

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2019-001814

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NOV 18 2019
SC Court of Appeals

Shaul Levy and Meir Levy,.....Appellants,

vs.

Carolinian, LLC,.....Respondent.

BRIEF ON APPEALABILITY

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STATEMENT OF THE CASE

In this case, knowledge of the procedural history is critical to understanding why the challenged order is immediately appealable. Thus, although some of the events discussed in this Statement of the Case are not directly germane to the merits of the issue on appeal, this full recitation is necessary to address the Court's question regarding appealability.

This appeal arises from an order denying Appellants' Motion for Contempt (filed on July 1, 2019) and the subsequent denial of Appellants' Motion to Reconsider (filed on October 3, 2019). While typically the denial of a Motion for Contempt might not be immediately appealable, this case's unique procedural posture ultimately makes the Court's ruling a final order in this matter, thereby allowing for – and, indeed, requiring – an immediate appeal.

This case originated in 2012 as a dispute between the Appellants Shaul Levy and Meir Levy (“the Levys”) and the Respondent Carolinian, LLC, (“Carolinian”) related to Carolinian's attempt to compel the purchase and sale of the Levys' distributional interest in Carolinian that they obtained from Bhupendra Patel (“Patel”) following a judicial foreclosure sale. The issue for the Levys' appeal was the trial court's determination that Carolinian could compel the purchase and sale of the Levys' distributional interest in Carolinian. After certifying the case for direct review, the Supreme Court issued its opinion, *Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014), in which the Court reversed the trial court's ruling and found in the Levys' favor on the controlling legal issue. Following the denial of a rehearing petition, the Supreme Court remitted the case to the Horry County Clerk of Court.

After the remittitur, the Court conducted a bench trial based on stipulated facts. Following that trial, the court granted the Levys some, but not all, of the declaratory and injunctive relief they requested in their Verified Complaint (“Injunction Order”). The Injunction

Order, permanently restrains Carolinian from doing the following: (a) maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Appellants, (b) making unauthorized and wrongful distributions of CN Resort funds in a manner inconsistent with or adverse to the Appellants' distributional interests, (c) taking any actions to sell or attempting to force the sale of Appellants' distributional interest in CN Resort; and (d) taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

Carolinian appealed the Injunction Order, and this Court affirmed in an opinion filed on March 7, 2018. In its opinion, the Court gave the following explanation:

[Levys] and [Carolinian] remain in an ongoing adversarial relationship...[t]hus, there is a real and substantial risk that without the circuit court's order, [Carolinian] will continue to seek ways to circumvent or undermine [Levys'] distributional interest. The record illustrates that the time of the second non-jury trial, [Carolinian] was still attempting to use the language of the Operating Agreement to interfere with the Levy's distributions.

On September 21, 2018, the Supreme Court denied Respondent's Petition for Writ of Certiorari. The Injunction Order became final at that point, and it continues to govern many aspects of the ongoing relationship between Appellants and Respondent.

After that appeal ended, Appellants asked Respondent to voluntarily produce documents to ensure Respondent was complying with the Injunction Order. Ultimately, Appellants were given limited access to inspect certain records, including a copy of the Asset Purchase Agreement by and between CN Resort, LLC, several other entities, and WVR South Carolina, LLC ("WVR Transaction"). Appellants suspected that some aspects of that transaction might have violated the Injunction Order, and they requested more complete access to the full records

of the transaction to determine if those suspicions were warranted. Respondent denied that request.

When it became clear that Respondent would not voluntarily revisit or reverse its stance on that issue, Appellants issued deposition notices and subpoenas for certain managers of Respondent and subpoenas *duces tecum* to Strand Capital Group, LLC (management company for Respondent), King Cunningham, LLC (law firm that handled the closing of the WVR Transaction); Daniel Professional Group (accounting company that handles Respondent's accounting); and WVR South Carolina, LLC. Appellants made those efforts in order to gain information that would allow them to determine whether or not Respondent was obeying the Injunction Order.

