IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas
James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann,
As President of the Live
Oak Village Homeowner's
Association, Inc., Respondent

v.

William McFarland, Appellant.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REVIEW OF LOWER COURT RULING REGARDING AUTOMATIC STAY UNDER RULE 241, SCACR

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This appeal arises from a dispute between homeowners regarding the governing leadership of their homeowner's association, the Live Oak Village Homeowner's Association, Inc. ("LOVHOA"). On August 13, 2020, the Trial Court issued its final Order granting summary judgment and declaring the Plaintiff/Respondent the duly elected president of the association and ordering Defendant/Appellant to turn over books, records, and banking information to the Plaintiff/Respondent. Defendant/Appellant McFarland filed this appeal from that Order and refuses to perform the affirmative actions required of him by the same. Plaintiff/Respondent Hannemann filed a Motion for a Rule to Show Cause relating to this ongoing refusal, which was heard on December 2, 2020. At this hearing, the Trial Court ordered that the Defendant personally appear on December 16, 2020, to answer for his noncompliance.

Defendant/Appellant McFarland has now filed an "urgent and time-sensitive" Petition for Review with this Court arguing that the automatic stay provisions of Rule 241, SCACR, preclude the Trial Court from enforcing its Order and divest the Trial Court of authority to proceed with the December 16th hearing on the Rule to Show Cause. Plaintiff/Respondent Hannemann respectfully submits that the order for delivery of the LOVHOA records falls within an exception to the automatic stay found in Rule 241(b)(2) and the order to close the LOVHOA bank account maintained by Defendant McFarland falls within an exception to the automatic stay found in Rule 241(b)(3).

FACTS

Without belaboring the Court at this time with unnecessary details on the intricate and protracted factual background and years-long procedural history of this case, Plaintiff/Respondent Hannemann offers this brief summary from the Trial Court's final Order for a basic background to frame the issues underlying the current Petition pending before the Court.

This matter arises out of a dispute over control of LOVHOA, which is responsible for managing a subdivision of seven residential lots located in Summerville, South Carolina. Defendant McFarland served as President of LOVHOA for many years until a LOVHOA meeting held in 2012, at which Plaintiff Hannemann was elected President. Defendant McFarland refused to recognize Plaintiff Hannemann as the duly elected President, refused to turn over LOVHOA records, and even initiated litigation against Plaintiff Hannemann.

Plaintiff Hannemann was again elected President of LOVHOA in 2015 and 2016, and Defendant McFarland continued to cling to control by refusing to turn over the HOA records or to transfer the HOA bank account to the newly elected President. Eventually, Plaintiff Hannemann opened a separate operating account for the HOA and initiated the underlying declaratory judgment action seeking recognition as the duly-elected LOVHOA President and seeking LOVHOA' financial information and control of the same.

After four years of litigation of this declaratory judgment action, during which Defendant McFarland doggedly retained control of the business and finances of LOVHOA and represented himself as the President of LOVHOA to other residents of the subdivision, the Trial Court considered the merits on cross motions for summary judgment and issued an Order granting summary judgment to the Plaintiff Hannemann on August 13, 2020. In addition to finding that Plaintiff Hannemann is the President of LOVHOA, the Court further ordered relief, as follows:

> NOW, THEREFORE, THIS COURT ORDERS, ADJUDGES AND DECREES:
>
> * * *
>
> G. Defendant McFarland shall turn over all the Association's books and records that are in his possession, custody or control to Plaintiff Hannemann within ten (10) days of this order.
>
> H. If Defendant McFarland is aware of any other books and records that may be in the possession of others, the Defendant McFarland is ordered to specify such books and records and inform Plaintiff Hannemann of the

person or entity holding such books and records, and to endeavor to have such books and records returned to himself to that he may turn such books and records over to the Plaintiff Hannemann.

I. Defendant McFarland is directed to provide Plaintiff Hannemann the bank statements of the Association for the preceding 72 months from the date of this order.

J. After procuring the Bank statements, [D]efendant McFarland is directed to close the bank account currently used by him as the Association's bank account.

