THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

Shaul Levy and Mier Levy ..... Respondent,

v.

Carolinian, LLC ..... Appellant.

APPELLANT'S REPLY BRIEF

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June 13, 2016

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Appellant Carolinian, LLC (hereinafter "Carolinian") submits this brief in reply to Respondents' Brief. Respondents correctly point out that the issues raised on this appeal are intertwined and somewhat overlap. This Reply with address Respondents' arguments while also streamlining Appellants' essential arguments.

I. THE SUPREME COURT'S ORDER ENDED THIS CASE

The threshold question for this Court is whether the Supreme Court's order ended this case. Respondents first argue that their "victory on the legal issue" is meaningless without a trial court order affording them "practical relief," e.g. all the declaratory relief and injunctive relief sought in their original Complaint. (Respondents' Brief, p. 14). To the contrary, the Supreme Court granted the Levys practical, full, affirmative relief by declaring that "Carolinian may not now invoke the provisions of Article 11 to compel the Levys to sell the distributional interest they acquired through the foreclosure sale." (Order of Supreme Court). When the Supreme Court entered this order, and subsequently denied Carolinian's petition for rehearing, the Supreme Court disposed of the one and only issue in dispute between Carolinian and the Levys,[1] thereby rendering any further proceedings superfluous. The Supreme Court did not remand this case for further proceedings. At that point, the only action necessary to award the Levys full relief was to remit a copy of the Supreme Court's order into the Circuit Court's file, to become an enforceable judgment. This case ended upon remittitur and the Horry County Clerk of Court should not have scheduled the matter for a second trial.

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[1]This lawsuit was filed as the direct result of a difference of opinion between counsel for the parties regarding the application of Article XI of the Carolinian Operating Agreement to the Levys following the foreclosure sale. See Respondents' Complaint, paragraphs 13-17, together with Exhibits D, E, F, and G thereto.

II. FOLLOWING THE SUPREME COURT'S RULING ON THE "DISPOSITIVE ISSUE IN THIS CASE," NO CASE OR CONTROVERSY EXISTED FOR DISPOSITION IN A SECOND TRIAL

If this Court holds that the Supreme Court's order did not end this case, no active case or controversy existed for disposition by a second trial. The Supreme Court correctly held, "[t]he dispositive issue in this case is whether Carolinian may compel the Levys to sell the distributional interest they acquired through the foreclosure sale." (ROA 34). Respondents argue that they are now entitled to the declaratory and injunctive relief sought in their Complaint based upon the stipulated facts presented to the trial court nearly three and one-half (3.5) years ago, on January 8, 2013. That relief consisted of five separate requests for declaratory relief and five separate requests for injunctive relief, the bulk of which would never resolve any issue in dispute between the parties and are advisory in nature. An examination of the record, most notably the Stipulation of Facts, reveals quite clearly that the record cannot support the entry of any declaratory relief or injunctive relief beyond the following:

With regard to the declaratory relief sought in their Complaint:

a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;

b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012. (Complaint, Prayer for Relief).

With regard to the injunctive relief sought in their Complaint:

c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian [pursuant to Article XI of the Operating Agreement based upon the transfer of Bhupendra Patel's distributional interest via judicial foreclosure sale]. (Complaint, Prayer for Relief).

The remaining relief requested by the Levys was vague, overly broad, and would not resolve any issue in dispute between the parties. Most notably, the Levys sought the trial court to declare that Carolinian must abide by the law and to enjoin Carolinian from violating the law and "maintaining unauthorized sole dominion and control" over the Levys' distributional interests. Such relief would not have resolved any issue in dispute between the parties at the time of trial, and surely resolves no issue in dispute between the parties following the disposition of the dispositive issue between them by order of the Supreme Court. The remaining relief sought by the Levys that was not specifically addressed by the trial court and Supreme Court consisted of relief that was similarly not in dispute and simply never litigated. For instance, whether dissolution and wind-up of Carolinian's business constitute the only grounds upon which Carolinian can force the Levys to sell their distributional interest was an issue never in dispute or litigated at trial. Likewise, whether the trial Court should enjoin Carolinian from making "unauthorized and wrongful distributions of Carolinian, LLC funds" was an issue never in dispute or litigated at trial. Nor are these issues in dispute today.

Respondents seem to argue they need injunctive relief. However, this need is not based upon any of the stipulated facts in the record, but upon speculation of counsel. (See Respondent's Brief, pp. 18-19). In their Brief, Respondents point to a "perpetual conflict" between Carolinian and the Levys that may not "always rise to the surface." (Respondent's Brief, pp. 18-19). Based upon no facts in the record and solely upon such speculation, Respondents conclude that "the existence of this conflict creates a constant risk of Carolinian seeking ways to undermine or circumvent the Levys' ownership of the distributional interest." (Respondent's Brief, p. 18). Speculation cannot support the entry of a permanent injunction.

