

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Appellate Case No.: 2020-001030

SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas, Ninth Judicial Circuit
Hon. Bentley D. Price, Circuit Court Judge

2020-CP-10-00209

Maybank 2754, LLC, Appellant,

v.

Eugene Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11,1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe Respondents.

**ALL RESPONDENTS' MOTION TO DISMISS APPEAL AND FOR COSTS
AND
MEMORANDUM IN SUPPORT THEREOF**

Respondents Eugene Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11,1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC

("Respondents") respectfully move the Court to dismiss this appeal of the trial court's orders (1) dated June 30, 2020 denying Appellant's Motion for Temporary Injunction and granting Respondents' Motion to Refer and (2) dated July 13, 2020, denying Plaintiff's Motion for Reconsideration, denying Plaintiff's Motion for Temporary Injunction and again referring all pre-trial matters, including previously filed motions, to the Master-In-Equity, with finality (the "Orders") because this appeal is moot. On August 17, 2020 after Plaintiff filed its notice of appeal, the Master-In-Equity conducted a status conference, which Appellant participated in, and, on the following day, the Master issued an Order Returning the Case to the Circuit Court. That August 18, 2020 Order specifically concludes "that the matter should be returned to the circuit court for disposition under Rule 28 and 53(b) and that this ruling would moot Plaintiff's appeal." (**Exhibit A**).

This appeal, therefore, is mooted by the Master-In-Equity's August 18, 2020 Order Returning Case to Circuit Court that explicitly provides its "ruling would moot Plaintiff's appeal." Yet, even in light of the August 18, 2020 Order, Appellant still maintains its intent to appeal. Because the issue raised on appeal is mooted by the August 18, 2020 Order, Respondents respectfully request this Court dismiss Appellant's appeal and move for costs and fees against the Appellant pursuant to Rule 222, SCACR.

DISCUSSION

The specific litigation underlying this appeal is in its infancy; nonetheless, certain parties and the property itself have a storied history. This case involves various claims by Maybank 2754, LLC ("Maybank") that it an easement right over Beach Fenwick's

adjoining 22 acre property. (“Subject Property”). Michel F. Laplante (“Laplante”) is the majority owner of Plaintiff Maybank and serves as its manager.

Laplante, certain members of his family, and Laplante’s business entities have a “contentious” and litigious history with Respondent Eugene Zurlo (“Zurlo”). In 1999, Respondent Eugene J. Zurlo Living Trust Dated December 11, 1997 (“Zurlo Trust”) and Laplante formed Penny Creek Associates, (“PCA”) to purchase and improve approximately 60 acres of land located along Maybank Highway on Johns Island, South Carolina. Laplante and his family were 50% members of PCA; Laplante and the Zurlo Trust were each 50% voting members. Until October 2013, PCA was the sole member of Maybank. On October 7, 2013, although the PCA Operating Agreement required both Trustees of the Zurlo Trust to sign documents involving interests in PCA real estate, Zurlo¹ purportedly executed a Resolution of the Sole Shareholder of PCA (the “Resolution”) in which PCA approved the transfer of its membership interest in Maybank to the “Laplante Family” and agreed to provide a thirty-foot private right of way access easement over the “Subject Property” at some undefined point in the future – the location and condition of which would “be mutually agreed upon at the completion of that certain road known as Pitchfork Road.” It is undisputed that the Resolution was not recorded, Pitchfork Road has not been completed, and there is no identifiable, described, or recorded easement over the Subject Property.

¹ At the time of the referenced Resolution, PCA was the sole member of Maybank 2754. The Resolution, however, was not properly executed by PCA, but rather was executed by Laplante and purportedly by Eugene Zurlo; not the Zurlo Trust.

In December 2013, Zurlo commenced a derivative action against PCA and others, including Laplante, seeking a judicial dissolution of PCA. In 2014, Wells Fargo commenced a foreclosure action against PCA and others, including Laplante, seeking to foreclose its mortgage upon a large tract of property from which the Subject Property was later sold to Beach Fenwick. The derivative action was resolved, as a result of which the Zurlo Trust received a promissory note from PCA secured by a mortgage on the Subject Property. The Zurlo Trust assigned this note and mortgage to 1776, LLC (“1776”).

