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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295
Appellate Case No.: 2023-000655

LAURA ABERNATHY.....Appellant,

v.

ERVIN W. LAMBERT SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
W. LAMBERT, JR., DECEASED.....Respondent.

**RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM OF LAW IN
SUPPORT THEREOF**

Respondent respectfully moves before this Court for an order dismissing the Appeal filed by the Appellant on the basis (1) Appellant has waived her right to review of these orders by not immediately appealing the denial of her motion to amend which raised the same or similar "mode of trial" issue set forth in this appeal; (2) the orders are interlocutory and not immediately appealable pursuant to § 14-3-330(2) and the related case law because Appellant has not been denied a right to a jury trial as a matter of right. Respondent respectfully requests that this Court dismiss this appeal and remand the case for further proceedings.

BACKGROUND

Ervin Lambert, Jr., (hereinafter “Decedent”) was the sole owner and manager of L&L Contractors, Inc. (hereinafter “L&L”) until his untimely death in 2018. Ms. Abernathy was employed as a Project Manager at L&L until her termination in 2020. See, DJ Complaint, attached as **Ex. A**.

Approximately three years prior to Decedent’s death, he and Ms. Abernathy executed a buy-sell agreement to purchase a residence (hereinafter “Subject”). Prior to closing on the Subject, Ms. Abernathy executed an addendum to the purchase agreement, removing herself as a co-purchaser of the Subject. The General Warranty Deed for the Subject was properly recorded in the Office of the Register of Deeds for Dorchester County in Decedent’s name. See, Memo Opp. Consolidation attached as **Ex. B**; Order Denying Motion to Amend attached as **Ex. C**; and Memo Opp. Motion Amend attached as **Ex. D**.

Immediately after closing on the Subject, Decedent allowed Ms. Abernathy to reside in the house while she was employed with L&L. It was not uncommon for Decedent to allow employees to reside in the various properties he owned while they were working for his company. Decedent continued to pay the property taxes and the repairs for the Subject until his death when the Estate took over the payments. See, Trans. Hrg’ Motion to Consolidate attached as **Ex. E** at 5.

In October 2018, Decedent and his wife died in a plane crash in the Atlantic Ocean. Decedent’s father Ervin W. Lambert, Sr. (hereinafter “Mr. Lambert” or “Respondent”) was appointed as the Personal Representative of his son’s estate. **Ex. C** at 2. Ms. Abernathy continued to work for L&L until her employment was terminated in April 2020. After her termination, Mr.

Lambert as PR for the Estate sought to secure the Subject for inclusion in his son's estate. Mr. Lambert requested Ms. Abernathy vacate the premises and after she refused, he served her with eviction papers. **Ex. E** at 13.

FACTUAL AND PROCEDURAL HISTORY

In June 2020, Ms. Abernathy (hereinafter "Appellant" or "Ms. Abernathy") filed a Declaratory Judgment action (2022-CP-18-00295)¹ arising out of equitable ownership rights she had in the Subject. Ms. Abernathy brought this action in equity with causes of action that sought imposition of a constructive/resulting trust quieting title in her favor. As part of her DJ Complaint, Ms. Abernathy alleged that she and the Decedent had an oral arrangement whereby she would become a fifty percent (50%) owner in the Subject around closing and thereafter a sole and absolute owner, in lieu of a cash bonus, for work already performed while an employee at the Decedent's company, L&L Contractors Inc. **Ex. A**. However, prior to closing Ms. Abernathy of her own volition removed herself as a co-purchaser and never obtained any ownership rights in the Subject which was deeded solely in the Decedent's name. *See, Ex. C* at 2; **Ex. D** at 2.

In September 2021 the DJ action was stricken from the docket pursuant to SCRCP 0(J) in order to allow both parties time to finish discovery and be ready for trial when the case was restored to the non-jury docket. Shortly there after, Ms. Abernathy's counsel notified counsel for Mr. Lambert that he would no longer be representing Ms. Abernathy. **Ex. C** at 2.

In February 2022, Ms. Abernathy's new counsel restored the DJ action to the non-jury docket. Approximately seven months later, Ms. Abernathy filed a Motion to Amend her Complaint

¹ Case Number changed when it was restored in 2022.

to join additional defendants and claims. Specifically, Ms. Abernathy sought to add claims for Wrongful Termination and Malicious Prosecution, and to add defendants, Ervin W. Lambert, Sr., individually and L&L Contractors Inc.² See, Motion to Amend, attached as **Ex. F**. The lower court heard Ms. Abernathy's motion to amend on October 4, 2022, and denied said motion by oral order that day and written order filed on December 19, 2022. See Trans. Hrg' Motion to Amend attached as **Ex. G**; **Ex. C**. Specifically the lower court, found that separate trials would be more appropriate based on the relationship of the claims and the parties, and more efficient since the DJ action had been pending for almost three (3) years and should be ready for trial. Moreover, the Court found that the delay and the amendment prejudiced Mr. Lambert. The lower court further explained that Ms. Abernathy still had time to file these new actions in a separate law suit and would not be prejudiced from advancing claims relating to retaliation and eviction in the trial of this separate action. **Ex. C** at 7; **Ex. G**, 17-21.

