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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy and R. Ferrell Cothran, Jr., Circuit Court Judges

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker
Media, Inc.; NBCUniversal Media, LLC;
Comcast Corporation; Craig Conover; Chelsea
Meissner; and Madison LeCroy,..... Appellants/Petitioners.

PETITION FOR WRIT OF SUPERSEDEAS

MCANGUS GOUDELOCK AND COURIE
Helen F. Hiser
James D. Smith
Danielle F. Payne
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Appellants/Petitioners

Appellants/Petitioners Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Defendants below (jointly “Defendants”)¹ hereby Petition this Court for a Writ of Supersedeas staying all further proceedings before the circuit court, including all discovery and third-party subpoenas served by Respondent Joseph Abruzzo, Plaintiff below (“Abruzzo” or “Plaintiff”), pending final resolution of this appeal. In this appeal, Defendants seek review of the circuit court’s July 6, 2020 and July 22, 2020 Form 4 Orders, (R. pp. 1-6; Exhs. A & B),² denying their Motion to Dismiss Plaintiff’s Amended Complaint and for Order Compelling Arbitration. (R. pp. 144-250). Pursuant to Rules 205 and 241, SCACR, as well as 9 U.S.C. §§ 3 & 16(a)(1)(A), all discovery in the circuit court should be stayed pending resolution of Defendants’ appeal of the circuit court’s Form 4 order denying their motion to compel arbitration. Allowing Plaintiff to proceed through full discovery, including third-party discovery, while this appeal is pending severely prejudices Defendants’ ability to effectively vindicate and benefit from their rights to an arbitral forum and/or a New York forum, creates the risk of inconsistent decisions, and risks needlessly wasting the circuit court’s time and resources in deciding and issuing decisions that would not be binding if Defendants prevail on their appeal. Rules 205 and 241 of the SCACR were promulgated to prevent precisely that result.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Abruzzo is a well-educated, sophisticated, and self-proclaimed successful Florida

¹ Where necessary for clarification, Appellants/Petitioners Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, and Comcast Corporation are referenced herein as the “Corporate Defendants,” and Appellants/Petitioners Craig Conover, Chelsea Meissner, and Madison LeCroy are referenced herein as the “Individual Defendants.”

² As the Record on Appeal has been filed with this Court, references are made herein to that Record where appropriate. Pleadings and documents not included in the Record on Appeal that are necessary for a resolution of this Petition are attached hereto as exhibits.

politician and consultant, who resides in Florida and, at all times relevant to this dispute, was a director for public relations for a major Florida law firm. (R. pp. 96-100).³ In the fall of 2018, Abruzzo pursued a romantic relationship with Kathryn Dennis (“Dennis”), one of the main cast members on the long-running hit reality television show, *Southern Charm* (“the Program” or “*Southern Charm*”)⁴, with full knowledge that Season Six of the Program was being filmed at the time. According to Plaintiff, Dennis persuaded him to appear on the Program. (R. p. 104). Prior to being filmed for the Program, Abruzzo voluntarily signed a three-page Appearance Release, Voluntary Participation, and Arbitration Agreement. (“Release and Arbitration Agreement”) (R pp. 153-156, 159). Paragraph 19 of the Release and Arbitration Agreement contains a prominently displayed agreement to mediate and, if necessary, arbitrate any disputes arising out of the Release and Arbitration Agreement (“Arbitration Agreement”), while Paragraph 20 contains a choice of law and forum selection clause, choosing both New York law and venue. (R pp. 155, 159).

Plaintiff filed a Complaint and Summons on January 28, 2020 (“Complaint”) in the Charleston County Court of Common Pleas, alleging ten causes of action against Defendants arising out of his appearance on *Southern Charm*, including: Outrage/Intentional Infliction of Emotional Distress; Fraud; Constructive Fraud; Negligent Misrepresentation; Fraudulent Inducement; Civil Conspiracy; Defamation; Violation of the South Carolina Unfair Trade Practices Act; Negligence; and, Unjust Enrichment. Plaintiff sought damages in excess of \$10,000,000, treble damages and costs and fees. (R. pp. 7-37).

³ Plaintiff has since been elected to serve as Clerk of Court and Comptroller for Palm Beach County, Florida. See <https://www.mypalmbeachclerk.com/about-us/meet-joseph-abruzzo>.