In June 2017, after years of litigation, the Master-In-Equity for Charleston County issued an Order and Judgment of Foreclosure and Sale (“Foreclosure Order”) in favor of Wells Fargo. In August 2017, 1776 purchased the real property at issue in the foreclosure action including the Subject Property. 1776 subsequently sold the Subject Property to Beach Fenwick in December 2019.

On January 13, 2020, Appellant filed its Complaint against Respondents, alleging, *inter alia*, Respondents denied Maybank 2754’s right to a thirty (30’) private right of way easement upon the completion of Pitchfork Road. The Complaint includes causes of action for declaratory judgment for an easement, civil conspiracy, declaratory judgment for restrictive covenant and temporary injunction.

Subsequently, Respondents filed the following motions:

- 1) February 17, 2020 – Defendants Beach Fenwick, LLC and The Beach Co.’s (“Beach Entities”) Motion to Dismiss;
- 2) February 17, 2020 – Beach Entities’ Motion to Refer to the Master-In-Equity;
- 3) February 20, 2020 – Defendant Seamon Whiteside Associates, Inc.’s (“Seamon Whiteside”) Motion to Dismiss;

- 4) February 21, 2020 – Defendant 1776 LLC’s (“1776”) Motion to Dismiss;
- 5) February 21, 2020 –1776’s Motion to Refer to the Master-In-Equity;
- 6) March 10, 2020 – Defendants Eugene J. Zurlo, individually and as co-trustee of Eugene J. Zurlo Living Trust’s (“Zurlo Parties”) Motion to Refer to the Master-In-Equity; and
- 7) March 11, 2020 – Plaintiff Maybank 2754’s (“Maybank”) Motion for Temporary Injunction.

On June 16 and June 25, 2020, the Circuit Court heard oral arguments on Appellant’s Motion for Temporary Injunction, and Respondents’ Motion to Refer to the Master in Equity but not hear or rule on the Motions to Dismiss.²

On June 30, 2020 the Court issued its Form 4 Order with the following Statement of Judgment:

Plaintiff Maybank 2754 LLC’s Motion/Temporary Injunction is denied. Defendant Beech Company’s Motion to Dismiss and Refer to the Master, along with all outstanding motions to refer to the master, are granted. See **Exhibit B**.

Appellant filed a Rule 59 Motion to Reconsider on July 1, 2020. The Motion was denied by Order of the Court on July 13, 2020. See **Exhibit C**. In its July 13, 2020 Order, the Circuit Court reiterated its holding in the June 30, 2020 Order finding:

The Plaintiff’s Motion for a Temporary Restraining Order is Denied, the Plaintiff’s Motion to Reconsider is denied, and the entire case and *all the pending Motions are referred to the Master-in-Equity, pursuant to and consistent with South Carolina Rules of Civil Procedure, Rule 53. All pre-trial matters, including the parties’ motions, shall be and are hereby referred to the Master-In-Equity, with finality, with appeal directly to the South Carolina Court of Appeals or the South Carolina Supreme Court. (emphasis added).* See **Exhibit C**.

² The Circuit Court Ruled on Motions (2), (5), (6), and (7) above.

Appellant filed a Notice of Appeal on July 15, 2020 on the grounds that the June 30 and July 13 Orders “refer the entire case to the master [-In-Equity]” and are, therefore “immediately appealable because they affect the mode of trial, a substantial right.” However, as explained below, the Orders do not affect the mode of trial but, instead, rightly refer “...all *pending motions* and all *pre-trial* matters ... to the Master-In-Equity” “*pursuant to and consistent with the South Carolina Rules of Civil Procedure, Rule 53.*” (emphasis added). As a result, the Master-In-Equity conducted a status conference on August 17, 2020, pursuant to which the Court issued a Form 4 “Order Returning the Case to the Circuit Court” and concluded “the matter should be returned to circuit court for disposition under Rule 38 and 53(b) and that this ruling would moot Plaintiff’s appeal.” **(Exhibit A).**

Even after the August 18, 2020 Order, Appellant continues with its appeal as evidenced by its letter to the South Carolina Court of Appeals Clerk, Ms. Kitchings, and its Motion to Order the Transcript Outside the Filing Deadlines of Rule 207. **(Exhibit D, E).** Yet, Appellant does not assert any grounds for appeal different than what it filed in its July 15, 2020 Notice.

