

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

RECEIVED

MAY 12 2017

SC Court of Appeals

Case No. 2013-CP-10-4874
Appellate Case No. 2017-000529

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,

v.

Johnathan Ramaci, Haverly Ramaci, Richard Scott, and
Billy Ulm, Defendants,

Of whom

Johnathan Ramaci is, Appellant.

REPLY IN SUPPORT OF PETITION FOR WRIT OF SUPERSEDEAS

Appellant Jonathan Ramaci is entitled to an order from this court staying the proceedings in the circuit court to protect Ramaci's right to appeal the denial of his motion for a permanent injunction. Regardless of whether this court grants Ramaci's petition pursuant to Rule 205 or Rule 241 of the South Carolina Rules of Appellate Procedure, the consideration is the same—a trial of the Respondents' claims would moot Ramaci's arguments in support of his request for a permanent injunction. Therefore, this court must order the circuit court to stay the proceedings to protect this court's ability to decide the merits of Ramaci's appeal. The majority of Ulm's and Respondents' arguments¹ are an attempt to litigate the merits of Ramaci's appeal through this court's

¹ Ulm and Respondents each filed a separate return to Ramaci's petition for supersedeas. Ramaci addresses both returns in this reply. In referring to Respondents, Ramaci is referring to Plaintiffs in the underlying circuit court action, in accordance with the caption for this petition.

consideration of Ramaci's petition for supersedeas. At this stage, this court is concerned only with whether a supersedeas order "is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. Any argument that Ramaci cannot establish irreparable harm, and therefore is not entitled to an injunction, is irrelevant.

As an initial matter, Respondents' argument that supersedeas is available only in cases involving an exception enumerated in Rule 241(b), SCACR, is wrong. Appellate courts often consider supersedeas petitions related to matters other than exceptions to the automatic stay provisions of Rule 241. See *Florence Cty. v. Moore*, 344 S.C. 596, 599, 545 S.E.2d 507, 509 (2001) (granting supersedeas after a county treasurer was ordered to surrender his office); *Richland Cty. Sch. Dist. One v. Richland Cty. Council*, 310 S.C. 113, 114, 425 S.E.2d 750, 751 (1992) (directing a county council to comply with a previous supreme court order); *Bunkum v. Manor Properties*, 321 S.C. 95, 97, 467 S.E.2d 758, 759 (Ct. App. 1996) (granting a petition for supersedeas to reduce the amount of an appeal bond). The fact that the denial of injunction does not appear in the list of exceptions to the automatic stay in Rule 241(b) does not affect this court's authority to consider Ramaci's petition. Supersedeas is warranted to protect this court's jurisdiction over the appeal. If supersedeas is prohibited in this situation, then litigants have no recourse to challenge a circuit court's refusal to apply the automatic stay provisions of Rule 241. This court should grant Ramaci's petition.

I. Respondents' claims are matters affected by the appeal and must be stayed pending a resolution of the appeal.

Respondents' claims are matters "affected by the appeal," and a trial of those claims while the appeal is pending will moot the appeal. Both Ulm and Respondents argue about whether Rule 205 or Rule 241 of the South Carolina Appellate Court Rules should apply to this case. (Ulm's Return pp. 3-4; Respondents' Return pp. 3-4). This argument is a red herring. Rule 205 and Rule

241 both allow the circuit court to proceed only with “matters not affected by the appeal.” Rule 205, SCACR; Rule 241(a), SCACR. Further, our supreme court has explained that a circuit court “may not act or issue orders that affect an issue on appeal.” *Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E.2d 419, 422 (2007). Although the appeal of Ulm’s cross-claims may appear, on its face, to be unrelated to Respondents’ claims, this court explained in *Tillman v. Oakes* that “answering the question of whether a matter is ‘affected by the appeal’ requires a closer examination of the appeal.” 398 S.C. 245, 256, 728 S.E.2d 45, 51 (Ct. App. 2012).