⁴ *Southern Charm* is a reality show that “reveals a world of exclusivity, money and scandal dating back through generations of families in Charleston, S.C.” (R. p. 102).

Defendants filed a Motion to Dismiss Plaintiff's Complaint and for Order Compelling Arbitration on May 12, 2020, (R. pp. 38-51), and, on June 19, 2020, a corresponding Memorandum in Support of their Motion to Compel Arbitration. (R. pp. 52-92). On June 19, 2020, Plaintiff filed a 50-page Amended Complaint, which re-alleged his earlier causes of action and added seven additional, and often duplicative, purported causes of action entitled: Wrongful Appropriation of Personality/Infringement on the Right of Publicity; Wrongful Publicizing of Private Affairs; Public Nuisance; Private Nuisance; Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement; and, Fraudulent Inducement of Release/Unconscionability of Release; and Rescission of "Release and Arbitration Agreement," again seeking damages in excess of \$10,000,000, treble damages and costs and fees, (R. pp. 94-143), along with a one-paragraph response to Defendants' Motion to Dismiss, arguing that that Motion was moot in light of his Amended Complaint. (R. p. 93).

Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint and for Order Compelling Arbitration on June 22, 2020, and a Memorandum in Support of their Motion on June 29, 2020 ("Motion to Compel Arbitration") (R pp. 144-250). Defendants argued that the prominent and unambiguous Arbitration Agreement, (R pp. 155, 159), requires Plaintiff to resolve any dispute arising out of the Release and Arbitration Agreement before an arbitrator, and not in circuit court. Defendants also argued that the New York forum selection clause also required dismissal of Plaintiff's claims in South Carolina state court.

The parties were heard by the Honorable Bentley Price on June 30, 2020. (R. pp. 312-331). Judge Price issued a Form 4 Order on July 6, 2020, (R. pp. 4-6; Exh. A), denying Defendants' Motion to Compel Arbitration. Defendants moved the Court for Reconsideration pursuant to Rule

59(e), SCRCF on July 16, 2020, (R. pp. 286-311), asking the circuit court to provide its reasoning, which the circuit court denied, in a Form 4 Order on July 22, 2020. (R. pp. 1-3; Exh. B).

Defendants timely appealed both Orders to this Court. (Exh. C). Final Briefs and the Record on Appeal have been filed and, on October 22, 2021, this Court requested additional bound copies of Briefs and the Record. Defendants argue on appeal that the circuit court erred in denying their Motion to Compel arbitration and, alternatively, in failing to enforce the New York forum selection clause. Thus, the issue on appeal is whether, in light of the Arbitration Agreement signed by Plaintiff choosing a arbitral forum to resolve all disputes arising out of his voluntary participation on *Southern Charm*, the circuit court lacks the authority to hear any part of this case, including but not limited to discovery. The same question is currently on appeal by virtue of Defendants' forum selection argument. In short, whether the circuit court can move forward with any aspect of this case is the main issue pending on appeal before this Court.

Nonetheless, after Defendants filed and served their Notice of Appeal, Plaintiff served an initial round of discovery on Defendants. (Exh. D). Because the circuit court's authority and/or jurisdiction to try and decide the merits of this dispute is clearly a matter affected by Defendants' pending appeal of their motion to compel arbitration, Defendants' objected to Plaintiff's initial round of discovery. Plaintiff filed a Motion to Compel on September 16, 2020, (Exh. F), and a Memorandum in Support of that Motion on December 8, 2020, repeatedly asserting that he was seeking only limited discovery that would otherwise be available to him under the JAMS Arbitration Rules. (Exh. G). Defendants filed an Opposition on December 8, 2020, arguing that, given that the central issues on appeal involve whether this dispute should be resolved by an arbitrator and not a civil court, or alternatively in a New York forum, discovery was automatically stayed by Rules 205 and 241, SCACR. Footnote 2 of Defendants' Opposition stated that, "In

federal cases involving the FAA [Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”)], a party can move to stay any further proceedings during an appeal, including discovery, pursuant to section 3 of the FAA. In South Carolina, such a motion to stay is unnecessary in light of the automatic stay provided in Rules 205 and 241, SCACR. However, to the extent this Court determines that Defendants need to move affirmatively to stay discovery; Defendants request that this Court treat this Memorandum in Opposition as, alternatively, a Motion For a Stay of Discovery pursuant to 9 U.S.C. § 3 pending the outcome of their appeal to the South Carolina Court of Appeals.” (Exh. H).