The Master-In-Equity’s Order Returning the Case to Circuit Court is unambiguous and clear in its holding. It found that “[Maybank] objects to the court’s jurisdiction as it has filed a Notice of Appeal of the Order of Reference on the basis of its Mode of trial for which Plaintiff demands trial by jury. . . . This court concludes that the matter should be returned to the circuit court for disposition under Rule 38 and 53(b) and that this ruling would moot Plaintiff’s appeal.”

“[M]oot appeals result when intervening events render a case nonjusticiable.” *McClam v. State*, 386 S.C. 49, 55, 686 S.E.2d 203, 206 (Ct. App. 2009) (citing *Sloan v. Greenville County*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct.App.2003)). A matter becomes moot “when judgment, if rendered, will have no practical legal effect upon [the] existing controversy.” *Collins Music Co. v. IGT*, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005) (citing *Curtis v. State*, 345 S.C. 557, 567–68, 549 S.E.2d 591, 596 (2001)).

The issue Maybank raises in its Notice of Appeal is whether the Circuit Court’s Order Referring the matter to the Master-In-Equity affects its “mode of trial” or its substantial rights. The Master-In-Equity subsequently sent this matter back to circuit court and, therefore, Appellants “mode of trial” is no longer affected. This intervening event rendered this appeal nonjusticiable. Indeed, the Master-In-Equity explicitly held this appeal moot. Appellant’s relief sought by this court is “impossible” because it already enjoys the relief requested.

Respectfully, Respondents request this Court dismiss the appeal as moot because an intervening act, the Master-In-Equity’s Order, granted the same relief to Appellant as Appellant seeks pursuant to this appeal, thus rendering the matters at issue nonjusticiable and non-appealable. Respondents requests costs and fees as applicable under SCAR Rule 222.

If this Court allows Appellant’s appeal to move forward, which it should not, Respondents respectfully this Court provide that all matters not affected by the appeal move forward before the Circuit Court. Alternatively, because Beach Fenwick is currently in the process of developing the Subject Property. Beach Fenwick respectfully requests

this Court establish a bond, in an amount not less than \$26,000,000³, to serve as compensation to Beach Fenwick for the substantial delay in its development of the Subject Property and costs associated therewith, should Appellant fail to prevail on the merits.

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Attorneys for 1776, LLC

³ This number is based upon projections prepared on behalf of Beach Fenwick as to costs and losses it will incur by a delay of two years in the development of the Subject Property.

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December 11, 1997

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Attorneys for Penny Creek Associates,
LLC

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter was referred to this court by Order entered June 30, 2020 came before the court on August 17, 2020 for a status conference. Plaintiff objects to the court's jurisdiction as it has filed a Notice of Appeal of the Order of Reference on the basis of its Mode of Trial for which Plaintiff demands trial by jury. The Defendants contend that this court has jurisdiction based upon the Order of Reference under Rule 53(b) as well as this courts prior Order in Wells Fargo v. Penny Creek, L.L.C. et al. Case No. 2014CP1004946 in which the court ordered that this court retains jurisdiction of all post foreclosure matters in that action. The property was sold at auction thereafter. This court concludes that the matter should be returned to the circuit court for disposition under Rule 38 and 53(b) and that this ruling would moot Plaintiff's appeal.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/17/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff Maybank 2754 LIC's Motion/Temporary Injunction is Denied. Defendant Beech Company's Motion to Dismiss and Refer to the Master, Along with all outstanding motions to the refer to the master, are granted.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/29/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MAYBANK 2754, LLC,

Plaintiff,

vs.