On October 14, 2022, Ms. Abernathy filed the new law suit (2022-CP-18-01582) for causes of action arising out of wrongful termination and malicious prosecution. See, Wrongful Termination action attached as **Ex. H**. On March 16, 2023, Ms. Abernathy amended her Wrongful Termination action to add an addition claim for breach of agreement. See, Amended Wrongful Termination Action, attached as **Ex. I**. The following day, Ms. Abernathy filed her Motion to Consolidate the DJ action with this second law suit (2022-CP-18-01582). See, Motion to Consolidate, attached as **Ex. J**. The lower court heard arguments from counsel and denied the motion. See Form 4 Order denying Consolidation, attached as **Ex. K**. On April 21, 2023, Ms. Abernathy filed her Notice of

²Ms. Abernathy did not seek to add the breach of agreement cause of action in her motion to amend.

Appeal, appealing the orders denying her motions to amend and to consolidate on the basis that she would be denied a right to a jury trial. *See*, Notice of Appeal.

ARGUMENTS

I. The Appeal should be dismissed because Ms. Abernathy failed to immediately appeal the denial of her motion to amend which alleges the same or similar “mode of trial”(right to a jury trial) issue as raised in this appeal.

Pursuant to §14-3-330(2), our Supreme Court has held “that when a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 334 (2000). Orders that deny a party’s right to a mode of trial must be appealed immediately or they can not be raised in a subsequent appeal. *See Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct.App.2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost). The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues. *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997).

Ms. Abernathy argues that she would be denied her right to a jury trial because there are intertwined issues of fact in the DJ and Wrongful Termination actions. Specifically, Ms. Abernathy alleges that “material common issues of fact exist between the two actions” and then she provides examples. In the first example she states that in both cases her “unwillingness to perform illegal actions on behalf of L&L Contractors led to her being retaliated against” and that “in the DJ action this would be the basis for her equitable argument that she be declared the equitable title holder of

the property”. Appellant’s Initial Brief, 5-6. However, these were the same arguments raised to the lower court in her motion to amend. **Ex. G, 3-7.** If these actions argued by Ms. Abernathy during the motion to amend hearing affected Ms. Abernathy’s alleged right to a jury trial as she argues now in her initial brief, she was obligated to immediately appeal the denial of her motion to amend in order to protect those rights or lose them. Our Supreme Court has held that orders affecting the mode of trial affect substantial rights under S.C. Code Ann. §14-3-330(2) and must be appealed immediately. *Lester v. Dawson*, 327 S.C. 263, 255, 491 S.E.2d 240,241 (1996). E.g., *Foggie v. CSX Transp.*, 313 S.C. 98, 431 S.E.2d 587 (1993) (“Issues regarding mode of trial must be raised in the trial court at the **first** opportunity, and the order of the trial judge is immediately appealable.”). Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue. *Id.*

Furthermore because Ms. Abernathy has waived her mode of trial argument by failing to immediately appeal the denial of her motion to amend, the Court should dismiss this appeal. Ms. Abernathy should not be allowed to circumvent the law by asserting the same mode of trial issue which she previously waived. Because the orders denying her motions to amend and for consolidation were interlocutory and this Court’s jurisdiction is based on §14-3-330(2), which jurisdiction no longer exists, the Court should dismiss the appeal and remand the case back to the lower court.

II. The Appeal should be dismissed because trying the equitable (“DJ”) action first and the at law action (Wrongful Termination) second does not violate Ms. Abernathy’s right to a jury trial as a matter of right making these orders immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2) nor does it invoke the doctrines of Res Judicata or Collateral Estoppel preventing a full and fair opportunity to litigate the Wrongful Termination action to a jury.

“The constitutional provision (Art. I, Section 14), that the right of jury trial shall remain inviolate, does not apply to cases within the equitable jurisdiction of the court.” *Pelfrey v. Bank of Greer*, 270 S.C. 691 (1978). The proper analysis in determining whether Ms. Abernathy has been denied a mode of trial to which she is entitled to as a matter of right is simply to determine whether or not she has been wrongfully denied a trial by jury in a law action or wrongfully forced to proceed before a jury in an equitable action. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 334 (2000).

As Justice Pleicones noted in his dissent in *Salmonsens*, “the ‘mode of trial’ exception to the general rule that only final orders are appealable is confined to orders which abridge a party’s constitutional right to trial by jury.” 377 S.C. at 461, 661 S.E.2d at 91. Here, there has been no abridgment of Ms. Abernathy’s right to a jury trial for the reasons and arguments set forth below.

A. Ms. Abernathy is not entitled to a jury trial in the DJ action as a matter of right because it arises in equity and seeks an equitable remedy.

