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Feb 17 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo, Respondent,

v.

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

**RESPONDENT'S RETURN TO APPELLANTS'
MOTION TO DISMISS PETITION FOR REHEARING**

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ATTORNEY FOR RESPONDENT

Appellants have cleverly found another end-run around a procedural rule. “No return to a petition for rehearing may be filed unless requested by the appellate court.” Rule 221(a), SCACR. This court did not yet request a return to respondent’s petition for rehearing. Instead, it seems appellants re-captioned what appears to be a return to respondent’s petition as a “motion to dismiss petition for rehearing.” Seeing as there really is no such thing as dismissal of a petition for rehearing (it is either granted or denied), the “motion to dismiss” can be denied for this reason alone. However, the motion to dismiss is quite revealing, and appellants should be requested to submit a return addressing the issues raised herein and in respondent’s petition for rehearing.

This Court’s January 28 order finally decided the matter of whether there is a stay of discovery in this case. By arguing the January 28 order granting a stay of discovery did not “finally decide any matter in the pending appeal”, appellants admit discovery is *not* a matter affected by the pending appeal. If discovery is not a matter affected by the pending appeal of Judge Price’s order, then appellants also admit Judge McCoy and the circuit court retained jurisdiction and ability to enforce discovery matters. Rule 241(a), SCACR (the lower court “retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal”); Rule 205, SCACR (“Nothing in these Rules shall prohibit the lower court...from proceeding with matters not affected by the appeal).

Moreover, Judge McCoy’s discovery order forming the basis of appellants’ petition for a writ of supersedeas does not involve the automatic stay general rule; it is an exception. Rule 241(b)(2), SCACR (excepting judgments directing the delivery of documents); *See also* respondent’s petition for rehearing, p. 11. “Where specific conditions must be met before the exception applies, those conditions must be strictly complied with.” Rule 241(b).

The specific provision applicable to Judge McCoy’s discovery order provides “execution of the judgment shall *not* be stayed by appeal” without a surety bond or placing the documents with the court or receiver. S.C. Code 18-9-150(emphasis added); *See also* respondent’s petition for rehearing, p. 11. Appellants have done no such thing. The rules therefore require the Court to deny appellants’ petition.

Finally, in a case subject to an exception, like this one, “any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision *on appeal...*” Rule 241(c)(1), SCACR. (emphasis added). A reasonable reading of this rule is that granting supersedeas relief contemplates an accompanying appeal of the same order from which the petitioner seeks supersedeas.¹ If this is the case, then without a pending appeal of the order from which appellants seek a supersedeas, neither Rule 205 nor Rule 241 provide a basis for the Court’s January 28 order imposing a stay.

Even if the Court could grant supersedeas over an order that is not pending on appeal, there are no novel issues of law to address,² no extraordinary circumstances warranting supersedeas relief,³ no abuse of discretion by the circuit court,⁴ and it is now acknowledged that discovery is

¹ Appellants have not appealed Judge McCoy’s discovery order; they have appealed Judge Price’s order denying their motion to compel arbitration. *See* respondent’s petition for rehearing, p. 7.

² Matter of Decker, 322 S.C. 212, 471 S.E.2d 459 (1995)(exercising discretion to grant writ of supersedeas in light of novel questions of law presented); *cf* Sanders v. Savannah Highway Automotive Company, 432 S.C. 328, 852 S.E.2d 744 (Ct. App. 2020)(holding trial court had jurisdiction to enter order compelling discovery after Defendants filed notice of appeal of order denying arbitration and further finding discovery orders are interlocutory and not immediately appealable).

³ *See* Oncology and Hematology Associates of S.C., LLC, 387 S.C. 380, 692 S.E.2d 920 (2010)(requiring exceptional circumstances to address an interlocutory order by way of writ of certiorari).

⁴ Hollman v. Woolfson, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009)(“A trial judge's rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion”).

not even a matter affected by the pending appeal. Thus, once again, neither Rule 205 nor Rule 241 provide a basis for the Court's January 28 order imposing a stay and it should be vacated.

Respondent has previously articulated how Judge McCoy's discovery order was not a matter affected by the pending appeal. *See* respondent's petition for rehearing, pp. 3-6. Appellants now essentially admit the same and that the circuit court retained jurisdiction to hear and enforce discovery matters as a result. This is in addition to appellants' acknowledging they've already engaged in discovery in the circuit court and that they would be required to do so even in arbitration. *Id*; *see also* Appellants Reply Brief p. 7 (acknowledging appellants have produced over 5,500 pages of documents and videos already); Appellants Reply Brief p. 3(acknowledging discovery is appropriate even if their appeal is granted and the case was referred to arbitration). Appellants have also failed to comply with all conditions necessary for the Court to impose a stay of discovery. Rule 241(b)(2), SCACR; S.C. Code 18-9-150. These facts, along with the binding and persuasive authority declining to grant relief in similar cases cited herein and in respondent's petition for rehearing, strongly suggest the Court's January 28 order imposing a stay of discovery was in error.

CONCLUSION

For the reasons set forth herein and in respondent's petition for rehearing, the appellants' motion to dismiss petition for rehearing should be denied, and the Court's January 28, 2022 order granting appellants petition for a writ of supersedeas should be vacated with such other relief as the Court deems appropriate.

s/ Aaron E. Edwards
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Mt. Pleasant, South Carolina
Dated: February 17, 2022

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Madison LeCroy, Appellants.

PROOF OF SERVICE

I certify that I have served **Respondent's Return to Appellants' Motion to Dismiss
Petition for Rehearing** on Appellants by emailing and mailing it to their attorneys of record
as follows:

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February 17, 2022

Via S.C. Court E-filing and U.S. Mail

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

In Re: Abruzzo vs. Bravo Media Productions LLC, et al.
Case No: 2020-CP-10-472 (Charleston)
Appeal No.: 2020-001095

Ms. Kitchings:

Enclosed please find Respondent's Return to Appellants' Motion to Dismiss Petition for Rehearing in the above-referenced matter. If you have any questions, please contact me.

Sincerely,



s/ Aaron E. Edwards

Enclosures

CC: counsel of record for Appellants