Defendant McFarland appealed from that order to the Court of Appeals. Meanwhile, Plaintiff Hannemann demanded that Defendant McFarland perform the actions ordered by the Court and advised Defendant McFarland that a Rule to Show Cause would be filed if he continued to refuse to comply with the affirmative actions required of him in Trial Court's Order. Defendant McFarland refuses to perform any of the actions ordered by the Trial Court and insists that his Notice of Appeal stays any and all efforts to enforce the portions of the Trial Court's Order quoted above.

While Defendant's Counsel argued the application of Rule 241 to Plaintiff's Counsel in various correspondence, Defendant's Counsel did not make any formal motion to enforce the automatic stay in the Court of Appeals. On October 14, 2020, Plaintiff Hannemann proceeded to file a Motion for a Rule to Show Cause seeking enforcement of the above-quoted portions of the Trial Court's Order. A hearing was noticed on November 9, 2020, setting the motion for hearing on December 2, 2020. Defendant McFarland again chose not to seek enforcement of the automatic stay at this Court, but instead appeared on December 2, 2020 and, at this hearing, argued that the Trial Court lacked jurisdiction because of the pending appeal. On December 7, 2020, the Trial Court ordered that the Defendant McFarland personally appear before the Court on December 16, 2020.

Despite his insistence that his Notice of Appeal stays all portions of the Trial Court's Order, including the production of the books and records of LOVHOA to Plaintiff Hannemann, Defendant McFarland orchestrated and arranged for other members of LOVHOA (including his wife) to request a special meeting of LOVHOA for the purpose of electing new officers this October. Upon receiving this special meeting request, Plaintiff Hannemann consistently stated that he would call the same upon confirming that the requirements of the Bylaws were satisfied – a determination which required the examination of the very materials Defendant McFarland continued to withhold. However, Plaintiff Hannemann was unable to determine without the books and records of LOVHOA whether this request had been properly made (as required of him by the LOVHOA Bylaws).

Despite Plaintiff Hannemann's willingness to abide by LOVHOA's proper procedures upon receipt of the information and materials withheld by Defendant McFarland, Defendant McFarland tenaciously refused to provide the documents, arranged for a purported special meeting in October, and declared that the Plaintiff Hannemann was not a member in good standing. The purported special meeting of LOVHOA was called by several individual members of the LOVHOA (including the Defendant's wife) for October 30, 2020, without permission or certification by the Plaintiff as the duly recognized President of LOVHOA. Plaintiff Hannemann appeared for the meeting to present his objections but was berated, assaulted, and driven to flee the meeting for fear of further physical altercation. Following this, Defendant McFarland was purportedly "reelected" to the Board of LOVHOA and again is claiming to be its President.

The Defendant has now filed an "urgent and time-sensitive" PETITION FOR REVIEW OF LOWER COURT RULING REGARDING AUTOMATIC STAY UNDER RULE 241, SCACR, seeking review of the Trial Court's order that Defendant personally appear on December

16th. Defendant McFarland argues that the automatic stay provision of Rule 241 applies to deprive the Trial Court of the ability to enforce its Order for delivery of the LOVHOA documents/records and transfer of the LOVHOA funds. Defendant McFarland also argues that the pending appeal has been rendered moot by the purported October 30, 2020 election of a new Board for LOVHOA. These arguments appear styled as "urgent and time-sensitive" in light of the Trial Court's noticing of a Rule to Show Cause hearing on December 16th. Since the filing of Defendant McFarland's Petition for Review of Lower Court Ruling Regarding Automatic Stay Under Rule 241, SCACR, Defendant McFarland has made the Trial Court aware of the submission of this Petition to the Court of Appeals, and the Trial Court has determined to not to hold the Rule to Show Cause hearing on December 16th pending further consideration or direction from the Court of Appeals.

Though the exigence of Defendant McFarland's Petition for Review appears to have subsided, Plaintiff Hannemann maintains that the Order for delivery of LOVHOA records and transfer of LOVHOA funds fall with the exceptions to the automatic stay pursuant to Rule 241(b)(2) and/or (b)(3), SCACR, and the final Order could not be mooted by Defendant McFarland's efforts to perpetuate his grip of control on LOVHOA through an end-run by orchestrating an unauthorized special meeting. As such, the Court should direct the Trial Court to proceed under its authority to enforce those portions of its Order not stayed by operation of Rule 241(b), including the consideration of the Rule to Show Cause.