Ms. Abernathy’s first case (2022-CP-18-00295) is a DJ action against the Estate of Ervin W. Lambert, Jr. (Deceased) which seeks to quiet title to a residence based on claims of a constructive/resulting trust. See, **Ex. A**.

The relevant question in determining the right to a trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Const. Art. I. § 14; Verenes v. Alvanos*, 387 S.C. 11 690 S.E.2d 771 (2010) reh'g denied (April 7, 2010). While under Rule 39 (c), *SCRCP*, “a jury may render an advisory verdict in equity matters, it may not however render a verdict granting ultimate relief unless consented to by both parties. Whether an action is legal or equitable is primarily determined by the allegations in the complaint. *Nat’l Bank of South Carolina v. Daniels*, 283 S.C. 438, 440, 322 S.E.2d 689, 690 (Ct. App. 1984). “Characterization of an action as equitable or legal depends on [Ms. Abernathy’s] ‘main purpose’ in bringing the action.” *Ins. Fin. Servs, Inc. V. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978). “The main purpose to the action should generally be ascertained from the body of the complaint or if necessary from the prayer for relief.” *Id.*

The main purpose of the DJ action centers on Ms. Abernathy’s belief that she has equitable ownership rights in the Subject. Based on these allegations she seeks the trial court impose a constructive/resulting trust quieting title in her favor.

However, the only question before the lower court in the DJ action would be whether or not Ms. Abernathy owns the Subject based on an equitable right. This declaration of rights by the lower court would have no bearing on Ms. Abernathy’s “Wrongful termination” action or her ability to fully litigate that action.

Actions to quiet title and actions to declare constructive and resulting trusts arise in equity. *See Johnson v. Arbabi*, 355 S.C. 64, 584 S.E.2d 113 (2003) (An action to quiet title is an action in equity); *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) (An action to declare a constructive trust is in equity) *Jocoy v. Jocoy*, 349 S.C. 441, 444, 562 S.E.2d 674, 675 (Ct. App.

2002). (Actions to determine resulting trusts sound in equity). Moreover, the standard of proof required in order to establish a constructive/resulting trust, requires that the evidence must be clear, definite, and unequivocal, a much higher burden of proof than the claims set forth in Ms. Abernathy's Wrongful Termination action which all require a mere preponderance of the evidence. *See, Lollis v. Lollis* 291 S.C. 525, 354 S.E.2d 559 (1987); (The burden of proof for claims seeking imposition of a constructive trust is clear and convincing evidence). *Privette v. Garrison*, 235 S.C. 119, 119, 110 S.E2d 17, 21 (1959) (With a resulting trust the evidence to establish it must be clear, definite and convincing).

B. Ms. Abernathy is able to fully litigate her Wrongful Termination action to a Jury in a separate trial.

Ms. Abernathy has argued that the common theme to the DJ action and the Wrongful Termination action arises out of retaliatory conduct taken by Mr. Lambert and L&L Contractors, Inc., against her for failing to do numerous alleged illegal acts. *See, Appellant's. Initial Brief at 3.* Furthermore, Ms. Abernathy argues that she would be denied the right to specifically raise and prove that the eviction attempts instigated against her were similar to the forms of retaliatory conduct alleged by her in the Wrongful Termination Action. *See, Appellant's Initial Br., 3-6.* However, this argument is flawed because Ms. Abernathy will not be prevented from fully litigating those issues regardless of whether the lower court finds she owns the house or does not own the house. Specifically, if the lower court finds that Ms. Abernathy does not own the house, Ms. Abernathy can still raise the issue that eviction proceedings were taken against her solely for retaliatory reasons because she had lived there for years while she was employed with L&L. The "eviction" issue and/or "common scheme" as asserted by Ms. Abernathy would still be preserved for litigation in her

Wrongful Termination suit. Furthermore, if the lower court finds that she owns the house then she can still argue that eviction attempts were used as an attempt for retaliation etc.

All of the causes of action set forth in Ms. Abernathy's Wrongful Termination action are at law. Furthermore, the burden of proof for each of the causes of action in the Wrongful Termination Action is by the preponderance of evidence as opposed to the heightened burden of proof found in the claims in the DJ action. It would not be fair to allow a jury to determine whether or not there was an enforceable agreement as to the house based on a preponderance of the evidence standard which is basically what Ms. Abernathy is requesting this Court to do. Ms. Abernathy is free to argue all of her claims in her Wrongful Termination action to a jury notwithstanding the affirmative defenses raised in the Amended Answer. *See*, Amended Answer(Wrongful Termination Action) attached as **Ex. L.**

C. The Doctrine of Res Judicata does not bar Appellant's right to a jury trial in her Wrongful Termination action.

Res Judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties or could have been raised during the prior action. *Plum Creek Development Co., Inc. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999). Res Judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by the court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.*, 327 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994). Res judicata will not bar Ms. Abernathy's right to a jury trial in her subsequent wrongful termination action. Specifically,

the subject matter at issue in the DJ action is simply whether or not Ms. Abernathy has equitable rights in the house pursuant to an oral arrangement she had with the Decedent. Ms. Abernathy has to prove that equitable right by clear and convincing evidence. *See, Lollis v. Lollis* 291 S.C. 525, 354 S.E.2d 559 (1987); (The burden of proof for claims seeking imposition of a constructive trust is clear and convincing evidence). *Privette v. Garrison*, 235 S.C. 119, 119, 110 S.E2d 17, 21 (1959) (With a resulting trust the evidence to establish it must be clear, definite and convincing).

