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Oct 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-001619

Willie J. Bennett, .....Appellant,

v.

Sasha N. Gray, Claire H. Eckert,  
and Chick-fil-A, Inc. .... Respondents

**RESPONDENT CLAIRE H. ECKERT’S MOTION TO DISMISS APPEAL**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

On or about October 16, 2023, Appellant Willie J. Bennett filed a Notice of Appeal related to a September 20, 2023, Order. While Appellant failed to attach the Order to his Notice of Appeal, based on the entry date of the Order, Respondent Claire H. Eckert (“Respondent”) believes the Notice of Appeal related to the Circuit Court’s September 20, 2023 Order granting Respondent’s Motion for Protective or, in the alternative, Motion to Quash. This motion before the Court related to a subpoena served on Respondent Claire H. Eckert. Because the Notice of Appeal seeks an improper interlocutory appeal of a discovery order, Respondent respectfully requests the Court dismiss the appeal.

This is a negligence action arising out of a motor vehicle accident that occurred on July 17, 2022, in the parking lot of the Chick-fil-A branded restaurant located at 7424 Garners Ferry Road, Columbia, South Carolina 29209. The subject Chick-fil-A restaurant is owned and operated by 2CE, LLC. Sasha N. Gray, an employee of 2CE, LLC was operating a vehicle on behalf of the

restaurant when Gray's vehicle allegedly came into contact with the rear bumper of the Appellant Willie J. Bennett's, *pro se*, vehicle. Appellant is claiming both property damage and personal injury.

On May 8, 2023, Appellant served a subpoena *duces tecum* on the subject restaurant, requesting production of video, insurance information, and photographs and repair estimate of the involved vehicle driven by Gray. Counsel to the Respondents provided a written response to the subpoena *duces tecum* on the same date, advising that this information was previously requested of the named Defendants and provided within the responses to the written discovery requests. Counsel to Respondents also served supplemental responses to discovery, producing the applicable declaration page.

On the same date, Appellant served an identical subpoena *duces tecum* on Respondent Claire H. Eckert (requesting video, insurance information, and photographs and repair estimate of the involved vehicle), along with a Notice of Deposition for Claire H. Eckert, set for May 30, 2023.

Respondents filed a motion to quash or in the alternative, motion for protective order related to the May 8, 2023, subpoena *duces tecum* and Notice of Deposition served on Claire H. Eckert.

The Circuit Court granted Respondent's motion, finding that based on a prior Order, Claire H. Eckert is not a proper party to this action and that because she is not a real party in interest, Respondents would be prejudiced in permitting the deposition of Eckert to be held prior to Appellant producing any supporting documentation regarding his claim.<sup>1</sup>

Additionally, the Court noted that Eckert provided an affidavit and based on the testimony contained within the affidavit, Eckert had no personal knowledge regarding the facts of the case

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<sup>1</sup> Respondents acknowledge that following the issuance of several Orders by the Circuit Court, Appellant provided outstanding documents and information which were the subject of a Motion to Compel filed by Respondents.

including but not limited to the accident, training and supervision of employees, or Plaintiff's damages. Based on the affidavit, the Court granted Respondents Motion to Quash the Notice of Deposition issued to Eckert as it appeared to the Court that the appearance at the deposition would impose an undue burden and expense on Respondents.

Related to the subpoena *duces tecum*, the Court held that the information was previously provided by way of respondent to the subpoena *duces tecum* issued to the restaurant as well as within Respondents' discovery responses. The subpoena *duces tecum* was duplicative of discovery requests and responses and, therefore, imposed an unnecessary burden and expense on Respondent. (**Exhibit A**, Order Granting Motion for Protective Order or, In the Alternative, Motion to Quash, September 20, 2023).

On October 18, 2023, Appellant filed a Notice of Appeal related to the Order.

“Discovery orders ... are interlocutory and are not immediately appealable.” Hamm v. South Carolina Public Service Com'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). The Order Appellant now seeks to appeal is a discovery order. Additionally, while “an interlocutory order may be reviewed if it contains appealable issues which are properly before the court,” Ferguson v. Charleston Lincoln/Mercury, Inc., 344 S.C. 502, 510, 544 S.E.2d 285, 290 (Ct. App. 2001), no such circumstance exists within the appealed order. While Appellant has appealed the Circuit Court's Order Granting Respondent's Motion to Substitute, that appeal is under a separate appellate number and the ruling—while referenced in the discovery order—is not ruled upon in the discovery order.

Accordingly, because Appellant seeks to appeal an interlocutory order, his appeal must be dismissed.

**Conclusion**

Respondents respectfully request that Appellant's Appeal in Case No. 2023-001619 be dismissed.

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS MOTION TO DISMISS  
APPEAL**

October 26, 2023  
Columbia, South Carolina

# **EXHIBIT A**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Willie J. Bennett,	)	Civil Action No.: 2023-CP-40-00017
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Sasha N. Gray, Claire H. Eckert, and	)	
Chick-Fil-A, Inc.,	)	
	)	
Defendants.	)	
	)	
	)	

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This matter is before the Court on Defendant Claire H. Eckert’s Motion for Protective Order or, in the alternative, Motion to Quash. The motion was heard by the Court via WebEx on June 27, 2023. Following consideration of the motion and submitted written material, along with oral arguments, the Court GRANTS Defendant’s Motion.

