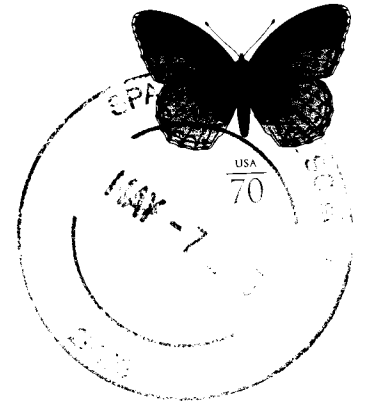


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