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LAW FIRM | LLC

Kathleen C. Barnes
Admitted: Georgia | South Carolina

February 2, 2016

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Brad Lightner, Individually, and on behalf of all others similarly situated v. Hampton Hall Club, et al.*
Appellate Case No. 2015-001969
Civil Action No. 2014-CP-07-723

Dear Ms. Kitchings:

Counsel for Appellant Brad Lightner, individually, and on behalf of all others similarly situated, (“Lightner”) is in receipt of the Court’s January 26, 2016, letter stating it will not take any action on Lightner’s motion to withdraw and vacate its December 24, 2015 Order on the basis that the Court is without jurisdiction. Lightner requests the Court reconsider this position and vacate the December 24, 2015 Order because, at the time the Court issued the Order, it was without jurisdiction.

The appellate procedure that occurred in this case is irregular. Lightner filed a Notice of Appeal with this Court on September 16, 2015. The appeal sought review of the trial court’s order granting Respondents, State of South Carolina and South Carolina Department of Revenue’s, motion to dismiss Lightner’s class action allegations based on a provision of the Revenue Procedures Act. Subsequently, on September 21, 2015, the State and SCDOR filed a Petition for Writ of Certiorari in the South Carolina Supreme Court for the same trial court orders Lightner appealed to this Court. (Exh. 1). On October 1, 2015, Lightner notified this Court by letter about the State and SCDOR’s Petition pending in the Supreme Court. Lightner, in his Return to Petition, specified “In the event the Court grants the Petition, [Lightner] request[s] the Court consolidate it with [Lightner’s] Notice of Appeal pending before the Court of Appeals, pursuant to Rule 213, SCACR, regarding whether the trial court erred in dismissing the class action allegations.” (Exh. 2, p. 6).

The Supreme Court granted the State and SCDOR’s Petition on October 26, 2015. (Exh. 3). The order granting the petition stated only “The petition for writ of certiorari is granted.” *Id.*; see Rule 242, SCACR (“If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered . . .”). The Supreme Court recently issued Order 2016-01-20-01, which provides that the order granting the petition “shall indicate the questions that will be considered.” Although the Order in this case does not specify the questions

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the Supreme Court is to consider, the issues raised by both parties concern the applicability and interpretation of the Revenue Procedures Act and arise from the same orders.

When this Court issued its December 24, 2015 Order,¹ the Supreme Court had jurisdiction over this case, and Lightner asserts this Court was without jurisdiction. *See* S.C. Code Ann. § 14-3-310 (1976) (discussing the Supreme Court's "power to issue writs" and titled "Original *jurisdiction* of Supreme Court" (emphasis added)); *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) (noting "Article V, § 5, of the South Carolina Constitution vests this Court with the authority to issue extraordinary writs and entertain actions in its original *jurisdiction*" (emphasis added)). Further, there was no need for the Court to send a remittitur to the lower court, as the Orders that Appellant appealed to this court are currently on appeal in the Supreme Court. *See, e.g.*, Rule 221(b), SCACR ("If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.").

Appellant requests this Court vacate the December 24, 2015 Order because it was without jurisdiction over the case due to the Supreme Court's order granting certiorari on October 26, 2015.

By copy of this letter, I am serving all counsel of record with a copy of the same. If you have any questions, please do not hesitate to contact me. Thank you.

With kind regards, I am,

BARNES LAW FIRM, LLC



Kathleen C. Barnes

Enclosures

cc: William F. Barnes, III (via email)
Milton Gary Kimpson
Tasha B. Thompson

¹ The Court issued its order dismissing the appeal as unappealable without allowing the parties to address the issue of appealability. Appellant asserts the class action issue is appealable because the effect of the lower court's order on Respondent's motion to dismiss was to remove the class action issue from the case, rather than to address the merits of class certification under Rule 23, SCRPC. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304-05, 705 S.E.2d 475, 479 (Ct. App. 2011). Further, an order granting a motion to dismiss is immediately appealable. *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (Ct. App. 1986).

Alan Wilson
Courtney E. Lowell
The Honorable Jerri Ann Roseneau
Terry A. Finger
E. Richardson LaBruce
Mary Bass Lohr