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

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.

BRIEF OF APPELLANTS

Thomas A. Belenchia
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

T. Camden Shealy
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

Larry E. Gregg
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

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T. Camden Shealy
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

Larry E. Gregg
Post Office Box 3421
Spartanburg, South Carolina 29304
(864) 699-9801
Attorney for Appellants

Scott F. Talley
Talley Law Firm
2500 Winchester Place, Suite 100
Spartanburg, SC 29301
Attorney for Respondent

Shannon M. Phillips
Talley Law Firm
2500 Winchester Place, Suite 100
Spartanburg, SC 29301
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF CASES

South Carolina Cases

South Carolina Rules of Civil Procedure

Other Authorities

STATEMENT OF ISSUES ON APPEAL

1. The lower court erred by issuing a temporary injunction on April 21, 2014 without notice, without security, that changed the status quo, ruled on the merits of the case, and failed to set forth the reasons for its issuance.

2. The lower court erred by issuing a second temporary injunction on May 16, 2014 without security and that failed to set forth the reasons for its issuance.

3. The lower court erred by holding Appellant Ron Ork in contempt of the April 21, 2014 Order Granting Temporary Injunction because the Appellant fully complied with the Order.

4. The lower court erred by holding Appellant Ron Ork in contempt of the Order Granting Temporary Injunction dated May 16, 2014 because the Appellant's alleged violations of the Order occurred before May 16, 2014.

5. The lower court erred by awarding the Respondent $3,500.00 in attorney's fees because the Respondent did not request attorney's fees pursuant to the lower court's sua sponte Rule to Show Cause and there is no evidence on the record by which the court could have evaluated the factors to be considered when determining an award of attorney's fees.

STATEMENT OF THE CASE

The lower court implied in its Contempt Order dated January 7, 2015 that the Appellants' attorneys lied to the lower court. (R. p. 8, ¶ 2, "it is unfathomable to the Court that neither lawyer would not remember or share with their client the Court's concern for the preservation of the funds on April 25, 2014, where, as here, it was the main issue before the Court on a temporary basis."; Id. at ¶ 3, "without conceding that neither lawyers Shealy nor Gregg remembered the Court's concern..."; R. p. 10, ¶ 2, "it is inconceivable that at least one of the three lawyers [...] did not share such important information with their client.") The lower court did not provide a basis for its assertions in the Contempt Order. The lower court's premise is probably its recollection of the attorneys' answers to questions that the lower court asked during a Rule to Show Cause hearing on November 17, 2014 (the "Contempt Hearing"). (R. p. 165, line 19 through p.166, line 24.) The lower court ordered the Appellants to appear for the Contempt Hearing because it assumed the Appellants made payments from the Respondent's bank account in violation of two temporary injunctions. (R. pp. 15-16.)

The procedural history of the underlying case is confusing and complicated. This lawsuit began on April 21, 2014 when the Respondent filed the following: an Order Granting Temporary Injunction, a Summons and Complaint, a Motion for Temporary Injunction, and a Notice of Hearing.

The Order Granting Temporary Injunction dated April 21, 2014 (the "First Injunction") was the first of the two injunctions that the court assumed the Appellants violated. (R. pp. 22-23.) Upon information and belief, the Respondent did not make a motion for the First Injunction. The Appellants never had the opportunity to oppose or defend

against the First Injunction or the allegations contained therein, and the First Injunction was not a Temporary Restraining Order. (R. p. 22 at ¶ 1, "during the pending litigation of this matter"; R. p. 10, ¶ 2, "without conceding that under any theory of law the April 21, 2014 written order expired after ten days...")

In the Complaint, the Respondent literally requested the relief granted by the lower court in the First Injunction. (R. p. 27, last ¶, "Plaintiff prays that it recover a ***temporary injunction***...") (***emphasis*** added) To further confuse matters, the Respondent's Motion for Temporary Injunction requested another temporary injunction for the same relief the lower court granted in the First Injunction and the same relief the Respondent requested in the Complaint. (R. pp. 109-110.) The Respondent concurrently filed a Notice of Hearing signed by the lower court that ordered the Appellants to appear four days after the date of the initial filings, on April 25, 2014, to show cause why a (second) Temporary Injunction should not be granted. (R. p. 111.) The Appellants accepted service of the initial filings for the Appellants on April 24, 2015, one day before the scheduled hearing. (R. p. 108.)