Furthermore, while res judicata normally applies to issues that were previously raised or could have been raised in an earlier action, declaratory judgment actions are different. “As one legal treatise has observed, res judicata does not apply to declaratory judgments, but only as to issues *actually decided* by the court:

Suits for declaratory judgments do not fall within the rule that a former judgment is conclusive not only of all matters actually adjudicated thereby but, in addition, also all matters which could have been presented for adjudication. *A declaratory judgment is not res judicata as to matters not at issue and not passed upon.* Unlike other judgments, a declaratory judgment determines only what it actually decides and does not preclude, under res judicata principles, other claims that might have been advanced. *Catawba Indian Nation v. State*, 407 S.C. 526, 539-4-, 756 S.E.2d 900, 908 (2014) citing 22A Am.Jur.2d Declaratory Judgments § 244 (2013).

The only issue before the lower court in the DJ action is the ownership rights of the Subject property. *See, Ex. A.*

D. The Doctrine of Collateral Estoppel does not bar Ms. Abernathy's right to fully litigate her Wrongful Termination action before a jury.

The doctrine of collateral estoppel, also known as “issue preclusion”, prevents an issue from being re-litigated in a subsequent action when an issue has been actually litigated and determined by a valid and final judgment. *S.C. Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). The doctrine may not be invoked unless the precluded party has had a full and fair opportunity to litigate the issue in the first action. *Id.* Mr. Lambert submits collateral estoppel will not be an issue in the DJ action as it will be limited solely to the issue of who owns the house. Ms. Abernathy would not be afforded a full and fair opportunity to litigate her Wrongful Termination claims in the DJ action so estoppel can not be used against her.

Moreover, the Restatement (Second) of Judgments § 28 (1982 as amended) enumerates five exceptions to the general rule of issue preclusion:

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action. *Pye v. Aycock*, 325 S.C. 426, 437, 480 S.E.2d 455 (1997). *See Also McHan v. C.I.R.*, 558 F.3d 326 (4th Cir. 2009).

In the DJ action the burden of proof required to establish a constructive/resulting trust is clear and convincing evidence, a much heavier burden compared to that required to establish the claims in the Wrongful Termination which only require a preponderance of the evidence.

CONCLUSION

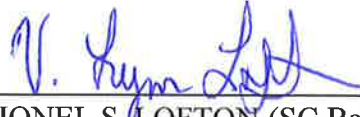
The Respondent respectfully requests that this Court dismiss Ms. Abernathy's appeal on the basis that Ms. Abernathy has waived her right to argue mode of trial in this appeal by not immediately appealing the denial of her motion to amend which first raised the mode of trial issues. Moreover, the two orders are interlocutory and not immediately appealable because they do not affect her right to a jury trial or her ability to fully litigate her Wrongful Termination action. The DJ action has been pending for over three (3) years and was number one on the non-jury docket when this appeal was filed. The trial of the DJ action has been delayed over and over again. On the other hand the Wrongful Termination action is in its infancy and will likely drag out in the courts for another three (3) years as the action is currently stayed with nothing having been done on the case since the filing of the Amended Answer. This case has been plagued by dilatory tactics and the procedural history has been arduous and contentious. **See Ex.'s B, D, E and G.**

For over three years now Ms. Abernathy has lived in a house which doesn't belong to her where she has paid no rent, no property taxes and which Mr. Lambert has had to make repairs. It is highly prejudicial and unfair to the Decedent's beneficiaries (the children left behind from their parents death) to prevent Mr. Lambert, as their representative, from having his day in court. This appeal was procedurally planned as another dilatory tactic to stymie the DJ action and is absolutely without merit. Ms. Abernathy should not be rewarded for sitting on her rights and playing procedural games with the lower court and now this Court. This appeal does not affect Ms. Abernathy's right to a mode of trial to which she is entitled to as a matter of right. Therefore, Mr. Lambert respectfully requests this Court dismiss the appeal and remand the case back to the lower court so that the DJ action can be tried and the Wrongful Termination action can move forward.

Respectfully Submitted,

LOFTON & LOFTON, P.C.