A close examination of the appeal in this case reveals that a resolution of the issue on appeal of whether the circuit court erred in denying Ramaci’s motion for a permanent injunction—and the arguments related to that issue—affects not only Ulm’s cross-claims, but also whether Respondents’ claims proceed to trial, and it affects merits of Respondents’ claims. Ramaci has argued throughout this litigation—including in his motion for a preliminary injunction—that Ulm’s cross-claims for negligence and breach of fiduciary duty are derivative in nature and, therefore, are improperly pled.² (Initial Brief of Appellant pp. 36-31, **Exhibit I** to petition; Memo in Supp. of Motion for Perm. Inj. p. 13 n.7, **Exhibit H** to petition).³ Similarly, Ramaci has argued Respondents’ claims are improperly pled derivative claims. (Initial Brief of Appellant p. 7, **Exhibit I** to petition). The derivative nature of the negligence and breach of fiduciary duty claims is the same issue for both Ulm’s cross-claims and Respondents’ claims. Ramaci is entitled to review of

² As Ramaci noted in his Initial Brief of Appellant, the circuit court properly found that Ulm’s cross-claim for negligence was derivative in nature, and dismissed the claim under South Carolina Rule of Civil Procedure 12(c). (Initial Brief of Appellant p. 27, n.8, **Exhibit I** to petition).

³ Ramaci incorporates the exhibits attached to his petition for a writ of supersedeas by reference. Rather than reattach exhibits that have already been filed with the petition for writ of supersedeas, Ramaci will identify whether he is citing a previously-filed exhibit or is attaching an additional exhibit to this reply.

this issue as to Ulm's cross-claims, and a ruling by this court as to the derivative nature of the claims will apply to Respondents claims as well. In other words, should this court rule that Ulm's negligence and breach of fiduciary duty cross-claims are derivative, that ruling will affect Respondents' ability to proceed with their negligence and breach of fiduciary duty claims.

Indeed, apparently recognizing that their breach of fiduciary duty and negligence claims are nearly identical to Ulm's, Respondents argue only that Judge Murphy "ruled that the Plaintiffs' claims under the *Securities Act* are not affected by whether Billy Ulm's family trust could be enjoined from assigning to Ulm the rights in securities owned." (Respondents' Return, at 5 (emphasis added).) Ramaci is not arguing that the Respondents' Securities Act claim could be affected by this court's ruling on the merits of his appeal. However, the fact that the breach of fiduciary duty and negligence claims are affected by the appeal necessarily means that the trial of this *entire* matter, including Respondents' claims, is undoubtedly affected by Ramaci's appeal and the circuit court does not have jurisdiction to proceed. Thus, those claims cannot be tried in the circuit court while the appeal is pending.⁴

Further, the circuit court's action in proceeding to a trial of Respondents' claims will affect the issue on appeal and will thus be contrary to our supreme court's decision in *Arnal*. 371 S.C. at 519, 641 S.E.2d at 422 (providing a circuit court "may not act or issue orders that affect an issue on appeal"). The irreparable harm that Ramaci will suffer if Ulm's cross-claims are not enjoined

⁴ Ulm argues in his return that the trial court considered the issue of whether the Respondents' claims and Ulm's cross-claims are based on the same facts and circumstances and rejected that issue, based in part on "judicial economy." (Ulm's Return p. 5). Ulm fails to cite any decision by the circuit court in which it considered or ruled upon those issues. In fact, with the exception of two points, Ulm cites no support for any of the facts relied upon in his return. Ulm, therefore, has failed to comply with the requirements of the South Carolina Appellate Court Rules. Rule 240(c)(3), SCACR ("Where the Record on Appeal or Appendix has not been filed, . . . the parties shall file affidavits and other documents in support of their positions.").

is the inability to settle claims that would have settled but for the improper assignment of Ulm's time-barred cross-claims. A trial of Respondents' claims during the pendency of the appeal would eviscerate a substantial portion of the relief Ramaci seeks, and Ramaci's argument that he will be irreparably harmed will be rendered moot. Therefore, pursuant to *Arnal*, the circuit court cannot proceed with a trial of Respondents' claims. 371 S.C. at 519, 641 S.E.2d at 422.

