

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Jennifer B. McCoy., Circuit Court Judge

Appellate Case No.: 2022 - 001374

Atlas Events, LLC.....*Petitioner*

v.

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

RESPONDENT MOON SCIENTIFIC GROUP'S RETURN TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI

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MOON SCIENTIFIC GROUP LLC

COMES NOW RESPONDENT, Moon Scientific Group, LLC, submits this Return to Petition for Writ of Certiorari. Atlas Events, LLC's Petition for Writ of Certiorari should be denied because the Court of Appeals appropriately dismissed Atlas Events, LLC's appeal because the underlying order is not immediately appealable.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals Err in reviewing the Order provided by Petitioner?
2. Is a Motion to Transfer Venue immediately appealable?

COUNTER-STATEMENT OF THE CASE

This case arises from breach of contract claims filed by Atlas Events, LLC (hereinafter "Petitioner") against the Respondent in the Charleston County Court of Common Pleas. On September 8, 2021, Respondent filed a Motion to Dismiss / Transfer Venue and a Motion for Summary Judgment. Respondent wished to represent the LLC *pro se*, but South Carolina law precludes a company from doing so in the Court of Common Pleas. The Motion to Transfer Venue argued that the amount in dispute was less than the jurisdictional threshold of the Circuit Court and the appropriate venue would be Magistrate's 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. The case was then transferred to Magistrate's Court and given a new case number. Respondents' were then permitted to represent themselves individually and the

LLC without further incurring attorney fees.

At the Magistrate's Court first hearing, Petitioner asserted to the Magistrate Judge that a Motion to Reconsider was still pending before the Court of Common Pleas. Petitioner's Motion to Reconsider was denied. Petitioner appealed the denial of the Motion to Reconsider to the Court of Appeals but failed to provide the proper Order. The Court of Appeals dismissed the appeal, concluding that the order before it was not immediately appealable.

ARGUMENT

The Court of Appeals did not err in dismissing Petitioner's interlocutory appeal because it was not a final appealable order. Respondents respectfully request that this Court dismiss Petitioner's Writ and affirm the Court of Appeals' decision dismissing the appeal.

I. The Court of Appeals did not Err because the Order on Appeal was Identified as Order dated January 31, 2022, which was interlocutory.

In South Carolina, S.C. Code Ann. § 14-3-330 defines the appellate jurisdiction of this Court as well as the Court of Appeals. *See* S.C. Code Ann. § 14-8-200. Section 14-3-330 provides for the immediate appeal of intermediate or interlocutory orders in three scenarios. The first scenario occurs when an order involves the merits of an action commenced in the trial courts. S.C. Code Ann. § 14-3-330(1). The second scenario occurs when an order affecting a "substantial right . . . (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c)

strikes out an answer or any part thereof or any pleading in any action.” *Id.* § 14-3-330(2). The third scenario occurs when an interlocutory order grants, continues, modifies, or refuses an injunction. *Id.* § 14-3-330(4).

In Petitioner’s Notice of Appeal, the specific order to be appealed was not mentioned by title. Instead, Petitioner stated, “intent to appeal the judgment in this mater entered on January 31, 2022, along with the Order denying Plaintiffs’ Motion to Reconsider dated June 9, 2022.” The “Order dated January 31, 2022” which was submitted by Petitioner was the Order denying Respondents’ Motion for Summary Judgment. Petitioner failed to distinguish or provide the proper Order in which Petitioner intended to challenge. Petitioner failed to timely appeal the proper Order and is now trying to remedy mistakes of his own creation. Petitioners wish to have the ability to appeal the Order, not because it effectively resolves the proceedings without the opportunity for an appeal, but because they wish to protract the litigation and get a second bite at the apple. Awarding the relief sought by Petitioner would establish precedent enabling a potential right to appeal a Petitioner’s mistake, a type of appeal not included in S.C. Code Ann. § 14-3-330. Given the language of the Notice of Appeal and Order provided, the Court of Appeals did not err in dismissing the appeal as interlocutory.

Accordingly, Respondents request that this Court issue an Order affirming the decision of the Court of Appeals.

II. The Court of Appeals did not Err because a Motion to Transfer Venue not immediately appealable.

Even if Petitioner provided the proper Order, a Motion to Transfer Venue is

not immediately appealable. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d. 11 (2000). Petitioner failed to address precedent in this Court. In *Breland*, this Court affirmed the Court of Appeals' denying immediate appellate review of a motion to transfer venue. (*Id.*) This Court stated that error concerning venue will be correctable upon appeal and thus the only damage a losing party will sustain is the expense of litigating. (*Id.*). This Court has long held that such orders are not immediately appealable. *Godley v. Uniroyal, Inc.*, 278 S.C. 571, 300 S.E.2d 78 (1983), *Sanders v. Amoco Oil Co.*, 283 S.C. 195, 320 S.E.2d 334 (Ct. App. 1984), and *Lewis v. Atkinson Implement Co. Inc.*, 280 S.C. 87, 311 S.E.2d 80 (Ct. App 1983).

Petitioner misapplied *Miles* and *Bowden* in their Writ. Petitioner alleges that an order awarding change of venue 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. In *Breland*, this Court analyzed "affecting a substantial right" and concluded that the basic policy behind denying immediate review of pretrial motions is to "avoid piecemeal litigation where the rights of the parties have not been substantially impacted". (*Id.* at 94). Petitioner has not lost any rights because the Circuit Court's lack of subject matter jurisdiction pertains solely to the amount in controversy, not the merits of the case. Stated differently, Petitioner may still recover a judgment, but the value of the relief sought limits which court has jurisdiction over the matter. The hole in Petitioners' argument is that the Order does not prevent a judgment from which an appeal may later be taken, this is because there is no finality to such orders.

Accordingly, Respondents request that this Court issue an Order affirming the

decision of the Court of Appeals.

CONCLUSION

For all of the foregoing reasons stated herein, this Court should deny the
Petition for Writ of Certiorari.

Respectfully submitted this **2nd** day of **November 2022**.

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