

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2015-CP-10-05463

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The Boathouse at Breach Inlet, LLC, by and through its member,
Laurence O. Stoney, Jr. Respondent,

v.

Richard S.W. Stoney, individually and as member-manager of
The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC

and

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr. and Gregory G.
Holmes, Third-Party Intervenors,

of whom

Richard S. W. Stoney is Appellant.

MOTION TO DISMISS APPEAL AND REQUEST FOR EXPEDITED RULING

Defendant Richard S. W. Stoney ("Richard Stoney") has prematurely filed a Notice of Appeal from orders stemming from the trial court's preliminary rulings in this derivative action. On its face, the underlying order makes clear that these are preliminary rulings only and that the trial court is not making any findings of fact. In issuing these orders, the trial court did not make any certification of finality pursuant to Rule 54(b), SCRPC.

EXHIBIT 6

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1 *THE COURT:* ---well, we disagree with my finding
2 on that issue because I found that there was a
3 legitimate purpose in bringing the action, that is to
4 -- on behalf of the corporation not on behalf of
5 himself individually. That whatever personal problems
6 that might exist because you Plaintiff, a lot of things
7 in the record, there is a lot of discord going on.

8 But, the fact of the matter, the ability to
9 make an election. I know that you disagree with that

10 *MR. BARR:* Yes, Your Honor.

11 *THE COURT:* But, that's a finding that I have
12 made. So -- but factors may exist that may cause that
13 to change. I don't know. We didn't hear the entire
14 case.

15 *MR. MCQUILLIN:* Your Honor's point is very well
16 taken that standing at -- I wish I had thought of this
17 and briefed this issue -- standing is never decided
18 with finality. And, a perfect example in a derivative
19 case like this, is in order to maintain a derivative
20 action, you've got to be a member of the company. And,
21 so if Mr. Stoney decides to sell his membership
22 interest, he lacks standing.

23 *THE COURT:* It's a continuous---

24 *MR. MCQUILLIN:* ---yes, correct. And, then number
25 two, if he decides look, I'm sick of pursuing this

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1 the company throughout the term of the litigation. He
2 has to always be a member of the company to bring a
3 derivative action.

4 Those are factors. They are subject to change.
5 Factors and new evidence can surface during the course
6 of discovery that could ultimately result in the Court
7 making an additional amended, modified, ruling in the
8 final ruling at the trial on the merits.

9 And, we're not asking the Court to modify it's
10 order. We agree with Your Honor, your order is clear
11 on it's face. It makes preliminary findings of facts
12 and states that it's a preliminary hearing.

13 The reason that we are before Your Honor today
14 talking about this, is Defendants in their motion to
15 reconsider say that they have no choice but to treat
16 Your Honor's order as a final order. And, so all we're
17 asking is that you clarify for the Defendants that it
18 was not that because otherwise 30 days from now we are
19 going to be getting a notice of appeal and this
20 thing---

21 *THE COURT:* ---well, if it were a final order than
22 I would do a form four and the case is over without any
23 determination of any of the major issues which is any
24 issue of liability it manages.

25 *MR. BARR:* Well, if -- that's assuming you granted

1 our motion there is a final finding no standing.

2 THE COURT: No standing.

3 MR. BARR: Right.

4 THE COURT: If there is no standing, then no one
5 representing -- maintaining any action against the
6 corporation and the case would be over. That's not
7 obviously not what I determined.

8 Well, first of all, I didn't -- but, I was
9 careful to couch my terms in that way without reaching
10 any findings on these issues, of course, sort of like
11 when you have a bond hearing and someone is charged
12 with murder and is trying to get out jail. I say, I'm
13 not sure whether you committed the murder or not, but
14 it -- I'm not letting you out to jail because it
15 appears that you created unreasonable risk of harm --
16 and I guess that Defendant will say well, the Judge
17 thinks I'm a big risk and I don't want him to be the
18 Judge on my case.

19 It's a balance that you have to walk in all
20 these situations. You know, so I made a finding on
21 what appeared to be based on what I heard understanding
22 that I have not heard the case. Certainly I understand
23 that with regards to Hollerback(sp) affidavit he was
24 here and ready and prepared to testified and though you
25 disagree with part of his -- I guess, all of his

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