

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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P.O. Box 12265, Columbia, South Carolina 29211-9979

February 26, 2016

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

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SC Court of Appeals

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:

The South Carolina Department of Revenue and the State of South Carolina, (collectively Respondents), respectfully request that the South Carolina Court of Appeals' (Court) December 24, 2015 Order remain effective as to the issue of class certification because the Court had jurisdiction to decide this matter at the time the Order was issued.

The Respondents' filed their September 21, 2015 Petition for Extraordinary Relief Including Writ of Certiorari and Request for Stay (Petition for Writ of Certiorari or Writ) to the South Carolina Supreme Court in the Supreme Court's original jurisdiction pursuant to Article V., § 5 of the South Carolina Constitution, S.C. Code Ann. § 14-3-310, and Rule 245, SCACR., and not under Rule 242, SCACR. While the Petition for Writ of Certiorari did concern the two trial court orders, it sought review of issues unrelated to class action certification (see below). Otherwise, the Respondents do not take issue with the procedural posture of this case as outlined by the Appellant in his February 2, 2016 correspondence. The Supreme Court granted the Respondents' Petition for Writ of Certiorari on October 26, 2015. In that order, the Supreme Court specifically referenced the relief requested by the Respondents Department and State, and the Appellant's Lightner opposition to such relief and granted the relief sought by the Respondents. (See Appellant's Exh. 3 "Petitioners [Department and State] have filed a petition for writ of certiorari...Respondent [Lightner] has filed a return in opposition...Petitioners have filed a reply...The petition for a writ of certiorari is granted.")

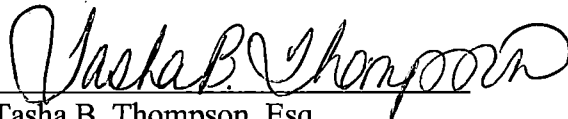
In the Respondents' Department and State Petition for Writ of Certiorari, the

4 S.C. 329, 331, 263 S.E.2d 383, 384 (1980) (finding issue of class certification sought to be raised on appeal was interlocutory and appeal regarding that issue was dismissed); *Knowles v. Standard Sav. & Loan Ass'n*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (dismissing class certification order as interlocutory on the grounds that “[c]lass certification, essentially procedural in nature, does not involve substantial or essential legal rights which require attention prior to final judgment”).

For the aforementioned reasons, this Court had jurisdiction to issue its December 24, 2015 Order and there is no basis for this Order to be vacated.

Thank you for your consideration.

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only questions presented were:

1. Whether the State should have been dismissed as a named party?
2. Whether the scope of the RPA [Revenue Procedures Act] is limited to “disputes” with the Department of Revenue concerning property taxes?
3. Whether the Plaintiff in the instant action must exhaust administrative remedies under the RPA rather than file suit in a circuit court to challenge the collection of state admissions taxes and to seek a refund of state admission taxes?

(See Appellant’s Exh. 1)

In specifically granting the Respondents’ petition, the Supreme Court invoked its original jurisdiction exclusively over the issues presented in the Respondents’ petition.¹ To be sure, the Appellant seems to agree that absent a direct Order from the Supreme Court specifying otherwise, the Court is only to consider “the issues raised by both parties concern[ing] the applicability and interpretation of the of the Revenue Procedures Act...” (See Appellant’s correspondence to this Court dated February 2, 2016, para. 3) As the Supreme Court made no mention of the issue of class certification, the Supreme Court, within its original jurisdiction, declined to address the issue of class certification. See *SCACR Rule 245(a)* (“The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court ... without material prejudice to the rights of the parties.”)

Finally, the Supreme Court has held that class certification orders are not immediately appealable. See *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 448 (2008) (“The general rule established by this Court is that class certification orders are not immediately appealable.”) (citing *Eldridge v. City of Greenwood*, 308 S.C. 15, 127, 417 S.E.2d 532, 534 (1992) (“Orders under Rule 23, SCRPC are interlocutory and thus, immediately appealable only in certain circumstances.”); *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) (“Usually, an order denying class certification is interlocutory and not immediately appealable.”); *Schein v. Lamar*, 27

¹Notably, the Appellant’s Return to Writ of Certiorari listed class certification in its “Counter Statement of the Questions Presented” but did not offer any argument on the matter. When the Supreme Court granted the Respondent’s Petition for Writ of Certiorari, it was undoubtedly aware of the class action issue, but gave no indication that it wished to review the matter. Furthermore, as the Appellant indicated in his February 2, 2016 correspondence to this Court, the Appellant’s Return to Respondents’ Petition for Writ of Certiorari specifically requested that the Supreme Court consolidate his “Notice of Appeal pending before the Court of Appeals,..” in the event the Petition for Writ were to be granted. The Supreme Court granted the Petition for Writ but declined to consolidate the matter pending before the Court of Appeals, thus also declining to invoke its jurisdiction over the class certification issue.