

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

68973

S. Jackson Kimball, Master-in-Equity

Appellate Case NO. 2013-001353

GM Company, Inc.....Appellant

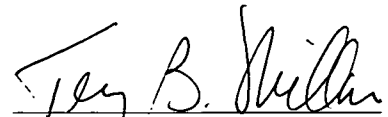
v.

Bruce Bryant, Marvin Brown, City of Rock Hill, South  
Carolina, and Town of York, South Carolina, Defendants

Of Whom Bruce Bryant and Marvin Brown are.....Respondents

**MOTION TO DISMISS APPEAL**

Respondents, through undersigned counsel, hereby move for a dismissal of the  
above-captioned appeal based upon the authorities set forth in the Memorandum In  
Support of Motion to Dismiss filed contemporaneously herewith.



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Attorney for Respondents  
Bruce Bryant and Marvin  
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July 1, 2013

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SC Court of Appeals

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MEMORANDUM IN SUPPORT  
OF  
MOTION TO DISMISS

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**SC Court of Appeals**

Respondents, by and through undersigned counsel, respectfully requests that this Court dismiss the Appeal on the grounds that the Order on Appeal is not a Final Order and does not affect a substantial right of any party, and, therefore, the Appeal should be dismissed as interlocutory.

**ISSUE PRESENTED**

Is an Order granting a motion to compel discovery and awarding sanctions for Appellant's failure to comply with a previous order compelling discovery immediately appealable?

## STATEMENT OF THE CASE

In its First Amended Complaint, filed February 28, 2012, Appellant alleged that the actions of a multi-jurisdiction task force, in seizing several "Palmetto Gold" machines from Appellant's place or places of business, were unlawful and improper, and set forth a number of causes of action against Respondents arising out of these actions. Respondents filed their Amended Answer on March 16, 2012. Respondents' First Set of Interrogatories and First Requests for Production of Documents were served on the counsel for Appellants on August 13, 2012.

When Appellant failed to respond to the discovery request by September 25, 2012, Respondents' counsel requested Appellant's counsel respond. Again, no response was received, and so Respondents made a motion to compel Appellant's responses. After a hearing on the matter, the Court granted the Respondents' motion on October 26, 2012, ordering that responses be delivered to Respondents' counsel of record no later than November 7, 2012. Responses from Appellant's counsel were received shortly before the close of business on the November 7th deadline established by the Court. However, Appellants' submitted responses were inadequate on their face and included improper objections to several requests. Respondents thereafter filed a second Motion to Compel. After a hearing on Respondents' second Motion to Compel, the Court issued an Order filed March 5, 2013 granting Respondents' motion and awarding Respondents' attorneys' fees and costs. A Rule 59(e) motion was denied by Order filed and served May 6, 2013. It is from these Orders Appellant has appealed.


## ARGUMENT

The South Carolina Courts are governed by the Final Judgment Rule as set forth in S. C. Code §14-3-330 (1976). The general rule provides that only final judgments are appealable. *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); *Bolding v. Bolding*, 283 S.C. 501, 323 S.E.2d 535 (Ct.App. 1984). “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005). An Order is immediately appealable *only* when it affects a substantial right and it in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. The Courts of this State have not been inclined to allow immediate appellate review of pre-trial motions which do not finally decide substantial rights. *See e.g., Breland v. Love Chevrolet Olds, Inc.*, 339 SC 89, 529 S.E.2d 11 (2000)(Court refused interlocutory appeal of a pretrial order denying a change of venue.)

Here, the March 5, 2013 Order granting a renewed motion to compel and awarding attorneys’ fees and costs as a sanction for discovery abuses does not end the action, prevent judgment from which an appeal might be taken, or affect any substantial rights of the parties. The Supreme Court has already specifically ruled that an order granting a motion to compel is not immediately appealable. *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 673 S.E.2d 417 (2009)(citing *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003) (holding an order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992) (explaining an order requiring a party to submit to a deposition is not immediately appealable); *Ex parte*

*Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986) (applying the same rule to a non-party). In *Weiters*, our Supreme Court reversed a Court of Appeals decision that had concluded a pre-trial grant of a motion to compel affected a substantial right and was thus immediately appealable. Instead, the Supreme Court specifically vacated the Court of Appeals decision and held that pre-trial discovery orders are not immediately appealable. *Accord Hamm v. South Carolina Public Service Com'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994)(An order compelling a party to submit to discovery is interlocutory and not directly appealable); *Waddell, supra*; *Wallace v. Interamerican Trust Co.*, 246 S.C. 563, 144 S.E.2d 813 (1965). A “discovery order is not a final order because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined.” *Ex parte Wilson*, 367 S.C. at 13, 625 S.E.2d 205, 208.

Based on the foregoing, this Court should dismiss this Appeal as interlocutory.

  
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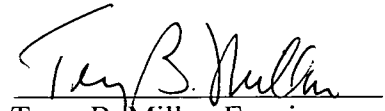
Bruce Bryant, Marvin Brown, City of Rock Hill, South  
Carolina, and Town of York, South Carolina, Defendants

Of Whom Bruce Bryant and Marvin Brown are.....Respondents

**PROOF OF SERVICE**

I certify that I have served the Motion to Dismiss Appeal and Supporting  
Memorandum of Law on Appellant, by depositing true and correct copies of them in the  
United States Mail, postage prepaid, on July 1, 2013, addressed as follows:

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July 1, 2013

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 2920

RE: GM Company, Inc. vs Bruce Bryant, Marvin Brown, et al  
Appellate Case No. 2013-001353

Dear Ms. Kitchings:

Enclosed please find the originals and six copies of the following:

- 1) Respondents' (Bryant and Brown) Motion to Dismiss Appeal,
- 2) Memorandum of Law Supporting same;
- 3) Proof of Service on all counsel of record; and
- 4) Check No. 6385 in the amount of \$25.00 as the filing fee as required by Rule 240, SCACR.

Please file the originals and return a clocked copy to me in the envelope provided.

In accordance with the Proof of Service, a copy of same has been served on counsel for the Appellant.

Thank you for your assistance. If you have any questions, please advise.

Yours very truly,



Patricia R. Clark  
Paralegal

Enclosures: 1-4) As listed above  
5) SASE

cc U.S. Mail w/enclosures 1-4:  
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