ARGUMENT

I. The Actions Required of Defendant McFarland by the Order Fall Within Rule 241(b)'s Express Exceptions to the Automatic Stay.

While Defendant McFarland has served and filed a notice of appeal to challenge the Court's summary judgment Order, the affirmative actions required by the Court's Order remain in effect

as they fall within the exceptions of Rule 241(b)(2) and/or (3) to the automatic stay imposed by Rule 241(a) of the South Carolina Appellate Court Rules ("SCACR") which provide:

> (a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.
>
> (b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:
>
> * * *
>
> (2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.
>
> (3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

The Order directs that Defendant McFarland deliver LOVHOA documents to Plaintiff Hannemann, which squarely falls within Rule 241(b)(2), SCACR. Accordingly, Defendant McFarland cannot prevent the order for delivery without complying with S.C. Code § 18-9-150:

> If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Under this section, Defendant McFarland has the option to deliver the documents to the court or to an appointed receiver. To date, he has not availed himself of this opportunity.

Likewise, the Order directs Defendant McFarland to close/transfer the LOVHOA bank account he has controlled throughout the entire existence of the LOVHOA, which amounts to a direction for the execution of an instrument within the provision of Rule 241(b)(3), SCACR. Defendant McFarland cannot refuse to do so without complying with S.C. Code § 18-9-160:

> If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

Pursuant to either Section 18-9-150 or -160, Defendant McFarland has the option to close/transfer the LOVHOA bank account or deposit the HOA funds with the Clerk of Court or an appointed receiver. To date, he has not availed himself of this opportunity.

Defendant McFarland argues that the exception of Rule 241(b)(2), SCACR does not apply because the documents/records do not belong to him personally, but rather are the property of LOVHOA. First, the designation of documents under Rule 241(b)(2), SCACR is not qualified by any "personal" designation. Second, the interpretation of "personal" property as meaning individual ownership in contrast to corporate (LOVHOA) ownership is not supported by any reasonable legal authority. Rather, "personal" as an adjective to property is used to contrast with "real" property, not to limit ownership of said property which is illustrated by S.C. Code § 18-9-20 which provided definitions for real property and personal property:

> As used in reference to courts and court procedure in this Title the following terms shall be interpreted as follows:
>
> (1) The words "real property" and "real estate" are coextensive with lands, tenements and hereditaments.
>
> (2) The words "personal property" include money, goods, chattels, things in action and evidences of debt.
>
> (3) The word "property" includes real and personal property.

S.C. Code § 18-9-20. Other statutory definitions further support the view that the HOA records/funds/bank account all constitute personal property, i.e.:

- S.C. Code § 15-1-40, in which "personal property" is defined (as used in Title 15) to "include money, goods, chattels, things in action and evidences of debt;" or

- S.C. Code § 12-37-10, in which "personal property" is defined in the property code as meaning "all things, other than real estate, which have any pecuniary value, and moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise.

Defendant McFarland's interpretation of "personal" as used in Rule 241(b)(2), SCACR is incorrect and should be given no credence.

Defendant McFarland also argues that the underlying final Order is not a judgment within the scope of S.C. Code §§ 18-9-150 or -160, because the "real issue" in dispute was about who is the rightful holder of the office of the LOVHOA presidency. However, in State v. Cooper, the Court stated that: "The term "judgment" used in the statute and rule connotes a final decision of the court that addresses the merits of the cause of action and disposes of the cause as to all." 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000). Here, the Trial Court has issued a final Order on the merits which includes an order that Defendant McFarland deliver documents and personal property and that he execute necessary paperwork to close the LOVHOA bank account that he controls. By its terms, these portions of the underlying final Order falls within the parameters of Rule 241(b)(2 and/or (b)(3), SCACR, and Defendant McFarland should not be allowed to continue to hinder and frustrate the business of LOVHOA by clinging to the LOVHOA records as some type of personal secret files or by controlling the LOVHOA funds. Nor should the Defendant be allowed to avoid the directives of the final Order by orchestrating an unauthorized special LOVHOA meeting to oust the Plaintiff from the Board and arrange for himself to be reelected to the Board and the LOVHOA Presidency.