II. Both Ulm's and Respondents' returns improperly attempt to argue the merits of Ramaci's underlying appeal.

Similar to the motion to dismiss Ulm filed in this court, Ulm and Respondents are both seeking to litigate the merits of Ramaci's request for an injunction via their returns to Ramaci's supersedeas petition by arguing settlement does not depend on a resolution of Ulm's cross-claims. *See* (Ulm's Return pp. 6-7; Respondents' Return pp. 6-7). Supersedeas proceedings are not the proper avenue for a determination regarding the merits of Ramaci's irreparable harm argument. For purposes of this petition, this court must consider only whether a trial of Respondents' claims would moot the appeal and whether Respondents' claims are matters affected by this appeal. *See* Rule 205, SCACR; Rule 241, SCACR. The issue of whether Ramaci's irreparable harm argument is correct is part of the merits of Ramaci's appeal and must be decided after the parties have fully briefed the issue.

III. The appeal and this petition for supersedeas were not filed to delay.

Ulm and Respondents once again accuse Ramaci of filing his appeal and this petition for supersedeas solely to delay the trial of both Respondents' claims and Ulm's cross-claims. (Ulm's Return pp. 8-9; Respondents' Return pp. 2-3). Ramaci did not file the appeal or this petition for the purpose of delay. Instead, Ramaci seeks only to protect his rights. The denial of a motion for a permanent injunction is immediately appealable, S.C. Code Ann. § 14-3-330(4), and a party is required to file an immediate appeal or it will waive the issue. *See Lester v. Dawson*, 327 S.C.

263, 266, 491 S.E.2d 240, 242 (1997) (finding a party waived an immediately appealable issue by failing to file an interlocutory appeal). In accordance with those rules, Ramaci filed this appeal to preserve his claim that he is entitled to an injunction.

Respondents' recitation of the lengthy history of the underlying litigation in their return is not only irrelevant to the merits of this petition, but also misleading and incomplete. Undersigned counsel's firm became involved in this case approximately twenty months ago, more than two years after Respondents' filed their lawsuit and after little progress had been made toward resolution of the matter. (Consent Motion and Order for Substitution of Counsel, attached as **Exhibit A** to this Reply). Since that time, the parties conducted mediation, nearly resolving the matter but for the issue subject to Ramaci's appeal; completed additional discovery, including additional depositions of both fact and expert witnesses; and filed, briefed, and argued various motions, all in an attempt to move this case forward. Counsel for Ramaci continued to conduct discovery and proceed with this case while awaiting the circuit court's ruling on the injunction and other potentially dispositive issues. Any claims by Ulm and Respondents that Ramaci somehow manufactured an issue to appeal in order to delay the trial of this matter are disingenuous, especially when considered in light of the fact that Ulm's attempts to skirt the statute of limitations and procedural rules were the reason Ramaci was forced to move for an injunction as his only means of preventing the improper assignment.

Further, contrary to Ulm's argument, (Ulm's Return p. 8), Ramaci has not taken inconsistent positions by arguing that Respondents' and Ulm's cross-claims cannot be bifurcated while simultaneously asserting that the cross-claims must be dismissed. Ramaci contends that *if* the Respondents' claims go to trial, Ulm's cross-claims must go with them in a single trial—unless this court rules that the cross-claims must be enjoined. Thus, Ulm's cross-claims are the linchpin

that will determine whether the parties try *any* claims. If this court decides in favor of Ramaci and orders the circuit court to enjoin Ulm's cross-claims, Ramaci can resolve Respondents' claims or—at the very least—argue for the dismissal of the Respondents' negligence and breach of fiduciary duty claims. A trial of Respondents' claims while the appeal is pending, therefore, would eliminate a substantial portion of the relief Ramaci seeks—even if he wins the appeal, he will win as to the cross-claims but will have already lost a substantial benefit of that victory by having been forced to try Respondents' claims.