EUGENE J. ZURLO, Individually and as
Co-Trustee of the Eugene J. Zurlo Living
Trust Dated December 11, 1997; 1776,
LLC; BEACH FENWICK, LLC; THE BEACH
COMPANY; SEAMON, WHITESIDE &
ASSOCIATES, INC.; PENNY CREEK
ASSOCIATES, LLC; JOHN DOE AND
MARY ROE,

Defendant.

Case No. 2020-CP-10-00209

[PROPOSED] ORDER

BRIEF PROCEDURAL HISTORY

This matter came before the Court on June 16 and June 25, 2020 pursuant to certain motions filed by Defendants and a Motion filed on behalf of Plaintiff in this action, including:

- 1) February 17, 2020 – Defendants Beach Fenwick, LLC and The Beach Co.’s (“Beach Entities”) Motion to Dismiss;
- 2) February 17, 2020 – Beach Entities’ Motion to Refer to the Master-In-Equity;
- 3) February 20, 2020 – Defendant Seamon Whiteside Associates, Inc.’s (“Seamon Whiteside”) Motion to Dismiss Civil Conspiracy;
- 4) February 21, 2020 – Defendant 1776, LLC’s (“1776”) Motion to Dismiss;
- 5) February 21, 2020 – 1776’s Motion to Refer to the Master-In-Equity;

- 6) March 10, 2020 – Defendants Eugene J. Zurlo, individually and as co-trustee of Eugene J. Zurlo Living Trust’s (“Zurlo Parties”) Motion to Refer to the Master-In-Equity;
- 7) March 11, 2020 – Plaintiff Maybank 2754’s (“Maybank”) Motion for Temporary Injunction.

Counsel for all parties appeared, via video conference application “Zoom,” and the Court heard oral argument on behalf of all parties.

On June 30, 2020, this Court issued its Form 4 Order, with the following Statement of Judgment:

Plaintiff Maybank 2754 LLC’s Motion/Temporary Injunction is denied. Defendant Beech Company’s Motion to Dismiss and Refer to the Master, along with all outstanding motions to refer to the master, are granted.

The Plaintiff filed a Rule 59 Motion to Reconsider on July 1. That Motion is denied for the reasons set forth below.

PLAINTIFF’S MOTION FOR TEMPORARY INJUNCTION

Plaintiff’s Motion for Temporary Injunction, filed March 11, 2020, seeks to enjoin Beach Fenwick from developing the Subject Property until after a trial on the merits and a judgment is rendered in this matter. In consideration of Plaintiff’s Motion, the Court considered the Beach Entities’ Memorandum of Law in Opposition to Plaintiff’s Motion for Temporary Injunction, filed on June 15, 2020, Plaintiff’s Notice of Filing Order Exhibits in Support of Its Motion for Temporary Injunction, filed June 23, 2020, the testimony of Michel F. Laplante, on behalf of Plaintiff, and the oral argument of Plaintiff’s counsel, and applicable South Carolina authority, based upon which this Court makes the following findings, and denies Plaintiff’s Motion for Temporary Injunction.

A court may issue a temporary injunction “only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*

In consideration of the briefing filed with this Court on behalf of Plaintiff and on behalf of the Beach Entities relative to Plaintiff’s Motion for Temporary Injunction, oral argument of counsel, testimony presented on behalf of Plaintiff, as well as the law of the State of South Carolina, this Court finds and so rules that Plaintiff has failed to demonstrate that it will suffer irreparable harm in the absence of the injunction sought. Plaintiff has failed to establish it will suffer irreparable harm if the injunction is not granted. Further, Plaintiff has failed to establish it will likely succeed on the merits of this litigation and likewise failed to establish it has no adequate remedy at law. Additionally, Plaintiff seeks damages in a Conspiracy Cause of Action in its Complaint, so Plaintiff has a remedy at law.

