

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Nov 12 2021

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2021-001022

Hampton B. Luzak Petitioner

-vs.-

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II, Merrill B. Light as trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998, and Merrill B. Light as trustee of the Merrill Barringer Light Revocable Trust, and Merrill Barringer individually Respondents

and

Hampton B. Luzak Petitioner

-vs.-

Merrill U. Barringer Respondent

RETURN TO REQUEST TO HOLD PETITION FOR WRIT IN ABEYANCE

J. Ashley Twombly, Esquire (SC Bar No.72916)
Lee Anne Walters, Esquire (SC Bar No. 74984)
Twenge + Twombly Law Firm
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombly@twlawfirm.com
lwalters@twlawfirm.com
Attorneys for Respondent Merrill U. Barringer

Alice F. Paylor, Esquire (SC Bar No. 4380)
Bijan Ghom, Esquire (SC Bar No. 103531)
Rosen Hagood, LLC
P.O. Box 893 29402
Charleston, SC 29402
(843) 577-6726

apaylor@rosenhagood.com

bghom@rosenhagood.com

**Attorneys for Respondent Merrill B. Light,
individually and as trustee of the Paul B.
Barringer, II Revocable Trust dated December 4,
1998, and as trustee of the Merrill Barringer
Light Revocable Trust**

Charles B. Molster, III, Esquire
Law Offices of Charles B. Molster, III, PLLC
2141 Wisconsin Avenue, NW, Suite M
Washington, DC 20007
(202) 787-1312

**Attorney admitted *pro hac vice* for Respondent
Merrill B. Light, individually and as trustee of the
Paul B. Barringer, II Revocable Trust dated
December 4, 1998, and as trustee of the Merrill
Barringer Light Revocable Trust**

OTHER COUNSEL OF RECORD:

Desa Ballard, Esquire (SC Bar #498)
Ballard & Watson, Attorneys at Law
226 State Street
W. Columbia, SC 29169
(803) 796-9299
desab@desaballard.com

James R. Gilreath (SC Bar #02133)
William M. Hogan, Esquire (SC Bar #65272)
The Gilreath Law Firm, P.A.
P.O. Box 2147
Greenville, SC 29602
(864) 242-4727
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin, Esquire (SC Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
(803) 777-7465
amedlin@sc.rr.com

Charles B. Macloskie, Esquire (SC Bar No. 3514)
Macloskie Law Firm
P.O. Box 280
Beaufort, SC 29901-0280
(843) 524-0909
macloskielawfirm@hargray.com

Thomas W. Traxler, Esquire (SC Bar No. 5624)
Carter, Smith, Merriam, Rogers & Traxler, P.A.
P.O. Box 10828
Greenville, SC 29603
(864) 242-3566
tom.traxler@carterlawpa.com

Attorneys for Petitioner Hampton B. Luzak

Respondents submit this Return to Petitioner’s “request” — made for the first time in her Reply — that the Court hold in abeyance her Petition for Writ of Certiorari pending the outcome of a new appeal that she filed in the Court of Appeals of the very same bifurcation order at issue in this Petition.¹ This request to hold in abeyance amounts to a motion, entitling Respondents to submit a Return addressing the new relief sought. See S.C. App. Ct. R. 240(e). As set forth in their Return to the Petition, Respondents oppose issuance of a Writ of Certiorari because a) the bifurcation order is not immediately appealable and, regardless, b) the issues it raises are moot. Petitioner’s new request to hold the Petition in abeyance is merely an attempt to avoid the inevitable and correct result — denial of an interlocutory appeal of the bifurcation order.