The Appellants filed a Motion to Dissolve or Vacate the First Injunction on April 25, 2014, just prior to the hearing. The hearing took place as scheduled, at approximately 2:15 p.m. on April 25, 2014, and the lower court heard both the Respondent's Motion for (a second) Temporary Injunction and the Appellants' Motion to Dissolve or Vacate the First Injunction (the "April Hearing"). Approximately three weeks later, on May 16, 2014, the lower court issued another Order Granting Temporary Injunction and denied the Motion to Dissolve or Vacate the First Injunction (the "Second Injunction"). (R. pp. 20-21.)

Approximately five months later, on October 8, 2014, the lower court issued the Rule to Show Cause sua sponte based upon the Appellants' alleged violations of the First Injunction and Second Injunction. (R. pp. 15-16.) During the Contempt Hearing, the lower court asked two of the Appellants' attorney questions about what happened during the April Hearing. The lower court asked those questions due to a request Thomas A. Belenchia made to the lower court.

Mr. Belenchia did not attend the April Hearing, but appeared for the Appellants during the Contempt Hearing. Larry E. Gregg and T. Camden Shealy appeared at the April Hearing on behalf of the Appellants and were present at the Contempt Hearing, but did not present arguments to the lower court there. They attended the Contempt Hearing to assist Mr. Belenchia.

Mr. Belenchia was explaining to the lower court that he could not find any language in the First Injunction that the Appellants violated. (R. p. 164, lines 22-25.) The Respondent's counsel then argued that the Appellants may not have violated any language in the First Injunction, but they were "pretty close" to violating something the lower court said during the April Hearing. (R. p. 165, lines 2-5.) The Respondent's counsel did not specify what that "something" was, but the Appellants understood that the Respondent's counsel was trying to say that during the April hearing, the lower court expressed its desire for the parties to protect the money in the Respondent's bank account. Mr. Belenchia requested a ruling on whether the Appellants actually violated the First Injunction. (R. p. 165, lines 9-18.) The lower court responded that the Appellants violated something implied by the First Injunction and expressed during the April Hearing, claiming "it'll be in the court record." (R. p. 165, lines 19-21.) The lower court then

asked Mr. Shealy and Mr. Gregg, the two Appellants' attorneys who were present at the April Hearing, whether they remembered the court expressing its concern for safeguarding the Respondent's funds. (R. p. 165, line 21 through p. 166, line 24.) Neither Mr. Shealy nor Mr. Gregg represented that they remembered the lower court expressing its concern during the April Hearing, though Mr. Shealy recalled representing to the court in chambers that the Respondent's funds were deposited back into the Respondent's account. (Id.; R. p. 166, lines 1-15.)

The Respondent's counsel, Ms. Shannon Phillips, then stated that she clearly remembered the court telling the attorneys that it had serious concerns about protecting the disputed funds. (R. p. 167, lines 1-2; (see also R. p. 164, lines 10-11.)) Throughout the rest of the Contempt Hearing, the lower court said that it made its concern for safeguarding funds clear during the April Hearing. (R. p. 168, lines 19-20, "it was this court's concern, expressly stated, it will be on the record"; R. p. 168, line 2 "it may well be on the record, that the funds were to be safeguarded"; R. p. 172, line 24 through p. 173 line 2, "That was adamantly clear, my recollection before the lawyers, as well as in the jury room, which was chambers, and in the courtroom, and we'll get the transcript.") The Respondent's other attorney, Mr. Scott Talley, stated, "that transcript and what was said in the courtroom should speak clearly [sic] to any confusion on that issue." (R. p. 171, line 17 to 18.)

The April Hearing transcript proves that the lower court did not express a concern for safeguarding the Respondent's funds during the April Hearing. (R. pp. 238-253)

After the lower court questioned Mr. Gregg and Mr. Shealy about whether they remembered the court expressing its concern for safeguarding the Respondent's funds

during the April Hearing, Mr. Belenchia continued to ask the lower court for guidance as to how the Appellants violated the First Injunction and Second Injunction. The lower court did not identify any language in the Injunctions that the Appellants violated. (R. p. 167, line 9 through p.173, line 17.)

