



March 14, 2016

VIA FACSIMILE AND U.S. MAIL

Clerk of Court
 SC Court of Appeals
 P.O. Box 11629
 Columbia, SC 29211

RE: David Wilson v. John Gandis
 Appellate Case Number: 2015-000476

Dear Sir or Madam:

In reference to the above, enclosed is Respondent David Wilson's Reply to Appellants Gandis and Shirley's Petition for Writ of Supersedeas, Certificate of Service, and one copy of each for filing. Please return the stamped copies to me in the enclosed stamped envelope.

Sincerely,

A handwritten signature in cursive script that reads "Jodie D. Fowler".

Jodie D. Fowler
 Paralegal

cc: Bruce B. Campbell, Esquire (with enclosures)
 D. Randle Moody, II, Esquire (with enclosures)
 Burl F. Williams, Esquire (with enclosures)

RECEIVED

MAR 14 2016

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge**

Appellate Case No.: 2015-000476

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

**RESPONDENT DAVID WILSON'S REPLY TO
APPELLANTS GANDIS AND SHIRLEY'S PETITION FOR
WRIT OF SUPERSEDEAS**

Respondent David Wilson (“Wilson”) requests that this Court deny the Petition for Writ of Supersedeas filed by Appellants John Gandis and Andrea Comeau-Shirley (“Gandis” and “Shirley” individually, “Appellants” collectively) on March 8, 2016. As explained below, Appellants have failed to establish that they would be deprived of the benefit of the favorable result of the appeal if a writ of supersedeas is not granted.

I. FACTUAL BACKGROUND

Respondent Wilson brought this action on April 27, 2012, alleging that (1) he was subject to shareholder oppression at the hands of Appellants Gandis and Shirley; (2) Gandis had breached his fiduciary duty owed to Appellant Carolina Custom Converting, LLC (“CCC”) and Wilson; (3) Gandis and Shirley converted company funds to pay for litigation expenses, and Gandis used CCC property to further his own separate business; (4) he was entitled to dissolution of the company, or in the alternative, (5) he was entitled to dissociation. After myriad answers, counterclaims, replies, and over \$100,000 in forensic account work, a bench trial was held before Judge D. Garrison Hill the week of September 29 – October 4, 2014.

On January 9, 2015, the trial court issued its Final Order and determined that Wilson had proved his claim of minority shareholder oppression, and the court ordered Gandis and Shirley, as the oppressors, to buy out Wilson’s 45% interest for \$347,863.23. On January 28, 2015, in denying CCC, Gandis, and Shirley’s motion to reconsider, the court issued the following denunciation of Gandis and Shirley’s character, honesty, and business acumen:

Mr. Wilson’s testimony was credible on the key issues. Mr. Gandis’ and Ms. Comeau-Shirley’s testimony lacked credibility in most important respects.

The evidence revealed that Mr. Gandis and Ms. Comeau-Shirley deliberately collaborated to oppress Mr. Wilson. **Their conduct was unconscionable.** They purposely created a toxic business environment with the goal of driving Mr. Wilson out.

Defendants' [Gandis and Comeau-Shirley's] tightly controlled cabal to oust Mr. Wilson could serve as a script for minority shareholder oppression. Their story even contains ample hubris, and an important irony: **they forgot Mr. Wilson was the partner who had the skills and contacts necessary to make the business work.**

Order Denying Defendants' Rule 59 Motion (emphasis added). The trial judge, as the sole fact finder in the present case who spent four and a half days observing the actions, reactions, body language, and physical presence of the witnesses, found that the testimony of Gandis and Shirley's only fact witnesses (themselves) to be without merit or credibility.

Appellants have asked this Court to stay enforcement of (1) the Trial Order of Circuit Court Judge D. Garrison Hill, issued on January 9, 2015, that ordered Appellants to purchase the 45% ownership interest of Wilson; and (2) of the Bond Order issued by Judge Hill on July 24, 2015 that found that the January 9 Trial Order constituted a money judgment under S.C. Code Ann. §18-9-130 and was thus an exception to the automatic stay rule of South Carolina Appellate Rule 241(b). In the Bond Order, Judge Hill granted a stay to Appellants on the condition that they post a bond or surety in the amount of \$347,863.23 within thirty days. Appellants failed to post a bond and instead appealed Judge Hill's Bond Order.

Wilson initiated supplementary proceedings in December 2015, and an initial hearing was set before the Master in Equity in Greenville County on January 26, 2016. On January 13, 2016, Appellants sought a writ of supersedeas from Judge Charles

Simmons, the Master in Equity for Greenville County. After a hearing on January 22, 2016, Judge Simmons denied Appellants' motion and set a new hearing date for March 18, 2016 with orders to Appellants to produce financial information to Wilson's counsel on March 8, 2016. On February 22, 2016, Appellants filed the same Petition for Writ of Supersedeas with this Court of Appeals, which Judge H. Bruce Williams denied on February 23, 2016 on behalf of the Court. On March 9, 2016, the day after Appellants were supposed to produce financial information to Wilson (and failed to do so), Appellants again filed a Petition for Writ of Supersedeas seeking further review. For the reasons argued below, Respondent Wilson requests that Appellants' Petition for Writ of Supersedeas be denied.

II. LEGAL STANDARD

In determining whether a writ of supersedeas "should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241, SCACR (2016). "An order staying proceedings pending appeal . . . should be made only when it appears that the party making the application has just reason to apprehend that without a stay he would be deprived of the benefit of the favorable result of the appeal." *Porter v. Lesesne*, 85 S.C. 399, 400, 67 S.E. 453, 453 (1910). Under the first prong of Rule 241, there is no jeopardy that failure to issue a writ will deprive this court of jurisdiction. Thus, under the second prong of Rule 241, Appellants must show that failure to issue a writ will render a contested issue moot. However, there is nothing in Appellants' petition that proves such a situation exists.