The Court of Appeals initially dismissed Petitioner’s appeal in this matter designated as Case No. 2021-000157 (“First Appeal”) because the bifurcation order is not immediately appealable. After briefing on this Petition was under way, Petitioner filed a second Notice of Appeal designated as Case No. 2021-000837 (“Second Appeal”) in which she challenges the same bifurcation order again in the Court of Appeals, along with additional orders granting summary judgment as to certain claims. Petitioner now takes the position that the First Appeal could be rendered moot if the Court of Appeals reverses one of the summary judgment rulings, but not the bifurcation order in the Second Appeal. In that particular scenario, Petitioner would again petition this Court for a Writ of Certiorari only as to the bifurcation order — which is the exact issue she is now seeking to have reviewed. Petitioner, therefore, argues that she must pursue this Petition to

¹ Although Petitioner requests an abeyance with or without issuance of the Writ, or issuance of the Writ coupled with a remand of the proceedings to the Court of Appeals in conjunction with the new appeal, all of these outcomes have the same effect — to avoid a denial of the Writ by staying the Petition pending further developments. This Return to the Reply will refer to each of these alternatives as a request to hold in abeyance.

avoid abandonment of her position in the First Appeal that the bifurcation order, standing alone, is immediately appealable. She also seeks to avoid a ruling that would become the law of the case adverse to her position. Petitioner's own arguments in her Reply, however, further demonstrate that the Petition must be denied — it presents an issue that is concededly not justiciable, and it fails to establish the special circumstances required to justify a Writ of Certiorari.

First, Petitioner acknowledges in her Reply that the appealability of the bifurcation order is not yet ready to be decided. Petitioner's Reply expressly concedes “[t]he question posed by this Petition for Writ of Certiorari that needs to be answered cannot be determined until the Court of Appeals issues its final order in [the Second Appeal].” Reply, at 5. She further notes that, depending upon how the Court of Appeals rules on issues in the Second Appeal, the appealability of the bifurcation order may be rendered moot or it “may be squarely back before this Court.” *Id.* In other words, Petitioner, by her own admission, presents this Court with a contingent issue that may never need to be decided. “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). The Petition does not present a justiciable issue and should be denied on that basis alone, as well as for the substantive reasons set forth in the Return to the Petition.

Moreover, because the Petition for a Writ of Certiorari does not present a justiciable issue, the Court should deny the Writ, rather than merely waiting to see what happens next. When parties bring premature appeals, the appellate courts do not hold them “in abeyance” pending the outcome of trial to see if, after entry of final judgment by the trial court, the appeal might become proper. To do so would be to commit the appellate sin of encouraging courts to “engage in ‘piecemeal

litigation.” See Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 73, 533 S.E.2d 331, 333 (2000). To the contrary, appellate courts should dismiss interlocutory appeals and, if appropriate after final judgment, consider the appeal on a complete record. See id. The Court should not establish a precedent of holding in abeyance petitions that present issues that are not yet ripe, rather than denying them because they are not justiciable.

Finally, denial of Petitioner’s Petition does not put her at risk of a later determination that she “abandoned” her argument that the bifurcation order is immediately appealable. A denial of her Petition will be a determination that the Petitioner has failed to show “special and important reasons” to justify a review of the Court of Appeals dismissal of the appeal. The implications of the denial for future proceedings would remain to be determined by the courts as this litigation further unfolds unless this Court chooses to specify otherwise.

For these reasons, Respondents respectfully request that the Court deny Petitioner’s “request” to hold her Petition for Writ of Certiorari in abeyance and instead deny the Petition for the reasons previously set forth in the Return and for the additional reason that the Petition does not present a justiciable issue in light of the Second Appeal.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. Ashley Twombley (SC Bar #72916)
Lee Anne Walters (SC Bar #74984)
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
lwalters@twlawfirm.com
Attorneys for Respondent, Merrill U. Barringer

Alice F. Paylor, Esquire (SC Bar #4380)
Bijan Ghom, Esquire (SC Bar #103531)
Rosen Hagood, LLC
P.O. Box 893 29402
Charleston, SC 29402
(843) 577-6726
apaylor@rosenhagood.com
bghom@rosenhagood.com

Attorneys for Respondent Merrill B. Light, individually and as trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998, and as trustee of the Merrill Barringer Light Revocable Trust

Charles B. Molster, III, Esquire
Law Offices of Charles B. Molster, III, PLLC
2141 Wisconsin Avenue, NW, Suite M
Washington, DC 20007
(202) 787-1312

Attorney admitted *pro hac vice* for Respondent Merrill B. Light, individually and as trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998, and as trustee of the Merrill Barringer Light Revocable Trust

Beaufort, South Carolina

November 11, 2021