In its Contempt Order, the lower court held Appellant Ron Ork "in wanton and willful contempt" of the lower court's "orders" for issuing three checks - of the five cited in the Rule to Show Cause- from the Respondent's bank account. (R. p. 11; R. pp. 15-16.) The court sentenced the Appellant to the South Carolina Department of Corrections for five months, provided however, that the Appellant could purge his contempt by depositing $59,765.30 into the Buddhist Center's bank account. (R. p. 11.) The court further ordered the Appellant to pay $3,500 to the Respondent's counsel. Id.

The Respondent Spartanburg Buddhist Center of South Carolina, Inc. is a South Carolina nonprofit corporation that began its existence on February 16, 2010 (the "Buddhist Center"). (R. pp. 222-223.) There is no evidence that the Buddhist Center's registered agent held an organizational meeting to elect initial directors per S.C. Code Ann. 33-31-205(a)(2) and the only election for a board of directors and a president took place on April 20, 2014, more than four years after the Buddhist Center came into existence (the "April Election"). The validity of the April Election is the main issue in the underlying litigation. (R. pp. 24-27.) The Respondent filed the underlying lawsuit, the First Injunction, and Motion the day after the April Election, on April 21, 2014.

At least four people acted as the Buddhist Center's officers and/or directors prior to the April Election. (R. p. 195, lines 8-12.) Two of those de facto officers and/or directors are the two individual Appellants. Id. The Buddhist Center members officially

elected the two individual Appellants into office at the April Election. The other two individuals who acted as de facto officers and/or directors prior to the April Election are Robert Pek and Sambo Khieav. Id. The Buddhist Center members did not vote for Mr. Pek and Mr. Khieav to be either officers or directors of the Buddhist Center at the April Election. The day after the April Election, having received no votes and lost the April Election, Mr. Pek and Mr. Khieav sued the individual Appellants to invalidate the April Election. (R. p. 22, ¶ 2; R. p. 27, ¶ 20.) Mr. Khieav and Mr. Pek initiated the suit in the name of the Buddhist Center rather than as members bringing a derivative suit. (R. p. 24, Caption.)

Appellant Ron Ork is a trained Buddhist monk who served as the Buddhist Center's head monk (the "Head Monk") both before and after the April Election. The Head Monk serves the Buddhist Center much like a pastor in a small Christian church: he leads services, ministers to the members, attracts new members, and seeks to beautify the Buddhist Center. However, the Head Monk differs from a typical Christian pastor in that he only wears a traditional monastic robe, has no income, survives on food and toiletry donations, owns no property or material possessions beyond that which he can carry, and lives in the Buddhist Center's temple. The Head Monk also acted as the Buddhist Center's treasurer by depositing money into the Buddhist Center's bank account and paying bills. (R. pp. 188 to 192.) Appellant Luke Dong, who the lower court did not hold in contempt, was in charge of the Buddhist Center's construction projects. (R. p. 195, lines 6-10)

The Buddhist Center raises money from its members for particular purposes, deposits the raised money into its bank account, and spends that raised money for that par-

ticular purpose. (R. p. 192, lines 4-5.) During the last two years, approximately, much of the money in the Buddhist Center's bank account has been designated for building a new temple/education center on the Buddhist Center's property. (R. p. 191.) On April 17, 2014, three days prior to the April Election, Mr. Pek, one of the de facto officers, withdrew $3010.00 from the Buddhist Center's bank account to pay the Respondent's counsel to thwart the April Election, but did not use the money to pay for building the new temple/education center as it was designated. (R. p. 235; R. p. 192, lines 20-24.) The Head Monk discovered Mr. Pek's wrongful withdrawal and on April 18, 2014, withdrew the bank account's remaining funds to protect the money. (R. p. 196, lines 14-22.) Over one hundred of the Buddhist Center's members approved of the Head Monk's decision. (R. p. 208, lines 12-18, R. p. 211, lines 5-9.) Over one hundred of the Buddhist Center's members demanded Mr. Pek to give the $3,010.00 he withdrew back to the Buddhist Center. (R. p. 267-272)

When the lower court referred to "disputed funds" or "safeguarding funds" in the Contempt Hearing, the Appellants assume the funds to which it was referring was the cashier's check the Head Monk withdrew.

The First Injunction ordered the Head Monk to deposit the disputed funds back into the Buddhist Center's bank account within 24 hours of the First Injunction. (R. pp. 22-23). The Head Monk fully complied with the written commands of the First Injunction. (R. p. 225, ¶ 6; R. p. 162, lines 14-15.)

