THE STATE OF SOUTH CAROLINA
In the Court of Appeals



APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Doyet A. Early III, Circuit Judge

Appellate Case No. 2018-002068

Wells Fargo Bank, N.A.,.....Respondent,

v.

Michael G. Morgan; Margaret H. Fitch, M.D.; Eric J. Olig; South Carolina Department of Revenue; Linda Lawrence Bowen; Defendants,

Of whom Michael G. Morgan is the.....Appellant.

# REPLY TO RETURN TO MOTION TO DETERMINE VALIDITY OF ORDER SUBJECT OF APPEAL

Appellant hereby submits this reply to the Respondent's return to Appellant's motion for this court to determine the validity of the November 2, 2018, order subject of this appeal.

Respondent implies that Appellant has brought this motion for delay purposes. Quite the opposite is true. If what Appellant sought was delay, it would make no sense for Appellant to have brought the instant motion, which, if granted, could result in the dismissal of his own appeal that might otherwise take a year or more to conclude. Appellant brought this motion in an effort to *avoid* the parties and the court having to go through the appeal process if the November 2, 2018, order is void.

The Respondent claims that the Aiken County Clerk of Court erroneously filed the October 29, 2018, order that granted Appellant's motion to reconsider and referred this case to the master-in-equity. The Aiken County Clerk of Court did not do that. As page 6 of that order itself shows, it was electronically signed and filed by the Honorable Doyet A. Early III, and the clerk of court simply implemented his filing of the order. See Rule 6(a), South Carolina Electronic Filing Policies and Guidelines.

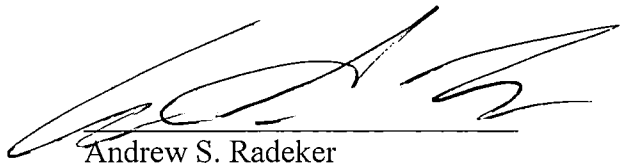
Respondent contends that the November 2 order "reflects the will of the Circuit Court"; however, that is, at best, only an inference that Respondent has drawn from an email message sent by the circuit judge's law clerk, not even by the circuit judge. Indeed, nothing in the record contains any statement by the circuit judge, who had already referred the case to the master-in-equity, that he filed the first order by mistake or that he at any point even intended to change the decision rendered in the first order. All of what Respondent argues about the time in which a judge may *sua sponte* alter or amend an order falls flat, as there is nothing in the record to indicate that the November 2 order was intended to alter, amend, or in any way modify the October 29 order. Respondent has no factual material in the record upon which to base its contention that "the Circuit Court realized the wrong order had been entered and corrected the error on its own initiative[.]" This is not a case of a circuit judge deciding *sua sponte* to grant a new trial under Rule 59(d), SCRCP.

What is before the court is a case in which the circuit court entered an order that made a decision and concurrently vested subject matter jurisdiction in the master-in-equity – thus taking such jurisdiction away from the circuit court. Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 75, 773 S.E.2d 607, 616 (Ct. App. 2015);

Normandy Corp. v. S.C. Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009); Smith Cos. of Greenville, Inc. v. Hayes, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993); Bonney v. Granger, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987). After that, once jurisdiction had vested in the master-in-equity, the same circuit judge who had sent the case to the master-in-equity purported to rule the opposite way on the motion to reconsider he had already granted – but not to change his earlier decision and *not to undo the reference to the master*. Something other than the passage of ten days had happened that divested the circuit court of jurisdiction: reference to the master-in-equity. For a different reason, the November 2 order is just as much a nullity as was the order subject of the Supreme Court's opinion in Leviner v. Sonoco Products Company, 339 S.C. 492, 494, 530 S.E.2d 127 (2000). Just as the Supreme Court recently observed when a circuit judge had purported to make a ruling in a case after sending the case to arbitration, the circuit judge here simply lacked jurisdiction to issue the second order. See Ex Parte Madison Cone v. Hood, App. Case No. 2018-001008 (S.C. Sup. Ct. order dated Dec. 18, 2018, published Dec. 19, 2018) (Shearouse Adv. Sh. No. 50 at 22-23).

WHEREFORE Appellant prays for an order determining the November 2, 2018, order subject of this appeal to be void and, accordingly, dismissing this appeal, or, alternatively, for the court to issue a ruling giving guidance on how the parties are to deal with the issue of the validity of this order.

Respectfully submitted,



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January 3, 2019

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PROOF OF SERVICE

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I certify that I served the foregoing reply to return to motion to determine validity of order subject of appeal in this case by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

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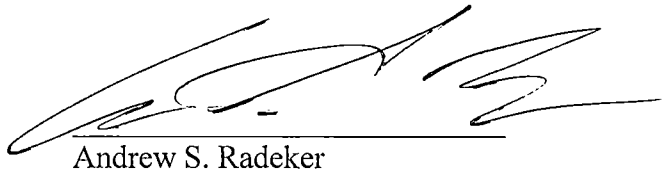
Respectfully submitted,



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