The parties were heard by Judge Jennifer McCoy on that same date. On February 11, 2021, Judge McCoy issued a Form 4 Order granting Plaintiff’s Motion to Compel. In that Order, Judge McCoy stated that, “To the extent Defendants’ response can be construed as a Motion for Stay, such motion is denied.” (Exh. I).

Defendants moved for reconsideration of the February 11, 2021 Order, seeking an extension of time in which to respond to discovery because Plaintiff’s counsel refused to communicate with Defendants regarding any extension. (Exh. J). Defendants began providing responses to Plaintiff’s initial discovery requests and, since Plaintiff’s discovery requests sought commercially sensitive information and Plaintiff’s counsel refused to engage in a constructive dialogue about a negotiated confidentiality agreement, on March 19, 2021 moved for a Protective Order asking the Court to enter a confidentiality order to protect commercially sensitive material. (Exh. K (exhibits not included)) .

Subsequently, and despite Plaintiff’s repeated claim to Judge McCoy that he was seeking only limited discovery that would otherwise be available to him under the JAMS Arbitration Rules, Plaintiff has continued to serve multiple rounds of discovery requests on Defendants, as well as

subpoenas on eleven uninvolved third parties.⁵ These include:

- Plaintiff's Requests for Admission to the Individual Defendants, served on April 23, 2021, (Exh. L);
- Plaintiff's Second Request for Production to the Corporate Defendants, served on April 23, 2021, (Exh. M);
- Plaintiff's subpoenas to eleven third-party media companies served on April 26, 2021, (Exh. N);
- Plaintiff's First Set of Interrogatories and Second Request for Production to the Individual Defendants, served on April 27, 2021, (Exh. O);
- Plaintiff's Third Request for Production on the Corporate Defendants, served on April 28, 2021, (Exh. P);
- Plaintiff's Third Request for Production on the Individual Defendants, served on April 30, 2021, (Exh. Q);
- Plaintiff's Fourth Request for Production to the Corporate Defendants, served on April 30, 2021, (Exh. R);
- Plaintiff's First Request for Admission to the Corporate Defendants, served on May 4, 2021, (Exh. S);
- Plaintiff's Second Request for Admission to the Individual Defendants, served on May 4, 2021, (Exh. T);
- Plaintiff's First Set of Interrogatories to the Corporate Defendants, served on May 5, 2021, (Exh. U);
- Plaintiff's Third Request for Admission to the Individual Defendants, served on May 7, 2021, (Exh. V);
- Plaintiff's Second Request for Admission to Corporate Defendants, served on May 7, 2021, (Exh. W);
- Plaintiff's Second Set of Interrogatories to the Individual Defendants, served on May 11, 2021, (Exh. X);

⁵ While Plaintiff served separate full sets of discovery on each of the seven Defendants, Petitioners are attaching only one set of each round of discovery, as well as only one set of the nonparty subpoenas, as exhibits hereto, as each of the sets is identical in substance.

- Plaintiff's Second Set of Interrogatories to the Corporate Defendants, served on May 12, 2021, (Exh. Y);
- Plaintiff's Third Set of Interrogatories to the Individual Defendants, served on May 12, 2021, (Exh. Z);
- Plaintiff's Third Request for Admission to the Corporate Defendants, served on May 14, 2021, (Exh. AA);
- Plaintiff's Third Set of Interrogatories to the Corporate Defendants, served on May 14, 2021, (Exh. BB);
- Plaintiff's Fourth Request for Admission to the Corporate Defendants, served on May 20, 2021, (Exh. CC);
- Plaintiff's Fourth Set of Interrogatories to the Corporate Defendants, served on May 20, 2021, (Exh. DD);
- Plaintiff's Fourth Request for Production to the Individual Defendants, served on May 20, 2021, (Exh. EE);
- Plaintiff's Fourth Request for Admission (to Defendant Craig Conover only) served on May 25, 2021 (Exh. FF);
- Plaintiff's Fifth Set of Interrogatories to the Corporate Defendants, served on May 25, 2021 (Exh. GG); and,
- Plaintiff's Fourth Set of Interrogatories and Fifth Request for Production to the Individual Defendants, served on May 25, 2021, (Exh. HH).