**DEFENDANTS’ MOTIONS FOR ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY**

All Defendants, except Seamon, Whiteside & Associates, Inc., filed motions for an order of reference of this litigation to the Master-In-Equity, as set forth above. Plaintiff filed its Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 6, 2020, following which Plaintiff filed its Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 9, 2020. Subsequently, the Zurlo Parties filed their Reply to Plaintiff's Amended Objection and Response in Opposition to Motion for Order of Reference to the Master-In-Equity on April 22, 2020, following which Plaintiff filed its Second Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on May 15, 2020. The Zurlo Parties filed their Brief in Support of Motion to Refer to Master on June 11, 2020. The Beach Entities filed their Memorandum of Law in Support of Their Motion for Order of Reference to Master-In-Equity on June 19, 2020.

The Court heard oral argument on Defendants' Motions to Refer to the Master-In-Equity on June 16, with additional argument on June 25, 2020. Based upon the parties' submissions to this Court, as well as oral argument of counsel and the testimony of Mitch Laplante, on behalf of Plaintiff, this Court finds as follows:

The Master-In-Equity may hear any matter referred to him or her by the Circuit Court. See S.C. Code Ann. § 14-11-10 et seq. and Rule 53 of the South Carolina Rules of Civil Procedure. "Pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by the order of reference." *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996). "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner

as the circuit court, unless the order of reference specifies or limits his powers.” *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993). “To rewrite the terms of sale after the sale would be patently inequitable.” *Ex parte Johnson*, 371 S.C. 614, 618, 640 S.E.2d 887, 889 (Ct. App. 2006). “[I]t is the long established policy in South Carolina that ‘[t]he courts should be particularly jealous of the integrity of judicial sales.’” *Id.* (citing *In re Wilson*, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927)).

THE BEACH ENTITIES’ MOTIONS TO DISMISS

The portion of the Court’s Order of June 30, 2020, indicating the Beach Entities’ Motion to Dismiss is granted is a scrivener’s error; that Motion was not argued, it was reserved for referral to the Master-in-Equity and not considered by this Court, so that Motion will be transferred to the Master-In-Equity.

CONCLUSION AND ORDER

The Plaintiff’s Motion for a Temporary Restraining Order is Denied, the Plaintiff’s Motion to Reconsider is denied, and the entire case and all the pending Motions are referred to the Master-in-Equity, pursuant to and consistent with South Carolina Rules of Civil Procedure, Rule 53. All pre-trial matters, including the parties’ motions, shall be and are hereby referred to the Master-In-Equity, with finality, with appeal directly to the South Carolina Court of Appeals or the South Carolina Supreme Court.

AND IT IS SO ORDERED.

Bentley Price
Presiding Judge-Ninth Judicial Circuit

Charleston, S.C.

July _____, 2020



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Scarlet B. Moore, Esq.

Attorney at Law

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September 8, 2020

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**RE: Maybank 2754, LLC, Appellant vs. Eugene J. Zurlo, Individually and as
Co-Trustee of the Eugene J. Zurlo Living Trust dated December 11, 1997;
Beach Fenwick, LLC; The Beach Company;
Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC;
John Doe and Mary Roe, Respondents
Case Number: 2020-001030**

Dear Madam Clerk,

Enclosed please find the Appellant's Motion to Order the Transcript Outside the Filing Deadlines of Rule 207 of the SCACR, and a Certificate of Service. Please note that on August 31, 2020, the Appellant sent a letter to This Court, copying the parties, regarding the status of the transcript.

If the Court requires further information, please do not hesitate to contact me.
With kind regards, I remain

Very Truly Yours,

s/Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Respondent

SBM/sfk

Cc: Alexandra Harrington Austin, Esq.
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Thomas Bacot Pritchard, Esq.
Jason S. Smith, Esq.
Jason M. Tarokh, Esq.
J. Rutledge Young, Jr., Esq.

Brian A. Hellman, Esq.
John Patrick Turner Norris, Esq.
Cheryl D. Shoun, Esq.
Kent Taylor Stair, Esq.
Jordan N. Teich, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas, Ninth Judicial Circuit
Hon. Judge Bentley D. Price, Circuit Court Judge, Presiding

2020-CP-10-00209

Eugene J. Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe.....Respondents,

Versus

Maybank 2754, LLC..... Appellant.