The three checks for which the lower court held the Head Monk in contempt predated the Second Injunction. (R. p. 170, line 23 through p. 171, line 1.)

Both Appellants would have complied with any order the lower court issued. (R. pp. 188-189; pp. 201-204.) During the Contempt Hearing, the Appellants presented a witness who testified that she did not believe the Head Monk would intentionally violate the court's orders. (R. pp. 217-218.) When the Appellants introduced a witness who eventually testified that the Buddhist Center's members raised money to build a new temple, the court stated, "I'm not going to listen to a hundred witnesses about his character. I'm not going to do it. That evidence is before the court and if somebody wants to appeal and overturn me, that's fine." (R. pp. 219-220.)

The Appellants filed a Notice of Appeal on February 25, 2014, appealing (1) the Contempt Order dated January 7, 2015 holding Appellant Ron Ork in civil contempt; (2) the Order dated February 20, 2015 denying the Appellants' SCRCP Rules 59 and 60 Motion, and SCRCP Rule 62 Motion for Stay of Execution of the Contempt Order pending appeal; (3) the Order Granting Temporary Injunction dated May 16, 2014; (4) the Order dated July 25, 2014 denying the Appellants' SCRCP Rules 59 and 60 Motion; and (5) the Order Granting Temporary Injunction dated April 21, 2014. (Notice of Appeal)

On March 17, 2015, the South Carolina Court of Appeals granted the Appellants petition for supersedeas and denied the Appellants' motion to expedite, but ordered that this appeal will be heard as expeditiously as possible. (R. pp. 3-4.)

ARGUMENTS

1. THE LOWER COURT ERRED BY ISSUING A TEMPORARY INJUNCTION ON APRIL 21, 2014 WITHOUT NOTICE, WITHOUT SECURITY, THAT CHANGED THE STATUS QUO, RULED ON THE MERITS OF THE CASE, AND FAILED TO SET FORTH THE REASONS FOR ITS ISSUANCE.

a. The lower court issued the First Injunction without notice.

Rule 65(a) of the South Carolina Rules of Civil Procedure ("SCRCP") states that, "No temporary injunction shall be issued without notice to the adverse party." The Appellants received no notice of the First Injunction prior to its issuance.

b. The lower court issued the First Injunction without requiring the Respondent to provide security.

Rule 65(c), SCRCP, states that, "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." "The circuit court's order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper." *Atwood Agency v. Black*, 646 S.E.2d 882, 884, 374 SC 68 (S.C., 2007). To the Appellants' knowledge, the lower court did not require the Respondent to provide any security for the First Injunction.

c. The lower court's First Injunction changed the status quo and ruled on the merits of the case.

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). "In determining whether a temporary injunction should issue, the trial judge should not consider the merits of the case, except as they may enable the trial court to determine whether a prima facie showing has been made." *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969). The validity of the April Election is the main issue in the underlying litigation. The First Injunction held that the April Election, which occurred the day before the lower court entered the First Injunction, was invalid. (R. p. 22, "It is hereby ORDERED that any election held which was improper under the Bylaws, including any election held on April 20, 2014, is not valid or enforceable. All officers and Board of Directors [sic] members will be the same as before the April 20, 2014 election pending the resolution of this matter.")

d. The First Injunction failed to set forth the reasons for its issuance.

"Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Props.*, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454-

55, 626 S.E.2d 34, 36 (Ct.App.2005). Rule 65 (d), SCRCP, states that "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance..."

The First Injunction stated, "The Court finds Plaintiff will suffer irreparable harm if the injunction is not granted." (R. pp. 22-23.) The First Injunction did not specify the harm to which it was referring.

2. THE LOWER COURT ERRED BY ISSUING A SECOND TEMPORARY INJUNCTION ON MAY 16, 2014 WITHOUT SECURITY, AND THAT FAILED TO SET FORTH THE REASONS FOR ITS ISSUANCE.

a. The lower court issued the Second Injunction without requiring the Respondent to provide security.

The Second Injunction stated, "It is hereby ORDERED that no bond shall be required." (R. pp. 20-21.) Appellants herein incorporate the preceding arguments that addressed the lower court's failure to require the Respondent to provide security for the First Injunction.

b. The Second Injunction failed to set forth the reasons for its issuance.