Many of these additional requests seek information and documents that are redundant, unduly burdensome, and/or plainly irrelevant to the claims and defenses in this lawsuit. Plaintiff has made it abundantly clear that he intends to conduct a full-scale fishing expedition from Defendants and uninvolved nonparties before the circuit court, far exceeding the "limited" discovery he claimed he is permitted under JAMS arbitration rules. Consequently and in light of Plaintiff's continued attempts to obtain full-blown discovery in this case while the appeal is pending, on April 28, 2021, Defendants filed a Motion for Stay with the circuit court. (Exh. II). On May 27, 2021, Defendants filed a Memorandum in Support of their Motion for Stay. (Exh. JJ).

Defendants' Motion for a Protective Order was heard by The Honorable Robert M. Young, Sr. on May 26, 2021. At that hearing, the issue of whether Judge McCoy's February 11, 2021 Form 4 Order was limited to the initial round of discovery (which Plaintiff had repeatedly characterized as limited and what he would be entitled to under the JAMS arbitration rules) or whether it extended to all discovery. Judge Young indicated he would consult with Judge McCoy and advise the parties. Judge Young agreed a confidentiality order was necessary and admonished Plaintiff's counsel for continuing to serve multiple rounds of piece-meal discovery.

Nonetheless, Plaintiff continued to serve discovery on Defendants, including:

- Plaintiff's Fourth Request for Admission and Fifth Set of Interrogatories (to Defendants Chelsea Meissner & Madison LeCroy only) served on May 28, 2021 (Exh. KK);
- Plaintiff's Fifth Request for Admission and Fifth Set of Interrogatories (to Defendant Craig Conover only) served on May 28, 2021 (Exh. LL);
- Plaintiff's Sixth Set of Interrogatories and Fifth Request for Production to the Corporate Defendants, served on June 24, 2021 (Exh. MM); and,
- Plaintiff's Sixth Request for Production to the Individual Defendants, served on June 24, 2021 (Exh. NN).

Following the May 26, 2021 hearing, the parties agreed to a Confidentiality Order, which was entered by the circuit court on June 21, 2021. Defendants have substantially completed their responses to Plaintiff's initial discovery requests.

Previously, on April 29, 2021, Defendants had filed a Motion for Protective Order and to Quash the Third-Party Subpoenas that Plaintiff had served on eleven uninvolved non-parties to this dispute. (Exh. OO).⁶ That Motion was heard by Judge Cothran on December 15, 2021. At that

⁶ Defendants filed their Memorandum in Support of Motion for Protective Order and to Quash Third-Party Subpoenas on December 8, 2021, arguing again that all discovery should be stayed pending the outcome of this appeal. (Exh. PP). Plaintiff filed his Opposition the day before the hearing. (Exh. QQ).

hearing, the central issue became whether Judge McCoy's February 11, 2021 Form 4 Order was limited to Plaintiff's initial round of discovery, or whether it extended to all discovery. As Judge McCoy was present at the courthouse on other matters, Judge Cothran consulted with her while she was on a short break and advised the parties that Judge McCoy had intended her order permit "full discovery" in the circuit court in this matter notwithstanding Defendants' pending appeal. As a result, Judge Cothran denied Defendants' motion as moot. (Exh. QQ-2, pp. 8-9) (Exh. QQ-3).

Plaintiff continues to pursue voluminous party and third-party discovery at the circuit court while Defendants' appeal is pending. On December 17, 2021, Plaintiff filed a Motion to Compel, (Exh. RR), and a Motion to Deem Admitted Plaintiff's Requests to Admit. (Exh. SS).

ARGUMENT

I. RULES 205 & 241, SCACR

Upon service of a notice of appeal, the appellate court has exclusive jurisdiction over the appeal. The South Carolina Appellate Court Rules permit the lower court to proceed only "with matters not affected by the appeal." Rule 205, SCACR. Correspondingly, under Rule 241, SCACR, "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." A lower court only "retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Rule 241(a), SCACR.