BY:



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ATTORNEYS FOR RESPONDENT

Charleston, South Carolina

October 26, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CIVIL ACTION NO. 2020-CP-18-_____
	)	
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>SUMMONS</u>
	)	Declaratory Judgment/Quiet Title
ERVIN W. LAMBERT, SR.,	)	(Non-Jury)
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF ERVIN W.	)	
LAMBERT, JR., Deceased,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the undersigned attorney, at 207 Carolina Avenue, Moncks Corner, South Carolina 29461, within (30) days after service hereof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or Special Referee for this County, which order shall, pursuant to Rule 53(c) of the South Carolina Rules of Civil Procedure specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with any appeal directly to the South Carolina Court of Appeals.

EXHIBIT A

Respectfully submitted,

s/ John S. West
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Attorneys for Plaintiffs

June 12, 2020
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CIVIL ACTION NO. 2020-CP-18-_____
	)	
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>COMPLAINT</u>
	)	Declaratory Judgment/Quiet Title
ERVIN W. LAMBERT, SR.,	)	(Non-Jury)
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF ERVIN W.	)	
LAMBERT, JR., Deceased,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE NAMED:

Plaintiff herein would respectfully allege and show unto this Honorable Court as follows,
to wit:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant is a citizen and resident of Williamsburg County, South Carolina.
3. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.
4. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

5. The subject matter herein is a lot of land with improvements located in the Plum Creek Subdivision, situate wholly in Dorchester County, South Carolina, and more particularly described in Exhibit "A", attached hereto and made a part hereof by expressed reference, ("Subject"); the same having a physical address of 106 Sarmiento Lane, Summerville, South Carolina.
6. The Subject appears of record in Dorchester County in the name of Decedent Ervin W. Lambert bearing Dorchester County TMS# 125-15-01-047, the source and origin of which is that certain General Warranty Deed dated October 23, 2015; found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Pages 166-170.
7. Decedent was at all times relevant herein the sole owner and President of L& L Contractors, Inc., ("L&L"), which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.
8. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.
9. Decedent and Plaintiff worked closely together at L&L for many years.
10. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management and accordingly there was a relationship of trust and confidence as and between Decedent and Plaintiff.
11. With respect to the Subject, Decedent made specific and unambiguous representations, assurances, guarantees and promises to Plaintiff prior to and after the closing on the Subject in October, 2015; that because Plaintiff had earned and was due a significant bonus from L&L, in lieu of a cash bonus for extraordinary and financially significant services to and for the benefit of Decedent and L&L, Plaintiff would become a fifty

(50%) owner in the Subject at or around closing and thereafter a sole and absolute owner of the Subject.

12. In reliance on the aforementioned representations, assurances, guarantees and promises, Plaintiff accepted the arrangement in lieu of an earned cash bonus for extraordinary work performed; she trusted Decedent to follow through; she expended certain monies, including the earnest money deposit which was credited to the buyer at closing, the home inspection fee and property taxes and Plaintiff immediately after closing moved into the Subject, where she has resided as her primary residence continuously since.
13. Decedent tragically and unexpectedly perished before the documents were executed accomplishing of record the arrangement made and contemplated as between Decedent and Plaintiff with respect to the Subject.
14. On June 4, 2020, Plaintiff was served with certain pleadings and papers originating from the Dorchester County Magistrate's Office in which Defendant alleges a landlord-tenant relationship with respect to the Subject, which Plaintiff expressly denies, and that Plaintiff should be evicted from the Subject.
15. The service of eviction papers is the first time Plaintiff became aware that Defendant or anyone else denied that Plaintiff is the equitable owner of the Subject, which denial is contrary to the knowledge, awareness, acquiescence and recognition of the arrangement between Decedent and Plaintiff with respect to the Subject.
16. For the reasons set forth herein and such other proofs to be presented at trial, Plaintiff asserts that she is the equitable owner of the Subject.
17. If Defendant continues to maintain that Plaintiff is a mere tenant in the Subject and he denies her legitimate rights with respect to the Subject, a justiciable controversy exists and will continue to exist as between the parties.

JURISDICTION AND VENUE

18. This Court is possessed of jurisdiction over the parties and the subject matter.

19. Venue is proper.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

20. Plaintiff repeats the averments contained in ¶¶ 1-19 above as if fully set forth herein *verbatim*.

21. Plaintiff brings this action pursuant to the provisions of the *S.C. Code Ann. § 15-53-10, et seq.*, “Uniform Declaratory Judgments Act” for a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a *constructive trust* in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a *resulting trust* in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff’s rights and interests in the Subject otherwise be made, declared and established.

FOR A SECOND CAUSE OF ACTION

(Quiet Title)

22. Plaintiff repeats the averments contained in ¶¶ 1-21 above as if fully set forth herein *verbatim*.

23. Plaintiff further brings this action pursuant to the provisions of *S.C. Code Ann. § 15-53-10, et seq.*, “Uniform Declaratory Judgments Act” and *S.C. Code Ann §15-67-10, et seq.*, for a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit “A” in the name of the Plaintiff against the Defendant and for the purpose of obtaining a declaratory order of this Court establishing that

Plaintiff is seized and possessed of a fee simple title to said properties to the exclusion of any others.