The Second Injunction stated, "The Court finds Plaintiff will suffer irreparable harm if the injunction is not granted." (R. pp. 20-21.) The Second Injunction did not specify the harm to which it was referring. Appellants herein incorporate the preceding arguments that addressed the lower court's failure to set forth the reasons for the First Injunction's issuance.

3. THE LOWER COURT ERRED BY HOLDING THE HEAD MONK IN CONTEMPT OF THE APRIL 21, 2014 ORDER GRANTING TEMPORARY INJUNCTION BECAUSE THE HEAD MONK FULLY COMPLIED WITH THE ORDER'S COMMAND.

a. The lower court's Contempt Order.

The lower court held the Head Monk in contempt for issuing three checks dated April 29, 2014, May 7, 2014, and May 9, 2014, respectively, to Harvest Group, LLC, the construction company hired to build the Buddhist Center's new temple/education center. (R. pp. 5-12; R. pp. 231-234.) The checks corresponded to invoices issued by the construction company to the Buddhist Center. (R. pp. 227-230.) Had the Head Monk not paid the construction company, Harvest Group, LLC may have filed a mechanic's lien against the Buddhist Center.

The lower court's logic for holding the Head Monk in contempt is difficult to describe. The lower court did not claim that the Head Monk violated any specific commands in the First Injunction, but rather the Head Monk violated an implication at which one could arrive by considering certain provisions in the First Injunction and factual assumptions. (R. p. 9, "Discussion.") The First Injunction invalidated the April Election. (R. p. 22, ¶ 2) Therefore, the First Injunction changed the Buddhist Center's officers and directors from those who were elected at the April Election to the officers and directors in place immediately prior to the April Election. (R. p. 9, "Discussion.") The lower court then assumed that the Head Monk only had authority to issue checks from the Respondent's bank account because the Buddhist Center's members voted the Head Monk into a position with that authority during the April Election. In other words, the Head Monk did not have authority to write checks prior to the April Election. Therefore, when the Head

Monk wrote checks out of the Buddhist Center's bank account after the First Injunction divested him of the authority to write checks out of the bank account, the Head Monk violated the First Injunction. Although the lower court's factual assumption is incorrect and the uncontroverted testimony during the Contempt Hearing made it clear that the Head Monk issued checks on behalf of the Buddhist Center prior to the April Election, six of which checks were to Harvest Group, LLC from February 4, 2014 to April 18, 2014, the lower court erred by holding the Head Monk in contempt for violating the First Injunction's implied command. (R. p. 204, lines 10-17; R. p. 190, lines 11-18; R. p. 199, line 1 through p. 200, line 4; R. p. 215; R. pp. 231-234; for verification of the Head Monk's signature: R. p. 226.)

b. The lower court's finding of contempt was erroneous because the Head Monk complied with the First Injunction's explicit command.

"A determination of contempt is a serious matter and should be imposed sparingly; whether it is or is not imposed is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without evidentiary support." *Floyd v. Floyd*, 365 S.C. 56, 72, 615 S.E.2d 465, 473 (Ct.App. 2005). "One may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do. The language of the commands must be clear and certain rather than implied." *Welchel v. Boyter*, 260 S.C. 418, 196 S.E.2d 496 (S.C., 1973) citing 17 Am.Jur. (2d), Contempt, Sec. 52 (1964)).

The only command the First Injunction gave the Head Monk was to deposit the disputed funds into the Buddhist Center's bank account within twenty-four hours of the

First Injunction. (R. pp. 22-23.) The Head Monk deposited the disputed funds into the Buddhist Center's bank account the same day the First Injunction issued. (R. p. 9, "While the funds were redeposited into [the Buddhist Center's] account") Therefore, the Head Monk complied with the First Injunction.

c. The lower court's finding of contempt was erroneous because the Head Monk did not willfully violate the First Injunction.

The elements of contempt are "(A) The existence of a valid duty, order or obligation or prohibition; (B) Appropriate knowledge/notice (actual or imputed) of element (A), with sufficient time to comply; (C) A willful, voluntary or even an attempted violation of the duty, order or obligation found in element (A)." Timothy L. Brown, South Carolina Contempt Law, 7 (2nd ed. 2011). "Contempt results from the willful disobedience of an order of the court." *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975). "A willful act is one which is `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 to be done; that is to say, with bad purpose either to disobey or disregard the law.'" *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct.App.2001).