Ramaci filed this petition for supersedeas only to avoid having the circuit court render moot the relief to which he is entitled before this Court has the opportunity to hear arguments and rule on the merits of his appeal. Ramaci is not scared of a trial. Rather, Ramaci wants to try only claims that are properly before the circuit court. Accordingly, although Ramaci does wish to prevent Ulm's cross-claims from reaching trial—because they are improper—the cross-claims cannot be bifurcated or severed from Respondents' claims because bifurcation/severance and proceeding with a trial of Respondents' claims alone would moot Ramaci's irreparable harm argument. A trial of the Respondents' claims, therefore, would be contrary to South Carolina law. *See Arnal*, 371 S.C. at 519, 641 S.E.2d at 422 (“Under Rule 205 and . . . Rule [241], the lower court may not act or issue orders that affect an issue on appeal.”); Rule 205, SCACR; Rule 241, SCACR. This court must grant supersedeas to prevent the trial from occurring while the appeal is pending.

CONCLUSION

This court should grant Ramaci's petition for a writ of supersedeas and order the circuit court to stay proceedings until this appeal is finally resolved.

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Columbia, South Carolina

May 12, 2017

EXHIBIT A

(Consent Motion and Order for Substitution of Counsel)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

BYRDNEST, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, and)
WESLEY NAU,)

Plaintiffs,)

JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, and BILLY ULM,)

Defendants.)

Civil Action No. 2013-CP-10-4874

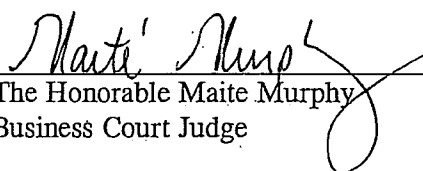
**CONSENT MOTION AND ORDER
FOR SUBSTITUTION OF COUNSEL**

FILED
2015 OCT 19 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

The law firm of Nelson Mullins Riley & Scarborough LLP, Cory E. Manning, and Adam J. Hegler, hereby move this Court for an Order substituting the undersigned counsel as attorneys of record for Defendants John Ramaci and Haverly Ramaci and allowing Julianne Farnsworth, of Farnsworth Law Firm LLC, to withdraw as counsel for Defendants in the above-referenced matters. As indicated by signature below, Julianne Farnsworth consents to this request. Counsel for all parties have been consulted about this motion.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Nelson Mullins Riley & Scarborough LLP, Cory E. Manning, and Adam J. Hegler be substituted for Julianne Farnsworth, of Farnsworth Law Firm LLC, as the attorneys of record for Defendants and that Julianne Farnsworth, be relieved of any further representation of Defendants John Ramaci and Haverly Ramaci in these matters.

IT IS SO ORDERED.


The Honorable Maite Murphy
Business Court Judge

Charleston, South Carolina

~~September~~ ^{Oct} 13, 2015

WE SO MOVE:

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September 11, 2015

WE CONSENT:

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WE SO MOVE:

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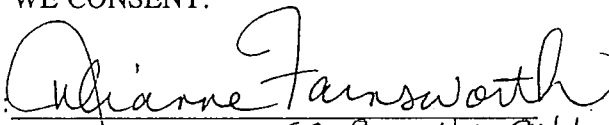
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September 11, 2015

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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SC Court of Appeals

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Respondents,

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Billy Ulm,

Defendants,

Of whom

Johnathan Ramaci is,

Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Reply in Support of Petition for Writ of Supersedeas

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May 12, 2017

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

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MAY 12 2017

SC Court of Appeals


RE: Byrdnest, LLC, et al v. Johnathan Ramaci, et al. (Civil Action No. 2013-CP-10-04874)
Appellate Case No. 2017-000529
Our File No. 47061/01500

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of a Reply in Support of Petition for Writ of Supersedeas in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of this Reply.

Very truly yours,



A. Mattison Bogan

AMB:eh

Enclosures

cc: Benjamin A. Traywick, Esquire
Rutledge Young III, Esquire
Julie Lauren Moore, Esquire
The Honorable Julie J. Armstrong