WHEREFORE, having fully set forth his Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a *constructive trust* in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a *resulting trust* in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established;
- b. For a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff and that any other be absolutely divested and forever barred from any right, title, claim, estate, interest therein; and
- c. For such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

s/ John S. West, Esq.
SC Bar No. 6035
West Law Firm, PA
207 Carolina Avenue
PO Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com
Attorneys for Plaintiff

June 12, 2020
Moncks Corner, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
LAURA ABERNATHY,	)	CASE NO. 2022-CP-18-00295
	)	
	)	
	)	
PLAINTIFF,	)	DEFENDANT'S MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF'S MOTION
vs.	)	TO CONSOLIDATE
	)	
ERVIN W. LAMBERT SR., Personal	)	
Representative of the Estate of Ervin W.	)	
Lambert, Jr., Deceased,	)	
	)	
DEFENDANT.	)	

The Defendant by and through his undersigned counsel submits this Memorandum of Law in Opposition to the Plaintiff's Motion to Consolidate filed on March 17, 2023, in the Court of Common Pleas of Dorchester County, South Carolina. The Defendant further seeks the Court impose monetary sanctions and award the Defendant attorney fees based on the dilatory and frivolous nature of this motion. The Court has already heard and ruled on a similar issue during Plaintiff's motions to amend and for joinder heard on October 4, 2022. The fact that Plaintiff has brought this almost identical Motion before the Court now as a Motion for Consolidation pursuant to Rule 42 (a), *SCRCP* after clear instructions from this Court that these cases should be separate, arguing this same again is not only a defiant disregard to the Court's previous order but yet another attempt to stymie this case into perpetuity, preventing the Defendant from having his day in Court. Based on following facts, law, and legal analysis the Plaintiff's Motion should be denied and monetary sanctions and attorney's fees should be awarded.

PROCEDURAL/FACTUAL BACKGROUND¹

On June 12, 2020, Plaintiff filed her initial Complaint as a Declaratory Judgment/Quiet Title action (2020-CP-18-00914)² arising out of ownership rights of a residence located at 106 Sarmiento Lane, Summerville, South Carolina (hereinafter “Subject”). (**Ex. A**). Plaintiff brought this action in equity with causes of action seeking imposition of a constructive and/or resulting trust quieting title in her favor. As part of her Complaint, Plaintiff alleged that she and the Decedent had an “oral” arrangement whereby she would become a fifty percent (50%) owner in the Subject around closing and thereafter a sole and absolute owner, in lieu of a cash bonus, for work already performed while an employee at the Decedent’s company, L & L Contractors Inc. However, Plaintiff of her own volition removed herself as a co-purchaser at closing and never obtained any ownership rights in the Subject which was deeded solely in the Decedent’s name.

On September 20, 2022, Plaintiff filed a Motion to Amend her Complaint to join additional defendants and claims. (**Ex. B**). Specifically, Plaintiff sought to add claims for Wrongful Termination and Malicious Prosecution, and to add defendants, Ervin W. Lambert, Sr., individually and L&L Contractors Inc. As grounds for this Motion Plaintiff stated that she had additional causes of action against Defendant (Ervin W. Lambert, Sr, as PR of the Decedent’s Estate) that are connected with the pending action and which she is not willing to abandon. (See **Ex. B**.) On October 3, 2022, Defendant filed his Memorandum of Law in Opposition to the Plaintiff’s Motion to Amend. (**Ex. C**).

¹ The Procedural history of this case is arduous and has been set out in detail in Defendant’s Memo. in Opposition to Plaintiff’s Motion to Amend. Because this Court heard that Motion, Defendant hereby adopts it by reference herein, in order to not further burden the Court with rehashing the detailed procedural history and facts.

² This action was 40(J) and when it was restored it became Case No. 2022-CP-18-00295.

Defendant argued that the new claims and defendants were not related to the existing DJ action. Specifically, the DJ action only dealt with a piece of real estate that was purchased by the Decedent back in 2015 while the new action arose out of Plaintiff's termination of employment at L&L Contractors Inc. which occurred in April of 2020. Further, the new action involved two additional parties: Mr. Lambert in his individual capacity and L&L Contractors Inc. Moreover, Defendant argued that the DJ action had been pending close to three (3) years and the case was ready for trial.

On October 4, 2022, the Court heard Plaintiff's Motion to Amend and Motion for Joinder brought pursuant to Rules 15(a), (18)(a) and 20 of the *South Carolina Rules of Civil Procedure (SCRCP)*. The Court denied Plaintiff's motions, finding that separate trials would be more appropriate based on the relationship of the claims and the parties, and more efficient since the DJ action had been pending for almost three (3) years and should be ready for trial³. Furthermore, the Court found that Plaintiff still had time to file these new actions in a separate law suit and thus would not be prejudiced. The Court filed its Order Denying Plaintiff's Motions to Amend and for Joinder on December 19, 2022. (Ex. D).