II. Mootness

Without citing to any authority in his Petition for Review, the Defendant Appellant also objects to the Trial Court's enforcement of the directives based on his contention that the directives are now moot because, as a result of the purported October 30, 2020 special meeting, Plaintiff Hannemman has been ousted as President of LOVHOA. Mootness is a judicial principle that limits the cases a court from issuing advisory opinions in cases that do not present an active dispute: "The appellate courts will not hear appeals in cases that have become moot." 15 S.C. JUR. *Appeal and Error* §19. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief." Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

If Defendant McFarland is arguing that his appeal is moot by the removal of Plaintiff Hannemann from the LOVHOA Board at unauthorized special meeting orchestrated by Defendant McFarland himself (directly and/or through his wife and other cooperating members of LOVHOA), then the appeal should be dismissed and the Trial Court's order will stand as the law of the case, and all subsidiary findings should be afforded preclusive effect.[1]

Even if, for the sake of argument, the removal of Plaintiff Hannemann as President mooted the dispute over current leadership of LOVHOA and entitlement to control of LOVHOA records/funds pending the appeal, this case would fall within one of the exceptions in the mootness doctrine recognized by the South Carolina Appellate Courts, for situations where "a decision by

[1]See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, 513 U.S. 18 (1994), which discusses the appropriate choice of whether to vacate underlying order in face of mootness and addresses the proper denial of a vacatur when the appellant causes the mootness. See also Nat'l Football League Players Ass'n v. Pro-Football, Inc., 79 F.3d 1215, 1216–17 (D.C. Cir. 1996) ("As vacatur is an equitable doctrine, we are not to apply it where "the party seeking relief from the judgment below caused the mootness by voluntary action.") (quoting U.S. Bancorp, 513 U.S.at 24.)

the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015) (citing Curtis v. State, 345 S.C. 557, 549 S.E.2d 591, 596 (2001)).

A central purpose of this exception can be seen in the very scenario that Defendant McFarland argues creates the mootness. Namely, the validity of the purported special meeting at which Plaintiff Hannemann was removed from the Board and Defendant McFarland was voted back on the Board continues the dispute over compliance with the By-Laws. Thus, it perpetuates these questions of the Plaintiff's status as a LOVHOA member in "good standing" and the Defendant's defiant exercise of authority as LOVHOA "President" with his exclusive control over the LOVHOA records and funds which he has refused to disclose. And, even if the purported special meeting of October 30th meeting and Board removal/election were valid on all points in dispute, the Trial Court's findings and holding in this action that Plaintiff Hannemann was the duly elected President during the time period at issue under the pending appeal, there are still real and consequential issues regarding invalidation any and all ultra vires actions taken by Defendant McFarland during the interim periods.

Plaintiff Hannemann has never contended or suggested that the final Order gives him a permanent lock on the LOVHOA Presidency. However, to properly and legally accomplish a change in LOVHOA control, the Defendant must first comply with the Trial Court's directives by delivering the records and transferring the funds to the Plaintiff, upon which Plaintiff may review the same and arrange for a special meeting of LOVHOA after confirming that such a meeting was properly requested and that voting members are in good standing as confirmed by the HOA records.

Respectfully submitted,

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December 15, 2020
Charleston, South Carolina

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The undersigned certifies that the **RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REVIEW OF LOWER COURT RULING REGARDING AUTOMATIC STAY UNDER RULE 241, SCACR** was served on Appellant on December 15, 2020, via email (see attached) to Appellant's following counsel of record:

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December 15, 2020
Charleston, South Carolina

Stephanie Chickey

From: Stephanie Chickey
Sent: Tuesday, December 15, 2020 2:58 PM
To: 'RHines@ycrlaw.com'
Cc: Jamie Hood; Virginia Floyd; Tina Gault
Subject: Hannemann v. McFarland, Case No. 2020-001029
Attachments: Hannemann v. McFarland Respondent's Return to Petition for Review.pdf

Attached please find Respondent's Return to Appellant's Petition for Review of Lower Court Ruling Regarding Automatic Stay Under Rule 241, SCACR in the above-referenced case.

Hood Law Firm is temporarily operating on a remote working basis due to the COVID-19 situation. Please communicate with me via electronic mail or by phone until further notice, as my receipt of office deliveries may be delayed at this time.

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