**MOTION TO ORDER THE
TRANSCRIPT OUTSIDE THE FILING
DEADLINES OF RULE 207 OF THE SCACR**

s/Scarlet B. Moore

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September 8, 2020

NOW INTO COURT, comes the Appellant Maybank 2754, LLC, who submits the following motion to this Honorable Court pursuant to correspondence received from the Court on August 28, 2020. This Court has required counsel to move to request the transcript of this matter outside the filing deadlines set in Rule 207 of the SCRAP. However, by this motion counsel informs the Court that the transcripts had already been received by the Appellant's co-counsel prior to the Rule 207 deadline, and thus no transcripts were ordered following the filing of this appeal. Therefore, the undersigned prays that this Court will accept the filing of this motion as an update on the status of the transcript in this matter.

Respectfully Submitted,

s/Scarlet B. Moore

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Greenville, South Carolina
September 8, 2020.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas, Ninth Judicial Circuit
Hon. Judge Bentley D. Price, Circuit Court Judge, Presiding

2020-CP-10-00209

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Versus

Maybank 2754, LLC..... Appellant.

CERTIFICATE OF SERVICE

I certify that on this date, I have served the **Appellant’s Motion to Order the Transcript Outside the Filing Deadlines of Rule 207 of the SCACR** on opposing counsel to their respective e-mail addresses, pursuant to the Order of the Supreme Court Appellate Case No, 2020-000447(g)(3).

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Jason Tarokh – jason@tarokhlaw.com

Respectfully Submitted,

s/Scarlet B. Moore

Scarlet B. Moore, #72534
Attorney for Appellant,
Maybank 2754, LLC
P.O. Box 17615
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Greenville, South Carolina
September 8 2020.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No.: 2020-001030

Appeal from Charleston County
Court of Common Pleas, Ninth Judicial Circuit
Hon. Bentley D. Price, Circuit Court Judge

RECEIVED

Sep 15 2020

SC Court of Appeals

2020-CP-10-00209

Maybank 2754, LLC, Appellant,

v.

Eugene Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11,1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe Respondents.

PROOF OF SERVICE

The undersigned Respondents certify that they have served a copy of the Respondents' Motion to Dismiss Appeal and for Costs and Memorandum in Support Thereof in the above matter on Appellant's counsel by causing a copy of same to be deposited in the United States Mail, postage prepaid, at the address shown below:

Jason M. Tarokh, Esq.
Tarokh Law, PLLC
Post Office Box 10827
Tampa, FL 33679

Scarlet B. Moore, Esq.
PO Box 17615
Greenville, SC 29606

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PO Box 486
Charleston, SC 29402
843-577-9440

Attorneys for Beach Fenwick, LLC,
and The Beach Company

Cheryl D. Shoun
Special Counsel
Admitted in SC

September 15, 2020

Honorable. Jenny Abbott Kitchings
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Maybank 2754, LLC vs Eugene J. Zurlo
Appellate Case No. 2020-001030

Dear Ms. Kitchings:

Enclosed for filing is the following motion with exhibits thereto:

1. Motion to Dismiss Appeal; and
2. Exhibits A through E to the Motion.

The check in the amount of \$50.00 is being sent via postal service.

Thank you for your assistance.

Respectfully,

/s/ Cheryl D. Shoun

Cheryl D. Shoun

CDS/mt

Enclosure

cc: Jason M. Tarokh, Esquire
Scarlet Bell Moore, Esquire
John Patrick Turner Norris, Esquire
Kent Taylor Stair, Esquire
Jordan N. Teich, Esquire
Jason S. Smith, Esquire

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SC Court of Appeals

Honorable. Jenny Abbott Kitchings
September 15, 2020
Page 2

Brian A Hellman, Esquire
J. Rutledge Young, Jr., Esquire
Blake Abernethy McKie, Esquire
Thomas Bacot Pritchard, Esquire