Respondent objected to the deposition notices and subpoenas, and Respondent's counsel instructed all recipients of the subpoenas to await an "Order of the Court." Appellants then filed a Motion for Contempt related to Respondent's actions in "preventing [the Levys] access to necessary financial information in order to properly evaluate [Respondent's] treatment in the WVR Transaction and compliance with the [Injunction Order] and for an Order allowing the [Appellants] certain discovery into these issues."

On July 11, 2019, the Honorable Larry Hyman issued an Order denying Appellants' Motion for Contempt. Appellants filed a timely Rule 59(e) Motion to Alter or Amend this Order. On October 3, 2019, Judge Hyman denied that motion. That decision ended the proceedings in the trial court, as there was no longer any active litigation between the parties. Thus, Appellants commenced timely appeals of the two orders.

ARGUMENT

South Carolina's appellate courts have jurisdiction to hear "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions." S.C. Code Ann. §14-3-330(1) (emphasis added). The Supreme Court has provided the following analysis as to the meaning of the term "final judgment":

This Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs . . . and enforcement of the judgment." *Black's Law Dictionary* 919 (9th ed. 2009).

Bone v. U.S. Food Serv., 404 S.C. 67, 79, 744 S.E.2d 552, 558-59 (2013). *See also Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Health & Env't'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.").

In the present case, the challenged orders are final judgments. By entering those orders, the circuit court concluded the current litigation involving Appellants and Respondent. Appellants filed a Motion for Contempt in order to enforce the previously entered Injunction Order, and the circuit court denied that motion. At that point, the case returned to its previous status as completed and no longer active.

Appellants have no choice but to appeal the challenged orders now. As indicated above, the action giving rise to this appeal is over, and there will never be any other opportunity to appeal. This is not the typical situation in which a party can challenge an order relating to a


discovery issue after a final judgment has been filed at some later time. Rather, this is a scenario in which the denial of the Motion for Contempt is the final order. Appellants must pursue their appeal now because they will never have any future opportunity to do so. Therefore, the challenged orders are immediately appealable.

Significantly, Respondent agrees that the orders are immediately appealable.¹ Although Respondent obviously disagrees with the merits of the appeal, it concurs that the challenged orders are “final judgments” from which an appeal may be filed under §14-3-330(1) and that no future proceedings are anticipated. This further demonstrates the need for an immediate appeal.

CONCLUSION

For these reasons, the challenged orders are immediately appealable, and this Court should allow the appeal to proceed in the normal course until a ruling on the merits.

Respectfully submitted,



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Attorneys for the Appellants

November 18, 2019

¹ Respondent does not necessarily agree with, or join in, all of the wording of the Statement of Facts as set forth in this brief. However, Respondent does agree that the procedural history stated in that section is accurate.

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PROOF OF SERVICE OF
APPELLANTS' BRIEF OF APPEALABILITY

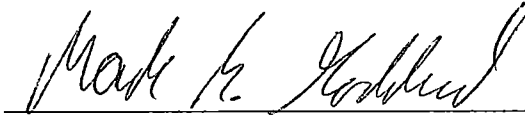
I certify that I have served the Appellants' Brief on Appealability on the Respondent via U.S. Mail, on November 18, 2019, to its attorneys of record at the address listed below.

BENJAMIN ALBERT BAROODY, ESQUIRE
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[SIGNATURE PAGE TO FOLLOW]

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November 18, 2019



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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Shaul Levy and Meir Levy, Appellants, v. Carolinian, LLC, Respondent
Appeal from Horry County Court of Common Pleas
Appellate Case No.: 2019-001814
TPGL File No.: 11816.00101

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellants' Brief on Appealability and Proof of Service in connection with the above-referenced matter. Please return one copy to our courier.

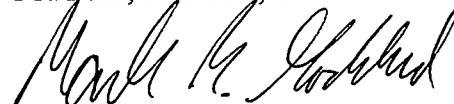
By copy of this letter I am serving a copy of same on all counsel of record.

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

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Mark B. Goddard

MBG:cag
Enclosures as stated
cc: Benjamin A. Baroody Esq. (w/encls.)

TPGL 9938528v1