On October 14, 2022, Plaintiff filed a new law suit (2022-CP-18-01582) for causes of action arising out of wrongful termination and malicious prosecution. (Ex. E). On March 3, 2023, Plaintiff's Counsel sent an email to Counsel for Defendant seeking consent to consolidate the DJ action and wrongful termination actions. On March 6, 2023, Counsel for Defendant responded to the email stating the issue had already been ruled on by Judge Goodstein during the hearing on Plaintiff's Motion to Amend and Motion for Joinder held on October 4, 2022. (Ex. F). On March 9, 2023, Plaintiff sought consent from the Defendants to amend law suit (2022-CP-18-01582) to

³ The DJ action is currently Number 1 on the Non-Jury Roster.

add an additional cause of action for breach of a written agreement. Defendants consented to the amendment reserving the statute of limitations defense and the Amended Complaint was filed on March 16, 2023. (Ex. G). On March 17, 2023, Plaintiff filed this Motion to Consolidate the DJ action with this second law suit (2022-CP-18-01582). In this Motion, Plaintiff claims that she is entitled to Consolidation because the two cases share parties, counsel in common, common questions of fact and/or law and that the attempted eviction that is alleged in the DJ case is a part of the common scheme of retaliation along with the forms alleged in case (2022-CP-18-01582). Plaintiff's Motion to Consolidate in essence requests a merger i.e. (joinder) of the two law suits to be tried together by a single jury. (Ex. H).

LEGAL STANDARD

Rule 42 (a) of the *SCRCP* provides that “[w]hen actions involving a common question of law or fact are pending before the court, it *may* order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated; and it *may* make such orders concerning proceedings therein as *may* tend to avoid unnecessary costs or delay”. Rule 42(a) *SCRCP*. Under a consolidation order, the parties and the pleadings are not merged, and each action retains its identity. Consolidation is within the broad discretion of the trial court. The moving party has the burden of persuading the court that consolidation is desirable. An appellate court will not disturb a trial court's ruling on a motion to consolidate absent an abuse of discretion. *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993).

ARGUMENTS

The Plaintiff's Motion to Consolidate should be denied on the following grounds:

1. The Court has already ruled that separate trials are appropriate in Plaintiff's Motion to Amend and Motion for Joinder heard on Oct. 4, 2022 and while consolidation and the joinder rules are technically different they both have provisions for Separate Trials.
2. Plaintiff is not entitled to a jury trial on the DJ action.
3. Motions to Consolidate are not appropriate when they cause further delay and prejudice.

I. Separate Trials are appropriate in this case.

This Court recently heard and denied Plaintiff's Motions to Amend and for Joinder in the DJ action which was brought pursuant to Rules 15, 18, and 20 of the *SCRCP*. In that motion Plaintiff sought to amend her complaint to add two additional parties and two additional causes of action. The Court in denying the Plaintiff's Motion held in pertinent part that the actions were "separate and distinct law suits" that should be tried separately. In further explanation, the Court held that the equitable nature of the DJ action was "light years" away from the wrongful discharge action, and that allowing the Plaintiff to shoehorn these unrelated parties and claims to the existing DJ action (that was supposed to be ready for trial), would be prejudicial to the Defendant and confusing to a jury. Furthermore, Plaintiff still had the opportunity to bring a separate law suit with these parties and claims.

Similar to the provisions found in Rules 18 (c) and 20 (b) of the Joinder Rules which provides the Court with broad discretion to order separate trials or to enter other orders to prevent delay and justice, Rule 42 (b) provides the same under the Consolidation Rules. In pertinent part Rule 42 (b) provides:

“[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to the expedition and economy, may order a separate trial of any claim,... or any separate issue or any number of claims...” Rule 42 (b) *SCRCP*.

II. Plaintiff has no right to a Jury Trial in the DJ Action

Plaintiff’s first case (2022-CP-18-00295)⁴ is brought as a DJ action against the Estate of Ervin W. Lambert Jr. (Deceased) seeking to quiet title to a residence based on claims seeking the Court impose a Constructive and/or Resulting Trust in favor of the Plaintiff. Therefore, the DJ action is a non-jury action arising in equity based on the equitable nature of each of the claims and their corresponding remedy.

“Whether a party is entitled to a jury trial is a question of law.” *See Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 145, 621 S.E.2d 344,-46 (2005). Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. Const. Art. I, §14. *Verenes v. Alvanos*, 387 S.C. 11, 690 S.E.2d 771 (S.C. 2010) reh’g denied (April 7, 2010). While under Rule 39 (c), “a jury may render an advisory verdict in equity matters. It may not however, render a verdict granting ultimate relief unless consented to by both parties.” Furthermore the Court has held that, where legal and equitable issues or rights are raised in the same complaint, the legal issues are for determination by a jury and the equitable issues are for determination by the court. *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398–99 (1991).

⁴ The original case was filed in June of 2020 and was 40 (J) in September of 2021. This case number represents the case once it was restored on February 15, 2022.