Respondents attempt to circumvent this problem by equating what they seek to a damages hearing. The Levys argue they won in the Supreme Court and are now entitled to an order granting them all of the relief in their Complaint regardless of whether the relief is supported by the evidence in the record or not. The Levys attempt to induce this Court not to focus upon the fact that there is no evidence in the record to support a finding of such broad, unsupported relief, and should, instead, focus on judicial economy, calling the fact-finding process a "pointless exercise." (Respondent's Brief, p. 15). The very essence of civil litigation is to afford parties the opportunity to present disputed facts to a fact-finder for resolution of the dispute. To skip this step and award injunctive relief based upon sheer speculation would undermine the judicial process, not enrich it.

III. THE TRIAL COURT PROPERLY GRANTED INJUNCTIVE RELIEF TO THE LEVYS

Contrary to the representations made in Respondents' Brief, Carolinian preserved its arguments for appellate review. At the hearing before Judge Hyman, counsel for Carolinian argued that the injunctive relief sought by the Levys was so vague that it could not be easily understood by Carolinian. See Transcript p. 15 ("Another thing they ask for is ... a permanent injunction that says that Carolinian cannot take any actions that interfere with the distributional interest of Plaintiffs in the Carolinian. Well, what . . . does that mean?"); p. 28 ("[W]hat does maintaining unauthorized sole dominion and control over the distributional interest rightfully belonging to Plaintiffs mean? What does that mean? I don't know."). Judge Hyman spent the last portion of the hearing questioning counsel for the Levys about the scope and breadth of the relief sought by the Levys. (Transcript, pp. 28-31). In fact, Judge Hyman ultimately ruled to deny one form of the relief

sought by the Levys in their Complaint for the reason that it was, in the Court's opinion, "too broad." (Transcript, p. 31).

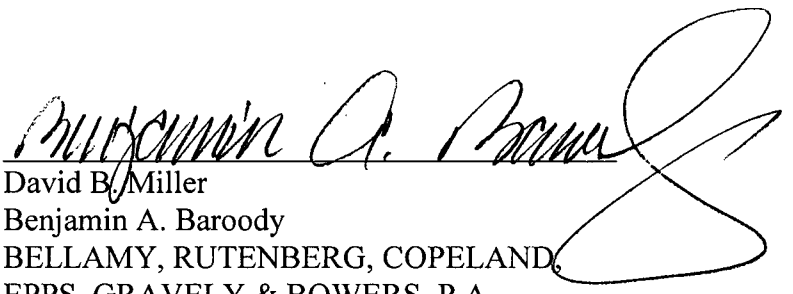
Counsel also challenged the issuance of further relief as advisory in nature based upon stale facts. Counsel for Carolinian made the following argument to Judge Hyman in this regard: "What we don't want to have is an order entered today that gives in essence an advisory opinion for something that hadn't (sic) even come up yet...." "[T]he real issue in the case, which was whether we could compel the purchase after the foreclosure sale, was dealt with squarely by the Court. That's it. If they think that they need an injunctive at this stage of the game, two years later, after the evidence and testimony went in two years ago, it's stale now. If they want to come forward in a separate action and say that we're doing something wrong and put that before you and get a new injunction ordering us to do something, fine. But to sit here today, two years later, and to ask for... a permanent injunction ... in a purely advisory capacity just doesn't make sense." (Transcript, pp. 25-26).

Carolinian challenged the issuance of any further injunction because there were no facts in the record demonstrating that the Levys still needed an injunction after the Supreme Court's ruling in its favor. Again, the only active controversy between the parties was whether Carolinian could compel the purchase of the Levys' distributional interest pursuant to Article XI of the Operating Agreement. That controversy was resolved when the Supreme Court entered its order. No other controversy existed between the parties, and no further relief was necessary to afford the Levys full relief. Any further relief sought by the Levys in the second trial resolved no dispute or controversy presently in existence between the parties, was advisory in nature, and was both vague and overly broad. For these reasons, this Court should reverse and vacate the Order of Judge Hyman.

CONCLUSION

For the foregoing reasons, Carolinian respectfully requests this Court reverse and vacate the Order of Judge Hyman.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Reply Brief complies with Rule 238 SCACR.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Appellant's Reply Brief on the person(s) whose name and address appear below by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2016.

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