

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Appellate Case No. 2017-001379
Lower Case No. 2013-CP-23-01810

RECEIVED

AUG 07 2017
SC Court of Appeals

John D. Hatcher, Rachel Shaluly, James F. Gilbert,
Molly A. Miller, and Michael Stheney, individually
and as members of the Architectural Committee of
Mill Creek Estates,

Respondents,

v.

Ronald J Ferguson, Ronald E. Ferguson and
Susan M. Ferguson,

Appellants.

MOTION TO REINSTATE APPEAL

COMES NOW, the appellants, who having been informed of an Order granting Respondents' Motion to Dismiss, moves of this Court for an Order to Reinstate or in the alternative acknowledgment satisfying rule 242, SCACR.

RULE 221(c)

Pursuant to Rule 221(c), SCACR, appellants would assert the matters in question have been ripe for disposition as a matter of law, and the failure of the Courts to enforce the applicable precedents and constitutional requirements the matter would be disposed.

ORDER DISMISSING APPEAL

It would appear that a single member of the appellate judiciary reviewed Respondents' Motion

to Dismiss and entered an Order granting same. It appears the Court relied on two precedents to conclude the matters are interlocutory. What seems to have escaped review is the conduct of the Court was in violation of not only state law, but also federal law. As stated by former South Carolina Supreme Court Chief Justice Jean Hoefler Toal, a trial court's interference with discovery effectively denies a party their due process rights.

"A petition for certiorari is appropriate to review a discovery order when the 'order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal.' "

Bearing in mind that the lower court judge and counsel for respondent have already been shown to have engaged in ex parte communications affecting the proceedings in *Ferguson v. Mill Creek, LP*, CA No. 2015-00593, LC No. 2013CP2305102, (Order recalling remittitur issued June 16, 2017) we will review a few other notables.

The same trial judiciary and counsel have also been implicated in ex parte communications and discovery order from October 29, 2014 – in violation of 9 USC §§ 15, 16 (which provides for right of interlocutory appeal) and 28 USC §1446(d) (Which affects whether a state court is vested with jurisdiction). The parties in question have also been found to have been involved in violations related to S.C. Code §§ 40-59-190, 40-1-190 which carry criminal penalties as defined in § 40-59-200, and separate lower court finding the State has an obligation to investigate the conduct of the parties and return findings. In recognition of Justice Toal's penning that judiciary who violate a parties due process rights, it is well understood that judiciary do not enjoy immunity for the intentional violation of established or laws; with injunctive relief readily available to victims.

While numerous courts had espoused cases with similar holdings as those cited in the Order of July 21, 2017, in this matter, it is clear that federal and multiple surrounding states have begun recognizing the constitutional limitations of judiciary and appellate court duties under the judicial

cannons to limit harm against society by trial court judiciary who have come to generally operate without restraint or liability.

Using Tennessee as an example, Rule 10B, Disqualification or recusal of a judge:

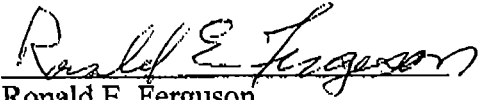
1.2. While the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

2.01. If the trial court judge enters an order denying a motion for the judge's disqualification or recusal, or for determination of constitutional or statutory incompetence, the trial court's ruling either can be appealed in an accelerated interlocutory appeal as of right, as provided in this section 2, or the ruling can be raised as an issue in an appeal as of right, see Tenn. R. App. P. 3, following the entry of the trial court's judgment.

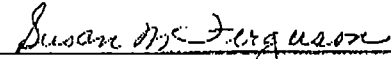
Similar to several other states who have since moved from the precedents espoused in *Townsend* and *Waddell*, have noted a duty under the judicial canons to address misconduct by a trial court – especially when same affects established rights or the parties.

In this case we have three additional known elements. Going back to October 2014, the judiciary engaged in hearings and issued an order that is contrary to federal law. Hence, under South Carolina law the order is null and void – unenforceable. Any actions derived therefrom also void. See *Davis v. Davis*, 267 S.C. 508, 229 S.E.2d 847 (1976) (concluding that all orders issued by state court after proceeding was removed to federal court were void); *Peoples Trust & Sav. Bank v. Humphrey*, 451 N.E.2d 1104 (Ind. Ct. App. 1983) (noting that, during the pendency of the removal petition, any proceedings by the state trial court are void until remand by the federal court); 77 C.J.S. Removal of Cases § 154 (Supp. 2013) ("Proceedings in the state court after the requirements for removal are met are not merely erroneous, but null and void. No subsequent pleadings can be filed in the state court." (footnotes omitted)).

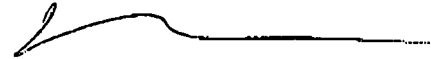
Second to that we have an instance of the trial court issuing (void) discovery orders combining cases which also partly involve parties subject to contracts under the Federal Arbitration Act. First, 9 USC sections 1-14 supercede state law and require arbitration of certain matters and divest the court of



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I certify, that on this date, I served a copy of the Motion to Reinstate, dated 08/05/2017 on Plaintiff's
Attorney of record by

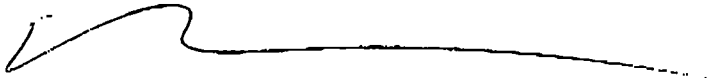
_____ delivering it to him/her personally; or,

_____ mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an
envelope with sufficient postage affixed, addressed as follows; or,

X mailing it to the address indicted by their counsel of record in the Summons as follows:

Rodney M. Brown
210 S Main St
Fountain Inn, SC 29644

This the 5th day of August , 2017.



Ronald Ferguson