This is a negligence action arising out of a motor vehicle accident that occurred on July 17, 2022, at the parking lot of the Chick-fil-A branded restaurant located at 7424 Garners Ferry Road, Columbia, South Carolina 29209. The subject Chick-fil-A restaurant is owned and operated by 2CE, LLC. Defendant Sasha N. Gray, an employee of 2CE, LLC was operating a vehicle on behalf of the restaurant, when Gray’s vehicle allegedly came into contact with the rear bumper of the Plaintiff Willie J. Bennett’s, *pro se*, vehicle. Plaintiff is claiming both property damage and personal injury.

On May 8, 2023, Plaintiff served a subpoena *duces tecum* on the subject restaurant, requesting production of video, insurance information, and photographs and repair estimate of the involved vehicle driven by Defendant Gray. Defendants provided a written response to the subpoena *duces tecum* on the same date, advising that this information was previously requested

of the Defendants and provided within the responses to the written discovery. Defendants also served supplemental responses to discovery, producing the applicable declaration page.

On the same date, Plaintiff served an identical subpoena *duces tecum* on Defendant Claire H. Eckert (requesting video, insurance information, and photographs and repair estimate of the involved vehicle), along with a Notice of Deposition for Claire H. Eckert, set for May 30, 2023.

Defendants filed a motion to quash or in the alternative, motion for protective order related to the May 8, 2023, subpoena *duces tecum* and Notice of Deposition served on Claire H. Eckert.

As articulated in the Court's Order granting Defendants' Motion to Substitute the Real Party in Interest, the proper defendants are Sasha N. Gray and 2CE, LLC. Per the Court's Order, Claire H. Eckert and Chick-fil-A, Inc. are not proper parties in interest and, therefore, are dismissed from this action.

Rule 45 of the South Carolina Rules of Civil Procedure states that "A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." Rule 45(c), SCRCP. "The court on behalf of which the subpoena was issued shall enforce this duty ...." *Id.* Further, "[t]he scope of discovery allowed under a subpoena is the same as the scope of discovery allowed under Rule 26."). See also Singletary v. Sterling Transp. Co., 289 F.R.D. 237, 241 (E.D. Va. 2012).<sup>1</sup> 9. Plaintiff has the burden "to explain why [he] cannot obtain the same information, or comparable information that would also satisfy [his] needs, from one of the parties to the litigation . . . ." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019).

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<sup>1</sup> Rule 45, SCRCP was modeled after the Federal Rules of Civil Procedure. See Rule 45, SCRCP cmt. ("Rule 45 is amended to conform to federal Rule 45, as amended in December 1991.").

As an initial matter, Claire H. Eckert is not a proper party to this action. The Court finds that because Claire H. Eckert is not a real party in interest to this action, Defendants would be prejudiced in permitting the deposition of Claire H. Eckert to be held prior to Plaintiff producing any supporting documentation regarding his claim. Plaintiff has the burden of proof in this case. If Plaintiff has not sought any treatment related to personal injuries or does not intend to seek a repair estimate, he must state the same in his discovery responses. However, Plaintiff has indicated he is seeking a repair estimate and has been treating with a physician, while at the same time has failed to provide any documentation supporting the same to date. Accordingly, the Court grants protection from the deposition appearance of Claire H. Eckert as the same would impose an undue burden and expense on Defendants as Plaintiff has failed to provide requested information in written discovery to substantiate his claims for property damage and personal injury.

Further, based on the affidavit submitted by Claire H. Eckert, she has no personal knowledge regarding the facts of this case including but not limited to the accident, training and supervision of employees, including Defendant Sasha N. Gray, or Plaintiff's damages. Accordingly, the Court further grants Defendant's Motion to Quash the Notice of Deposition issued to Claire H. Eckert, as it appears to the Court that the appearance at the deposition would impose an undue burden and expense on Defendants.

As it relates to the subpoena *duces tecum* served on Defendant Claire H. Eckert, the Court finds that the information has been previously provided by Defendants to Plaintiff through both written discovery responses, as well as a response to a similarly served subpoena *duces tecum* on the Restaurant. The subpoena *duces tecum* is duplicative of discovery requests and responses, the information requested has already been produced or responded to, and the subpoena imposes an unnecessary burden and expense on Defendant Claire H. Eckert. Accordingly, the Court grants

Defendant's Motion to Quash subpoena *duces tecum* as the information requested has already been provided through the course of discovery and/or response to an identical subpoena *duces tecum*.

IT IS SO ORDERED.

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The Honorable Maite Murphy  
Presiding Judge



Richland Common Pleas

**Case Caption:** Willie J Bennett vs Sasha N Gray , defendant, et al

**Case Number:** 2023CP4000017

**Type:** Order/Protective Order

So Ordered

s/ Maite Murphy 2166

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**PROOF OF SERVICE**

The undersigned certifies that she has caused to be served **Willie J. Bennett** with a copy of **RESPONDENTS' MOTION TO DISMISS APPEAL** by electronic mail and/or mailing a copy of same to him at the address of 113 Healing Springs Road, Hopkins, SC 29061, in the United States mail, with sufficient postage affixed thereto and return address clearly marked on October 26, 2023.

COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**PROOF OF SERVICE -  
RESPONDENTS MOTION TO DISMISS  
APPEAL**