

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

May 26 2022

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

Appellate Case No.
2021-000837

In Re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. LuzakAppellant

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 Respondents

--and--

Coastal Forest Resources Company ("CFRC") Intervenor/Respondent

--and--

Hampton B. LuzakAppellant

vs.

Merrill U. BarringerRespondent

**INTERVENOR-RESPONDENT COASTAL FOREST RESOURCES COMPANY'S
PETITION FOR REHEARING**

Intervenor-Respondent Coastal Forest Resources Company (“CFRC”) hereby files this petition for rehearing in accordance with Rule 221(a), SCACR. CFRC respectfully requests that the Court grant rehearing of the April 29, 2022 order dismissing this appeal (Appellate Case No. 2021-000837, the “Second Appeal”) as moot (the “Vacating Order”).¹ CFRC further requests that the Court rescind the Vacating Order, clarify that this appeal is not moot, and proceed to the merits of the appeal.

ARGUMENT

CFRC joins and adopts the arguments of Respondents Merrill Barringer, individually and as personal representative of the Estate of Paul Brandon Barringer II, and 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 (“Respondents”) in their Petition for Rehearing. As Respondents explain, the Circuit Court was never divested of jurisdiction because this Court has ruled that the Circuit Court’s December 29, 2020 bifurcation order (the “Bifurcation Order”), which was the sole subject of the petition for writ of certiorari before this Court, was interlocutory and not immediately appealable. Therefore, under longstanding South Carolina law, Ms. Luzak’s appeal of the Bifurcation Order did not transfer jurisdiction from the Circuit Court. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (“Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay further proceedings in the lower court.”).

CFRC also notes two inconsistencies in the Vacating Order that specifically affect Appellant Hampton Luzak’s appeal of the Circuit Court’s June 7, 2021 order granting CFRC’s

¹ For the sake of clarity and brevity, CFRC adopts the same defined terms used in Respondents’ petition. In addition, all internal citations, quotations, and alterations are omitted unless otherwise noted.

motion for intervention and protective relief (the “Derivative Damages Order”), which is the only order to which CFRC is a party.

First, the Vacating Order dismisses the Second Appeal as moot, but does not mention the Derivative Damages Order that is part of that appeal. The Second Appeal involves three separate orders that Ms. Luzak has appealed: the Derivative Damages Order; a July 6, 2021 order granting Merrill Light’s partial motion for summary judgment as to the validity of certain estate planning documents executed by the decedent, Paul B. Barringer II, in February 2012 (the “July 2021 Summary Judgment Order”); and a second appeal of the Bifurcation Order. The Court dispensed with the Bifurcation Order by denying Ms. Luzak’s petition for a writ of certiorari. The Vacating Order also references “Respondent Merrill U. Barringer’s motion for summary judgment,” ruling that the Circuit Court “did not have authority” to grant that motion while the appeal of the Bifurcation Order was still pending.² But the Vacating Order makes no mention of the Derivative Dismissal Order or CFRC even though it dismisses “this appeal . . . as moot.” Indeed, CFRC was not even a party to the first appeal of the Bifurcation Order, the disposition of which apparently prompted the Court’s Vacating Order for the Second Appeal.

Second, the Circuit Court had the authority to issue the Derivative Damages Order despite the pending appeal of the Bifurcation Order. Ms. Luzak did not assert before the Circuit Court, and has not contended in her appeal of the Derivative Damages Order, that the Circuit Court lacked authority to issue the Derivative Damages Order while her first appeal of the Bifurcation Order was pending. On the contrary, Ms. Luzak only sought a declaration of stay from the Court of

² It is unclear if the Vacating Order is referencing the motion for summary judgment of *Merrill Light*, which is part of the Second Appeal, or a separate motion for summary judgment filed by Merrill U. Barringer that is the subject of a separate, later-filed appeal.

Appeals *after* the issuance of the Derivative Damages Order to forestall the bifurcated trial that was the subject of the Bifurcation Order.

That was for good reason. As the Court noted in the Vacating Order, “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. . . . 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.” Rule 241(a), SCACR. Likewise, “[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” Rule 205, SCACR; *see also Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 171–72, 866 S.E.2d 562, 575–76 (2021); *Tillman v. Oakes*, 398 S.C. 245, 254–56, 728 S.E.2d 45, 50–51 (Ct. App. 2012).

The Derivative Damages Order was not a matter “affected by the appeal” of the Bifurcation Order. The Derivative Damages Order solely concerned certain of Ms. Luzak’s damages claims arising from alleged injuries she sustained only in her capacity as a CFRC shareholder. CFRC intervened for the limited purpose of precluding Ms. Luzak from litigating those claims in this case because they constitute shareholder derivative claims that belong *solely* to CFRC. The Circuit Court lacked subject matter jurisdiction, and Ms. Luzak lacked standing to pursue those claims individually, because derivative claims belonging to CFRC must be litigated pursuant to Virginia law in a Virginia court, the state where CFRC is incorporated. The damages claims at issue in the Derivative Damages Order have little to do with the two contract-based causes of action against Mrs. Barringer that were the subject of the Bifurcation Order.

CONCLUSION

CFRC respectfully requests that the Court grant rehearing, rescind the Vacating Order, clarify that this appeal is not moot, and proceed to the merits of the appeal.

Dated: May 26, 2022

Respectfully submitted,

s/ Ryan G. Rich

HUNTON ANDREWS KURTH LLP

RYAN G. RICH (S.C. Bar No. 80906)
One South at the Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280-0008
Telephone: 704-378-4700
rrich@huntonAK.com

EDWARD J. FUHR
(admitted *pro hac vice*)
JOHNATHON E. SCHRONCE
(admitted *pro hac vice*)
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: 804-788-8201
Facsimile: 804-788-8218
efuhr@huntonAK.com
jschronce@huntonAK.com

*Counsel for Intervenor/Respondent
Coastal Forest Resources Company*