"Under Rule 205 and the last sentence of" what is now Rule 241, "the lower court may not act or issue orders that affect an issue on appeal," but can "act only to enforce matters not stayed by the appeal." *Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E.2d 419, 422 (2007). A matter or issue should be stayed where it "depend[s] upon the success of the [party's] appeal of the trial court's order ..." *Wayne Smith Constr. Co. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 149, 363

S.E.2d 115, 120 (Ct. App. 1987). To determine whether a matter is “affected” by an appeal, a court must closely examine the issues on appeal, asking whether there is any “action the appellate courts could take resolving th[e] appeal that would affect the” proceedings initiated by a party during a pending appeal. *Tillman v. Oakes*, 398 S.C. 245, 256, 728 S.E.2d 45, 51 (Ct. App. 2012).

Rule 241(c)(1) provides, in pertinent part, that, “In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal.” Rule 241(b) lists “some, but not all, of the exceptions to the general rule.” While Defendants believe discovery before the circuit court is and should have been stayed automatically by operation of Rules 205 and 241(a), the circuit court apparently believes this case is subject to an exception to the automatic stay provisions, as it has denied Defendants’ requests for a stay of Plaintiff’s on-going repetitive and burdensome discovery requests.

Rule 241(d)(1) requires a party seeking a writ of supersedeas to first apply to the lower court for relief, which Defendants have done. (Exhs. H, II, JJ). “After the lower court ... has ruled, any party may petition the appellate court where the appeal is pending ... for review of this order.” Rule 241(d)(2), SCACR. “Any party aggrieved by the decision of the lower court ... may petition under this Rule for a review of that decision.” Rule 241(d)(7), SCACR. Where a party’s request for a stay of proceedings during an appeal is denied by the circuit court, it may petition this Court for a writ of supersedeas. *State v. Smith (In re Decker)*, 322 S.C. 212, 213, 471 S.E.2d 459, 460-461 (1995).

Defendants applied to the circuit court for a stay of proceedings, including discovery, (Exh. H), but that relief has been unjustifiably denied. Until December 15, 2021, it was unclear whether the circuit court was compelling only limited discovery, which, as noted above, Plaintiff asserted

he would have been entitled to under the JAMS rules⁷ and to which Defendants have substantially responded, or whether the circuit court intended for full-blown discovery to proceed during the pendency of this appeal. It is now clear that, by allowing Plaintiff to proceed with his ongoing, repetitive and burdensome discovery, the circuit court intends to allow this matter to be litigated at the trial level while the question of whether this dispute must be mediated and, if necessary arbitrated, is pending before this Court.

In deciding whether to impose a supersedeas of further proceedings in the forum below, “the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to preserve a contested issue from becoming moot.” Rule 241(c)(2), SCACR. In addition, where “the issuance of a writ of supersedeas is insufficient to afford complete relief, the ... appellate court may order other affirmative relief upon such terms as are deemed appropriate.” Rule 241(c)(3), SCACR.

Here, continued litigation of this case before the circuit court, when that tribunal’s very authority to hear and resolve the dispute between the parties is the entire question on appeal to this Court, will largely defeat Defendants’ rights to an arbitral forum, effectively mooting their pending appeal, runs directly counter to the very purpose of an appeal of a denial to compel arbitration, and subjects the parties to the “worst possible outcome,” *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504, 506 (7th Cir. 1997), *i.e.*, going through the time and expense of broad discovery before a civil court, only to have an appellate court order that the dispute must be arbitrated.

⁷ While Defendants dispute Plaintiff’s assertion that the JAMS Rules would have allowed all of the extensive discovery he sought in his initial standard discovery requests, Defendants acknowledge that the JAMS Rules do provide for some discovery and, as a result, have been providing responses to that initial set of discovery requests.

II. THIS COURT SHOULD ISSUE A WRIT OF SUPERSEDEAS STAYING ALL PENDING AND FURTHER DISCOVERY IN THIS CASE UNTIL FINAL RESOLUTION OF DEFENDANTS' APPEAL OF THE DENIAL OF THEIR MOTION TO COMPEL ARBITRATION.

While Defendants believe all further proceedings before the circuit court, including discovery, are automatically stayed by their appeal pursuant to Rules 205 and 241 of the SCACR, the circuit court recently confirmed that it disagrees (albeit without providing any substantive reasoning whatsoever). In light of the circuit court's recent clarification that it is denying any stay of the proceedings, thereby allowing Plaintiff to pursue overly broad, burdensome, and plainly irrelevant party and third-party discovery while Defendants' appeal is pending before this Court, Defendants seek a writ of supersedeas staying all further discovery and proceedings before the trial court.

