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Oct 03 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Hon. Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-4473
App. Case No.: 2022-000945

Atlas Events, LLC.....*Appellant*

v.

Moon Scientific Group, LLC & Christopher Moon.....*Respondents.*

PETITION FOR WRIT OF CERTORARI

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COUNSEL FOR THE PETITIONER

CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1) of the South Carolina Appellate Court Rules, the undersigned counsel for Petitioner certifies that a Motion for Rehearing was made and ruled upon by the South Carolina Court of Appeals.

QUESTIONS FOR REVIEW

1. Did the Court of Appeals err in dismissing the present appeal as Interlocutory where the Order was incorrectly identified by the Court and where the Order effectively strikes a portion of the Appellants pleadings?

STATEMENT OF THE CASE

This case arises from breach of contract claims filed by the Appellant against the Respondent in the Charleston County Court of Common Pleas. Appellant has alleged that they were harmed as a result of the Respondent's failure to perform under an agreement to provide sound equipment for a music festival. Appellant has claimed damages in the form of repayment of sum(s) paid under the contract, as well as consequential damages flowing from Respondents failure to perform. The Respondents have filed counterclaims against the Appellant claiming to be owed monies due under the subject agreement. On or about September 8, 2021, Respondent filed a Motion to Dismiss / Transfer Venue and a Motion for Summary Judgment. The Motion to Transfer Venue alleged that the amount in dispute was less than the jurisdictional threshold of the Circuit Court.

On or about January 31, 2022 two orders were issued by the Court of Common pleas: (1) Denying Respondents Motion for Summary Judgment and (2) Granting the Respondents Motion to Dismiss / Transfer Venue. Appellant subsequently filed a Motion to Reconsider the trial court's grant of the Motion to Dismiss / Transfer Venue. Some four months later, without a hearing (although requested by Appellants) the Motion to Reconsider was denied. Appellants filed the present appeal with the Court of Appeals, seeking the Court to overturn the Order on the Motion

to Transfer Venue and the Motion to Reconsider. The Court of Appeals summarily dismissed the Appeal as interlocutory, finding that “an Order denying the dismissal of a Motion for Summary Judgment is not immediately appealable.” Appellant filed a Petition for Rehearing with the Court informing the court that it had misidentified the Order actually on appeal, as no party was appealing the denial of the Motion for Summary Judgment. On or about September 2, 2022 the Court issued an Order denying Appellant’s Petition for Rehearing.

LEGAL ARGUMENTS

Appellants respectfully assert the Appellate Court overlooked or misapprehended a critical point of fact and law with respect to the issues present in the case at bar due to what appears to be a scrivener’s error, the resulting decision is therefore in opposition to established case law of this Court.

I. The Order on Appeal was incorrectly identified.

The Appellate Court erred in holding this appeal should be dismissed as interlocutory. On or about July 14, 2019, this Court issued an Order finding that the appeal should be dismissed as interlocutory as an appeal of the denial of summary judgment is not immediately appealable. Appellant does not intend to, nor would Appellant have the standing to, appeal the denial of the Respondent’s motion.

On or about January 31, 2022 two orders were issued by the Court of Common pleas: (1) Denying Respondents Motion for Summary Judgment and (2) Granting the Respondents Motion to Dismiss / Transfer Venue. While the correct Order was filed in the Circuit Court and served on the parties, it appears that the incorrect January 31, 2022 order was attached to the Notice filed electronically with this Court. The Motion to Reconsider filed by Appellant in the underlying matter, which is also referenced in the Notice of Intent to appeal, directly references the subject matter jurisdiction arguments, and does not contest the ruling on the Motion for Summary Judgment.

Appellant respectfully contends that the Court of Appeals should not dismiss the Appeal as interlocutory when the Order on a Appeal is not the denial of the Motion for Summary Judgment, but rather the Order on the Motion to Dismiss / Transfer Venue being granted in Respondents' favor. Appellant would assert such a ruling is not interlocutory as it impermissibly seeks to grant jurisdiction to the magistrate court over a matter which is clearly outside the jurisdictional threshold of the inferior court.

II. The Order Dismissing and Transferring Venue affects a substantial right of the Appellants.

The order dismissing the case and transferring the venue to magistrate's court is immediately appealable because it affects a substantial right by in effect, striking Plaintiff's demand for damages in their pleadings. As the Court of Appeals held in *Thornton v. SCE&G Corp*, 705 SE 2d 475, 391 S.C. 297 (2011):

We find support for this view in several opinions of our supreme court. In *Miles v. Charleston Light & Water Co.*, 87 S.C. 254, 69 S.E. 292 (1910), the supreme court considered the defendant's appeal from an interlocutory order ... After noting that such an order was not immediately appealable, the court heard the appeal anyway because "appeal has also been taken from the order upon the [defendant's] demurrer, which in effect strikes out a portion of the complaint.". In *Bowden v. Powell*, 194 S.C. 482, 10 S.E.2d 8 (1940), the supreme court [held] 'If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings. Id. (quoting Harbert, 74 S.C. at 16, 53 S.E. at 1002);

Under the reasoning of *Miles* and *Bowden*, an appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial."

While the *Thornton* court ultimately held the particular order in that case (one for class certification) was not immediately appealable, using the same logic the Court applied in reaching the

conclusion it is clear the present case *would* be immediately appealable. By dismissing the case, the Court is effectively striking the Plaintiff's demand for consequential damages. Moreover, the Order is effectively capping the claimed damages by Respondents, and thereby striking a portion of their Answer as well. If the case were allowed to proceed to trial in the magistrate's court, there would be no error of law at trial which Appellant could claim that would vindicate their right to claim damages in excess of the jurisdictional threshold of magistrate's court. Any decision finally affecting such a right is per se immediately appealable.

Accordingly, Petitioner respectfully requests this honorable Court to GRANT the Petition for Writ of Certiorari and review the Appellate Court's Order dismissing the appeal as interlocutory.

CONCLUSION

For all of the foregoing reasons stated herein, and in consideration of the logical and legal support thereof, this Court should GRANT the Petition for Writ of Certiorari and review the Appellate Court's decision.

Respectfully submitted this **3rd** day of **October, 2022**.

By: /s/ Andrew J. McCumber

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CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of Certiorari and Appendix on the Respondents by emailing a copy of same to their counsel of record Alison E. Gutberlet of the firm AG Brown Law Group, LLC at her email of record. Further, copies of same were emailed and mailed to Christopher Moon, individually and as agent of Defendant Moon Scientific Group, LLC.

Respectfully submitted this **3rd** day of **October, 2022**.

By:

/s/ Andrew J. McCumber
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October 3, 2022

VIA E-FILE AND US MAIL

THE HONORABLE JENNY ABBOTT KITCHINGS
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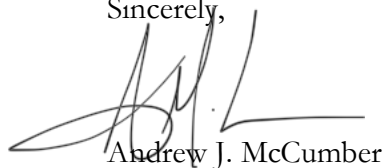
RE: Atlas Events, LLC v. Moon Scientific Group, LLC & Christopher Moon
Appellate Case No.: 2022-000945
Circuit Case No.: 2016-CP-10-4473
Our File No.: 2015-CV-025

Dear Ms. Kitchings:

Enclosed for filing you will please find one (1) copy of a Petition for Writ of Certiorari being filed with the S.C. Supreme Court in reference to the above case. Also enclosed are the following:

If you should have any questions, or need anything further from me, please do not hesitate to contact me. I thank you in advance for your time and attention to this matter.

Sincerely,



Andrew J. McCumber

AJM/scm

Enclosure(s) as stated.

cc: Allison E. Gutberlet, Esquire
Christopher Moon