III. ANALYSIS

There is no outcome in the appeals process of this case that would prevent Wilson from being paid for his interest in CCC. In actuality, the issues raised by the Appellants on appeal only affect the value of Wilson's interest (valuation date and amount of Wilson's interest) and the identity of the parties who will pay Wilson for his ownership interest. And despite Appellants' claims that "emergency relief" alone from this Court will protect them from Wilson's attempts to collect on his money judgment, the fact remains that Judge Hill offered to stay any collection actions while the appeals process continued if the Appellants would only post a bond, an offer which Appellants refused, deciding instead to fund two appeals, one with money from CCC.¹

It is undisputed that Wilson owns a 45% share of CCC, it is undisputed that he was locked out of CCC by Appellants, and it is undisputed that four years later he has yet to be paid for his interest in his company currently being run solely by Gandis and Shirley. Of course, Wilson sought a dissolution of CCC from the very beginning of this litigation, but Appellants argued that a buy-out was a more appropriate remedy, and so the trial court instead ordered a buy-out after making a finding of oppression. This finding is well-supported by the evidence in the record.²

Despite Appellants' arguments, this reversal does not render any issue moot, since Appellants have had sufficient opportunity to post a bond and therefore any down

¹ Appellants appealed the denial of the order granting a stay upon posting of a bond, which Respondent believes was an order subject to the process contained in Rule 241.

² However, even if the finding of oppression were reversed, Wilson is still entitled to the purchase of his interest under South Carolina Code §33-44-801(4). Moreover, Appellants officially dissociated Wilson in April 2015 after squeezing him out four years earlier, which under the statute entitles him to a purchase of his interest. "A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date determined under subsection." S.C. Code Ann. §33-44-701 (2015).

payment on the money judgment can be repaid. If this Court ultimately orders CCC to make payment, that decision simply changes the source of funds from the Appellants individually to CCC, which Appellants control, and they would be free to reimburse themselves from company assets.³

As to the issue of Appellants' counterclaims, enforcement of the judgment has no impact on the counterclaims, which would still be viable. If Appellants prevail before this Court, then they would be entitled to their remedy regardless of the status of the buy-out. CCC has also appealed the trial court's findings on its unsuccessful trade secret claims, but enforcement of the judgment would have no impact on these issues. The bottom line is that Appellants simply want to continue to run a business—of which 45% is still owned by Wilson—while never paying him for his interest. There is no outcome in this case where Wilson is not entitled to the value of his distributional interest. Appellants' arguments are without merit, and if they desire to appeal and continue to keep Wilson from the value of his distributional interest, then they can simply post a bond.

Finally, Appellants argue that this Court's failure to issue a writ would leave Appellants "burdened with the task of trying to get their hundreds of thousands of dollars back from someone [Wilson, 45% of the company, now dissociated by Appellants and still without payment for his interest] who should never have received it." (App. Petition, page 9). But the fact that Wilson remains a 45% stakeholder makes any risk to Appellants non-existent. Four years after Gandis physically changed the locks on the

³ In reality, the funds to purchase Wilson's interest could come from CCC in any event, and this argument is simply a red herring. Appellants are well informed on how to use company assets to pay their own liabilities.

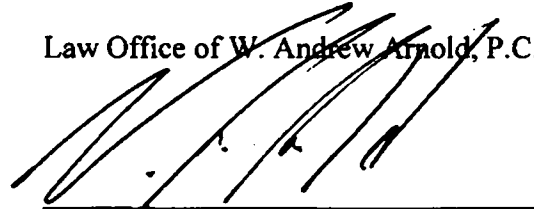
building at the company 45% owned by Wilson and locked him out completely, it is safe to say that this burden mentioned by Appellants is by now well-known to Mr. Wilson. Just a review of the orders and findings of fact should further demonstrate that this petition should be denied.

IV. CONCLUSION

Appellants have twice used last minute filings to delay both production of their financial information and the start of the supplementary proceedings hearing (the most recent of which will not be able to take place since Appellants have defied the court's order to produce such information by filing this Petition on the very day the information was due). Appellants have failed to establish that this Court's refusal to grant a writ of supersedeas would deprive Appellants of the benefit of a favorable result of the appeal. Therefore, Respondent Wilson respectfully requests that this Court deny Appellants' March 8, 2016 Petition for Writ of Supersedeas.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.



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SC Bar # 0065311

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Attorney for Respondent David Wilson

March 14, 2016

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Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

PROOF OF DELIVERY

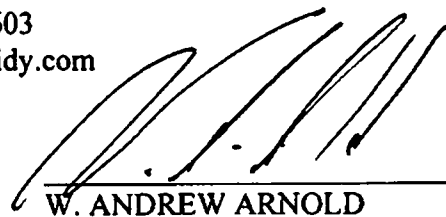
I certify that I have served the Respondent David Wilson's Reply to Appellants Gandis and Shirley's Petition For Writ of Supersedeas by depositing a copy of the same in the United States Mail, postage prepaid, on March 14, 2016, addressed to the attorneys

of record and also I electronically served the document on the below-named individuals
by emailing a copy of the document to the email addresses listed below:

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FACSIMILE TRANSMITTAL SHEET

RECEIVED

MAR 14 2016

SC Court of Appeals

DATE: March 14, 2016

TO: Clerk of Court

FAX #: 803-734-1839

FROM: Jodie D. Fowler

RE: David Wilson vs. John Gandis 2015-000476

Number of pages including Transmittal Sheet: 11

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