The result reached by the circuit court is inconsistent with numerous federal court decisions, which routinely hold that discovery should be stayed while a denial of a motion to arbitrate is being heard on appeal. The test in federal court for whether an appeal divests a lower court of authority to proceed is similar to that applied under Rules 205 and 241, SCACR: "As a general rule, the filing of an appeal 'confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case *involved in the appeal*.'" *Levin v. Alms & Assocs.*, 634 F.3d 260, 263 (4th Cir. 2011) (emphasis added), quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), and 9 U.S.C. § 16(a)(1)(A). By way of example, in *Bradford-Scott*, the Seventh Circuit explained that "The qualification 'involved in the appeal' is essential—it is why the district court may award costs and attorneys' fees after the losing side has filed an appeal on the merits." 128 F.3d at 505; cf. *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (finding award of attorney's fees not affected by pending appeal); *Carolina Bus.*

Brokers v. Strickland, 301 S.C. 434, 439, 392 S.E.2d 469, 472 (Ct. App. 1990) (same). The terms “involved in” and “affected by” are substantively similar and, to the extent there is any substantive difference, “affected by” (the language of Rules 205 and 241 of the SCACR) arguably has a broader scope than does “involved in.”

Clearly, the permissible scope and timing of discovery, among other discovery-related issues, are “affected by” Defendants’ pending appeal. Indeed, in *Lummas Co. v. Commonwealth Oil Refining Co.*, the First Circuit instructed that “a court order of discovery would be affirmatively inimical to appellee’s obligation to arbitrate, if this court determines it to have such obligation. It seems clear that if arbitration is to be had of the entire dispute, appellee’s right to discovery must be far more restricted than if the case remains in a federal court for plenary trial ...” 273 F.2d 613 (1st Cir. 1959).

For similar reasons, the Fourth Circuit holds that “an appeal on the issue of arbitrability automatically divests the district court of jurisdiction over the underlying claims and requires a stay of the action, unless the district court certifies the appeal as frivolous or forfeited.” *Levin*, 634 F.3d at 26.⁸ While “*Levin* does not elaborate on the meaning of ‘frivolous’” in this context, “the ‘common application’ of frivolity in the context of appeal is when ‘[none] of the legal points [are] arguable on their merits.’” That is a high bar and, therefore, courts in the Fourth Circuit regularly stay discovery while a motion to compel arbitration is pending. *See, e.g., Berkeley County Sch. Dist. v. Hub Int’l Ltd.*, No. 2:18-cv-00151-DCN, 2019 U.S. Dist. LEXIS 86712 *3-4, 2019 WL 2233145 (D. S.C. May 23, 2019) (applying the rule adopted in *Levin* and staying underlying case where the issue on appeal was whether the parties formed an agreement to arbitrate); *see also*

⁸ Plaintiff has not filed any motion to dismiss the pending appeal on the basis of frivolity. In addition, this Court has ordered the parties to submit additional bound copies of their Briefs and the Record, indicating the Court believes the appeal warrants serious consideration.

Lummus, 273 F.2d at 613 (staying discovery while denial of defendant’s motion to compel arbitration was on appeal, noting that the plaintiff’s “right to discovery must be far more restricted” in an arbitral forum than it would be in federal district court); *Combined Energies v. CCI, Inc.*, 495 F. Supp. 2d 142, 143 (D. Me. 2007) (granting the defendant’s motion to stay discovery while the denial of its motion to compel arbitration was pending on appeal because an appeal, in either federal or state court, “is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”).

“To assume ongoing jurisdiction over discovery,” while an appeal of a denial of a motion to compel arbitration was pending, “would be inconsistent with the bedrock principle that once a case is appealed, jurisdiction rests with the court of appeals, not in both the court of appeals and the district court.” *Combined Energies*, 495 F. Supp. 2d at 143-144. “Congress acknowledged that one of the principal benefits of arbitration, avoiding the high costs and time involved in judicial dispute resolution, is lost if the case proceeds in both judicial and arbitral forum. If the court of appeals reverses and orders the dispute arbitrated, then the costs of the litigation in the district court incurred during appellate review have been wasted and the parties must begin again in arbitration.” *Blinco v. Green Tree Serv., LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004).

