

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001304

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DEC 21 2018
SC Court of Appeals

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,.....Appellant

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC,
Allstar Financial Group, Inc., and Tower Street
Capital Management, Inc.

Of Whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are.....Respondents

INITIAL BRIEF OF MADISON CONE, INDIVIDUALLY AND ON BEHALF
OF TOWER STREET CAPITAL MANAGEMENT, INC.

SOWELL & DuRANT, LLC

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
1325 Park Street, Suite 100
Columbia, South Carolina 29201
803-722-1100
bsowell@sowelldurant.com
bdurant@sowelldurant.com

Attorneys for Appellant

STATEMENT OF THE ISSUE ON APPEAL

- I. DID THE TRIAL COURT ERR IN ISSUING AN ORDER STAYING THE ARBITRATION OF THIS CASE?

ARGUMENT

I. THIS APPEAL IS MOOT BASED ON THE SOUTH CAROLINA SUPREME COURT'S ORDER DATED DECEMBER 18, 2018.

On December 18, 2018, the South Carolina Supreme Court ordered as follows:

The Honorable Robert E. Hood granted the defendants' motion to compel arbitration on certain claims and to stay the circuit court proceedings on the remaining claims in this matter. During discovery, the arbitrator appointed a special referee to review certain documents *in camera* to determine if they were discoverable. The special referee issued an order finding certain of the documents discoverable and requiring defendants to produce the documents to petitioner. Defendants appealed the special referee's order to the court of appeals. They also asked Judge Hood to lift the prior stay of the action in circuit court and to enjoin the arbitration proceedings while defendants' appeal from the special referee's order proceeded. The court of appeals dismissed the appeal from the special referee's order as interlocutory. We have denied defendants' request for a writ of certiorari to review the court of appeals' decision.

Petitioner now asks this Court to issue a writ of mandamus to compel Judge Hood to rescind and vacate the orders granting defendants' motion to lift the stay and staying the arbitration proceedings pending defendants' appeal of the special referee's order.

Petitioner has not shown he is entitled to a writ of mandamus in this matter as Judge Hood's decision was not a ministerial act. *See Willimon v. City of Greenville*, 243 S.C. 82, 87, 132 S.E.2d 169, 171 (1963) (to obtain a writ of mandamus, the petitioner must show: (1) a duty of the respondent to perform an act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) the lack of any other legal remedy). Accordingly, we deny the petition for a writ of mandamus.

However, because the case had been sent to arbitration, Judge Hood did not have jurisdiction to lift the stay and issue a preliminary injunction. *See Main Corp. v. Black*, 357 S.C. 179, 181, 592 S.E.2d 300, 301-02 (2004) (when a case is sent to arbitration, the circuit court is divested of jurisdiction over the case). Accordingly, Judge Hood's orders issued without jurisdiction are void and are hereby vacated. *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013) (a judgment is void if a court acts without jurisdiction); *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 615, 815 S.E.2d 780, 782 (Ct. App. 2018) (a court has no discretion to perpetuate a void judgment).

Ex Parte Madison Cone, individually and on behalf of Tower Street Capital Management v. The Honorable Robert E. Hood, S.C. Sup. Ct. Order dated December 18, 2018 (Shearouse Ad. Sh. No.

50). Because the orders at issue in this appeal have been rendered void and vacated, this appeal is moot.

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Bess J. DuRant (SC Bar No. 77920)

1325 Park Street, Suite 100

Columbia, South Carolina 29201

803-722-1100

bsowell@sowelldurant.com

bdurant@sowelldurant.com

Attorneys for Appellant

December 19, 2018

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Of Whom Atlantic Intermediaries, LLC and
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PROOF OF SERVICE

I certify that I have caused the service of the Initial Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2018, to their attorneys of record at the addresses listed below.

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202
(803) 256-9664
EricBland@BlandRichter.com

Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401
(843) 573-9900
ronnie@blandrichter.com

Attorneys for Respondents Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC

SOWELL & DuRANT, LLC



Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
1325 Park Street, Suite 100
Columbia, South Carolina 29201
803-722-1100
bsowell@sowelldurant.com
bdurant@sowelldurant.com

Attorneys for Appellant

S O W E L L + D U R A N T

December 19, 2018

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

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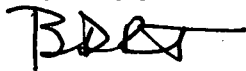
Re: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
v. Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar Financial Group, Inc. and
Tower Street Capital Management, Inc.
Appellate C/A No.: 2018-001304
C/A No.: 2016-CP-40-7402
Our File No.: 6820/1500

Dear Ms. Kitchings:

Enclosed for filing please find the Initial Brief of Respondent and Proof of Service. We have not filed a Designation of Matter since as stated in our Initial Brief, we believe the recent Supreme Court order, which is enclosed, renders this appeal moot. The Supreme Court order provides that the orders at issue in this appeal are void and vacated.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Very truly yours,



Bess J. DuRant

BJD:aak

Enclosures

cc: Eric S. Bland, Esquire
Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire

BESS J. DURANT

Member

sowelldurant.com

803.722.1100



803-722-1102 (direct)

bdurant@sowelldurant.com

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Columbia, SC 29201

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