The Head Monk's testimony during the Contempt Hearing clearly shows that the Head Monk did not and would not willfully violate the lower court's orders. (R. p. 202, line 22 through p. 203, line 1; R. p. 204, lines 1-7.)

d. The lower court's Contempt Order holding the Head Monk in civil contempt was erroneous because the Head Monk cannot purge himself of contempt.

In *Phillips v. Phillips*, 341 S.E.2d 132, 288 S.C. 185 (S.C., 1986), the South Carolina Supreme Court held that "[t]he lower court was in error in holding the [contemnor] in civil contempt since she was helpless to purge herself of the contempt." In the case at bar, the lower court held the Head Monk in civil contempt and sentenced the Head Monk to five months in the South Carolina Department of Corrections, provided however, that the Head Monk could purge his contempt by depositing $59,765.30 into the Buddhist Center's bank account. (R. p. 11.) The Head Monk has no income and cannot produce $59,765.30 to purge himself of contempt. The Head Monk issued the three checks from the Buddhist Center's bank account to pay invoices that Harvest Group, LLC issued to the Buddhist Center. (R. p. 227.) The Head Monk did not retain any of the disputed funds.

4. THE LOWER COURT ERRED BY HOLDING APPELLANT RON ORK IN CONTEMPT OF THE ORDER GRANTING TEMPORARY INJUNCTION DATED MAY 16, 2014 BECAUSE THE APPELLANT'S ALLEGED VIOLATIONS OF THE ORDER OCCURRED BEFORE MAY 16, 2014.

"An order is not final until it is written and entered by the clerk of court." *Bowman v. Richland Memorial Hosp.*, 515 S.E.2d 259, 335 S.C. 88 (S.C. App., 1999). "Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly." *Va. Mccomb v. Conard*, 394 S.C. 416, 715 S.E.2d 662 (S.C. App., 2011). Rule 58(a)(2), SCRCP, states, "A judgment is effective only when so set forth and entered in the record." "[T]he effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court." *Upchurch v. Upchurch*, 367 S.C. 16, 23, 624 S.E.2d 643, 646 (2006). "The final written order contains the binding instructions which are to be followed by the parties." *Corbin v. Kohler Co.*, 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct.App. 2002).

The Head Monk issued three checks, dated April 29, 2014, May 7, 2014, and May 9, 2014, respectively, to Harvest Group, LLC, the construction company hired to build the Buddhist Center's new temple/education center. (R. pp. 231-234.) The three checks corresponded to invoices issued by Harvest Group, LLC to the Buddhist Center. (R. pp. 227-230.) The Contempt Order does not clearly state which of the three checks violated the Second Injunction or how those checks violated the Second Injunction's commands, impliedly or otherwise. (R. p.10, ¶ 2, "the Court finds [the Head Monk] in civil contempt by issuing ***both*** checks" (***emphasis*** added)) Regardless, the three checks predated the Second Injunction and the Head Monk should not be held in contempt for violating an order that did not exist at the time of the alleged violations.

Similarly, the law clerk's email dated May 2, 2014 was not signed by the lower court or entered by the clerk of court. (R. pp. 138-139.) Therefore, the email did not have the effect of an order that could bind the parties. The Contempt Order itself states, "As is customary and usual, the lawyers sought clarification and modification of certain verbiage between themselves and a written order was signed May 15, 2014 and filed with the Clerk of Court [on May 16, 2014]." (R. p. 6, ¶ 3.) The lower court's own assertion confirms that the parties could modify the verbiage of the email's language before the court signed a written order.

In *Phillips v. Phillips*, 341 S.E.2d 132, 288 S.C. 185 (S.C., 1986), the South Carolina Supreme Court held that a lower court erred when finding a grandmother in contempt for failing to bring her granddaughter to a hearing although the lower court made an oral ruling during a hearing, confirmed its oral ruling in a written order, and incorporated by reference the transcript of the hearing where the lower court made the ruling. The grandmother could not properly be held in contempt of the court's oral ruling, the written order that incorporated a transcript of the oral ruling, or the written order that failed to explicitly state that the grandmother had to bring her granddaughter to the hearing. In the case at bar, the lower court did not make an oral ruling that the Head Monk could not continue to pay the Buddhist Center's bills and invoices. Even if there was language in the law clerk's email that prevented the Head Monk from paying the Buddhist Center's invoices, the court could not have held the Head Monk in contempt until such ruling explicitly appeared in a written order that was entered by the clerk of court. Mr. Belenchia presented the *Phillips* case and other relevant case law to the lower court during the Contempt Hearing. (R. pp. 184-188.)