“Whether the case should be litigated in the [lower] court is not an issue collateral to the question presented by an appeal under § 16(a)(1)(A),” which is the appeal provision of the FAA; instead, “it is the mirror image of the question presented on appeal. Continuation of the proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals.” *Bradford-Scott*, 128 F.3d at 505; *see also Levin*, 634 F.3d at 264 (“Discovery is a vital part of the litigation process and permitting discovery

constitutes permitting the continuation of the litigation over which the district court lacks jurisdiction. [citation and quote omitted] Furthermore, allowing discovery to proceed would cut against the efficiency and cost-saving purposes of arbitration”). Specifically, “discovery on the subject matter of a dispute to be arbitrated should be denied in the absence of extraordinary circumstances.” *McIntire v. China MediaExpress Holdings, Inc.*, 252 F. Supp. 3d 328, 330 (S.D. N.Y. 2017), citing *Hughes, Hooker & Co. v. American Steamship Owners Mut. Prot. & Indem. Ass’n, Inc.*, No. 04 Civ. 1859 (SHS), 2005 U.S. Dist. LEXIS 11381 *21 (S.D. N.Y. June 5, 2005). The term “extraordinary circumstances” “addresses situations where a party’s ability to properly present its case to the arbitrator will be irreparably harmed absent court ordered discovery.” *McIntire*, 252 F. Supp. 3d at 331. Plaintiff has not and cannot meet such a standard. He has not, for example, argued let alone made any showing that the discovery he seeks now would be unavailable if later permitted in the proper forum. Indeed, he argues, erroneously, that he would be entitled to have his repetitive, intrusive and unduly burdensome discovery requests enforced regardless of the forum in which this dispute ultimately is resolved.

In addition, this case is subject to the provisions of the FAA, the applicability of which Plaintiff has conceded. (R. pp. 102, 276-279 (asserting *Southern Charm* is broadcast nationally and internationally, and arguing he is entitled to a jury trial under the FAA)). Sections 3 and 16 of the FAA provide additional authority that all further proceedings before the circuit court, including all pending discovery, should be stayed pending the outcome of Defendants’ appeal to this Court.

In the circuit court, Plaintiff argued, without any authority, that Defendants’ appeal affects only the “mode and manner of the trial of this case.” It is frankly unclear what Plaintiff’s argument even means. As explained in detail in many of the cases cited above and below, the mode and manner of trying a case in court versus in an arbitral forum can be significantly different with the

resulting effect that forcing a party to litigate an arbitrable dispute deprives that party of the principal benefits of arbitration while also wasting party and judicial resources. To the extent Plaintiff is suggesting, without any support, that proceeding through plenary discovery in court is not an issue that is “affected by” Defendants’ pending appeal, that argument is clearly foreclosed by well-established precedent, only some of which is cited above and below.

Defendants’ primary argument below was that Plaintiff’s Amended Complaint should be dismissed in its entirety and his claims resolved through mediation and, if that failed, through binding arbitration administered by JAMS in accordance with the terms of the Arbitration Agreement Plaintiff freely and voluntarily signed. (R. pp. 179-196, 287-303). Defendants also argued that the Amended Complaint should be dismissed pursuant to the separate valid and enforceable forum selection clause that selects New York state or federal court. (R. pp. 196-202, 303-305). These are the same issues Defendants have raised to this Court. *See* Brief of Appellants; Reply Brief of Appellants. Thus, the ultimate issues raised by Defendants on appeal directly concern the circuit court’s jurisdiction to proceed with any aspect of the litigation of Plaintiff’s claims with no exception or carve out for conducting discovery. It is not disputed (nor could it be) that if this Court reverses the circuit court and orders the parties to mediation, and if necessary, arbitration or litigation in New York, the circuit court would have no jurisdiction to issue any rulings on the scope of discovery, including third-party subpoenas, in this action. Undeniably, the forum in which the merits of this action is tried is the forum that has jurisdiction to define the scope and timing of any discovery. *E.g., Lummus*, 273 F.2d at 613 (observing that the plaintiff’s “right to discovery must be far more restricted” in an arbitral forum than it would be in federal district court).

As the Seventh Circuit succinctly explained in *Bradford-Scott*, “Arbitration clauses reflect

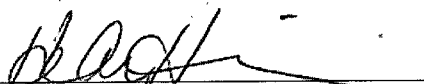
the parties' preference for non-judicial dispute resolution, which may be faster and cheaper. These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially. The worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to court to have the award enforced Combining the costs of litigation and arbitration is what lies in store if a district court continues with the case while an appeal under § 16(a) is pending. Cases of this kind are therefore poor candidates for exceptions to the principle that a notice of appeal divests the district court of power to proceed with the aspects of the case that have been transferred to the court of appeals.” 128 F.3d at 506; *see also Hardin v. First Cash Fin. Servs.*, 465 F.3d 470, 474 n.2 (10th Cir. 2006) (upholding stay of all proceedings before lower court while denial of a motion to compel arbitration was on appeal because “allowing a district court to retain jurisdiction of such matters would disrupt the very purpose of an arbitration appeal: ‘Arbitration clauses reflect the parties’ preference for *non-judicial* dispute resolution”); *Falcone Bros. P’ship v. Bear Stearns & Co.*, 699 F. Supp. 32, 35 (S.D. N.Y. 1988) (“The law in this circuit ... is that discovery on the subject matter of a dispute to be arbitrated should be denied in the absence of extraordinary circumstances”); *Gingras v. Rosette*, No. 5:15-cv-101, 2016 U.S. Dist. LEXIS 113187 *20-22 (D. Vt. 2016) (finding the balance of hardships supported granting a stay of discovery while defendants’ appeal of a denial of a motion to compel arbitration was pending, as the plaintiffs would suffer no harm as a result of any delay). Here, as was the case in *Lummus*, “Until it is determined whether this action has been properly brought, appellee should not receive any unnecessary fruits thereof.” 273 F.2d at 614.

CONCLUSION

For all of the reasons set forth above, Defendants respectfully request that this Court issue a writ of supersedeas staying all further proceedings before the circuit court, including discovery, particularly in light of the wide-ranging and unduly burdensome fishing expedition to which Defendants, as well as uninvolved nonparties, have been subjected in contravention of South Carolina appellate rules and the well-reasoned public policy reasons supporting those rules. In addition, Defendants request that this Court award other appropriate relief, such as attorneys' fees and costs related to filing of this Petition, that this Court deems appropriate.

January 14, 2022

MCANGUS GOUELOCK & COURIE, LLC

By: 
Helen F. Hiser, S.C. Bar No.: 76124
James D. Smith, Jr., S.C. Bar No. 16179
Danielle F. Payne, S.C. Bar No. 73142
P.O. Box 650007
Mount Pleasant, South Carolina 29465
helen.hiser@mgclaw.com
danielle.payne@mgclaw.com
jsmith@mgclaw.com
(843) 576-2900

Attorneys for Appellants/Petitioners

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 18 2022

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy and R. Ferrell Cothran, Jr., Circuit Court Judges

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker
Media, Inc.; NBCUniversal Media, LLC;
Comcast Corporation; Craig Conover; Chelsea
Meissner; and Madison LeCroy,..... Appellants.

PROOF OF SERVICE

I certify that I have served Appellants/Petitioners' **Petition for Writ of Supersedeas** on Joseph Abruzzo, by emailing it and placing a copy of it in the U.S. Mail to his attorney of record, as follows:

Aaron E. Edwards, Esq.
Edwards Law Firm
755 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, South Carolina 20464
(843) 375-2008
aaron@edwardsfirmllc.com

January 14, 2022

/s/Helen F. Hiser
Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200
PO Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

Attorneys for Appellants/Petitioners

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JAN 18 2022

SC Court of Appeals

Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

January 14, 2022

Via S.C. Courts E-Filing & U.S. Mail

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

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc.,
NBCUniversal Media, LLC, Comcast Corporation, Craig Conover,
Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095


Dear Ms. Kitchings:

Enclosed please find Appellants' Petition for Writ of Supersedeas, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email and U.S. Mail.

Pursuant to the Supreme Court's August 25, 2021 Order No. 2021-08-25-03 regarding Reduced Number of Copies Required in Appellate Matters, we are sending an unbound copy of the original of the Petition, along with our firm's check in the amount of \$50 for the filing fee, via U.S. Mail. If the Court needs additional copies, please let us know.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email & U.S. Mail)

McANGUS GOUDELICK & COURIE LLC

735 JOHNNIE DODDS BLVD, STE 200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

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