5. THE LOWER COURT ERRED BY AWARDING THE RESPONDENT $3,500.00 IN ATTORNEY'S FEES BECAUSE THE RESPONDENT DID NOT REQUEST ATTORNEY'S FEES PURSUANT TO THE LOWER COURT'S SUA SPONTE RULE TO SHOW CAUSE AND THERE IS NO EVIDENCE ON THE RECORD BY WHICH THE COURT COULD HAVE EVALUATED THE FACTORS TO BE CONSIDERED WHEN DETERMINING AN AWARD OF ATTORNEY'S FEES.

In its Contempt Order, the lower court ordered the Head Monk to pay the Respondent's counsel $3,500.00. (R. p. 11.) The court issued the Rule to Show Cause sua sponte and the Respondent did not request attorney's fees during the Contempt Hearing. (R. pp. 15-16.)

On July 17, 2014, approximately three months before the lower court issued the Rule to Show Cause requiring the Appellants to show cause why they should not be held in contempt, the Respondent's counsel improperly moved for SCRCP Rule 11 sanctions against both the Appellants' counsel and the Appellants due to the Head Monk's issuance of the same checks eventually cited by the lower court in the Rule to Show Cause. (R. pp. 113-114.) During a review of the clerk of court's file of the underlying case, the Appellant's counsel discovered an Order denying the Respondent's Rule 11 Motion for Sanctions that the lower court signed on December 31, 2014, but was not entered by the clerk of court. (R. pp. 13-14.)

The Respondent did file an "Affidavit of Attorney Work Performed" as part of its Motion for Rule 11 Sanctions, but that affidavit requested $3,555.00 for "[1]time drafting the Motion for Sanctions and Temporary Orders in this matter, [2] correspondence with counsel for the Defendants and the Court, [3] meetings with Plaintiff and opposing counsel regarding the bank account at issue and Motions for Sanctions, and [4] attendance at

today's [the Motion for Rule 11 Sanctions] hearing" (the "Affidavit"). (R. pp. 236-237.) "In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees." *Poston v. Poston*, 502 S.E.2d 86, 331 S.C. 106, 114 (S.C., 1998).

The Affidavit connected with the Motion for Rule 11 Sanctions had nothing to do with the attorney's efforts to enforce the court's prior orders through the contempt proceedings. The Affidavit was dated September 10, 2014, nearly a month before the lower court issued the Rule to Show Cause on October 8, 2014. (R. p. 237.) The Affidavit only addressed time the Respondent's counsel spent on miscellaneous aspects of the case up until the hearing on the Motion for Rule 11 Sanctions. Therefore, the Affidavit was not relevant or indicative of the attorney's efforts to enforce the court's prior orders and the lower court had no evidence by which to determine reasonable attorney's fees.

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 request 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.

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted,

T. Camden Shealy
Thomas A. Belenchia
Larry E. Gregg
P. O. Box 3421
Spartanburg, SC 29304
Phone: (864) 699-9801
Attorneys for Appellants

June 1, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

RECEIVED
JUN 04 2015
SC Court of Appeals

Case No. 2014-CP-42-01622

Spartanburg Buddhist Center of South Carolina, Inc., Respondent,

v.

Ron Ork and Luke Dong, Appellants.

PROOF OF SERVICE

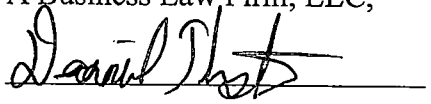
I, the undersigned attorney for the Appellants do hereby certify that on June 2, 2015, I served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action per Rule 262 of the South Carolina Appellate Court Rules with copies of the Brief of Appellants, Reply Brief of Appellants, and Record on Appeal in accordance with South Carolina Appellate Court Rules 210 and 211 to the following addresses:

a. South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

b. Scott F. Talley
Talley Law Firm
2500 Winchester Place, Suite 100
Spartanburg, SC 29301

c. Shannon M. Phillips
Talley Law Firm
2500 Winchester Place, Suite 100
Spartanburg, SC 29301

A Business Law Firm, LLC,



Danniel Johnston
P. O. Box 3421
Spartanburg, SC 29304
(864) 699 - 9801

June 2, 2015