Whether an action is legal or equitable is primarily determined by the allegations in the complaint. *See Nat'l Bank of South Carolina v. Daniels*, 283 S.C. 438, 440, 322 S.E.2d 689, 690 (Ct.App.1984). "Characterization of an "action as equitable or legal depends on the [plaintiff's] 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978). "The main purpose to the action should generally be ascertained from the body of the complaint or if necessary from the prayer for relief." *Id.*

The main purpose of the DJ action centers on Plaintiff's belief that she has equitable ownership rights in a residence to which she seeks the Court impose a constructive/resulting trust quieting title in her favor.

Actions to quiet title and actions to declare constructive and resulting trusts arise in equity. *See Johnson v. Arbabi*, 355 S.C. 64, 584 S.E.2d 113 (2003) (An action to quiet title is an action in equity); *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987) (An action to declare a constructive trust or resulting trust is in equity). Moreover, in order to establish a constructive and/ or resulting trust, the evidence must be clear, definite, and unequivocal.

The DJ action contains no reference whatsoever that the attempted eviction was part of a common scheme of retaliation related to an alleged wrongful discharge. In reality, it was Defendant's duty as PR of his son's Estate to secure this residence for the Decedent's children, the beneficiaries of the Estate. The property was in the Decedent's name and properly recorded in the Dorchester County Register of Deeds and the legality of the Deed has never been contested. Furthermore, the PR testified in his deposition that it was common practice for the Decedent to allow employees to stay in residences he owned while they were employed with L & L Contractors Inc.

III. Motions to Consolidate are not appropriate if they cause further delay and prejudice

The purpose of Consolidation is to expedite cases, prevent unnecessary costs and multiplicity of suits when possible. In this case consolidating the cases would not achieve any of the above. As set forth above, these cases cannot be tried in a single action to a jury. Therefore, all that consolidation would do in this matter, is allow the at-law action (wrongful termination) action to be tried first and the DJ action (the one presently number 1 on the non-jury docket) to be tried last. The DJ action has been pending close to three years and the Defendant is being prejudiced daily by not being able to have his day in Court. Long delays hurt the administration of justice and are highly prejudicial to the Defendant because witnesses become unavailable, memories fade, and the Defendant continues to pay taxes and repairs on a house that he is not able to occupy or sell and in which the Plaintiff has lived for free since 2020.

In comparison, the Wrongful termination action was just amended in March of 2023 by the Plaintiff to add an addition cause of action. Therefore that case is in its infancy. The legal issues, witnesses and subject matter are expansive and will take years before it will be ready for trial. It would be highly prejudicial and not serve any economical or prudent purpose for the Court to consolidate these actions.

Moreover, Defendant submits that the real reason the Plaintiff seeks to keep the DJ action pending for as long as possible is because the (1) Plaintiff gets to live in a residence she doesn't own for free and doesn't have to pay taxes or repairs on it ;(2) Plaintiff knows that she will not be successful on the DJ action because she cannot meet her burden of proof of "clear and convincing" evidence in conjunction with the evidentiary limitations on her testimony under the Dead Man's

statute and (3) majority of the admissible evidence supports Defendant's ownership right to the residence.

CONCLUSION

Defendant would respectfully request that the Court deny the Plaintiff's Motion to Consolidate and set the DJ action for a day certain so that this matter can be tried and concluded. Furthermore, the Defendant would seek monetary sanctions and attorney's fees based on the continued delay tactics Plaintiff continues to employ.

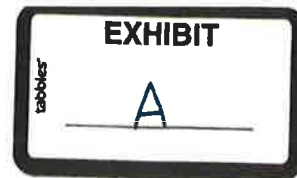
LOFTON & LOFTON, P.C.

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COUNSEL FOR DEFENDANT

Charleston, South Carolina

April 5, 2023



STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LAURA ABERNATHY,)
Plaintiff,)
vs.)
ERVIN W. LAMBERT, SR.,)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF ERVIN W.)
LAMBERT, JR., Deceased,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2020-CP-18-00914

SUMMONS
Declaratory Judgment/Quiet Title
(Non-Jury)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the undersigned attorney, at 207 Carolina Avenue, Moncks Corner, South Carolina 29461, within (30) days after service hereof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or Special Referee for this County, which order shall, pursuant to Rule 53(c) of the South Carolina Rules of Civil Procedure specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with any appeal directly to the South Carolina Court of Appeals.

Respectfully submitted,

s/ John S. West
SC Bar No. 6035
West Law Firm, PA
207 Carolina Avenue
PO Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com
Attorneys for Plaintiffs

June 12, 2020
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

LAURA ABERNATHY,)

Plaintiff,)

vs.)

ERVIN W. LAMBERT, SR.,)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF ERVIN W.)
LAMBERT, JR., Deceased,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2020-CP-18-00914

COMPLAINT

Declaratory Judgment/Quiet Title
(Non-Jury)

TO THE DEFENDANT ABOVE NAMED:

Plaintiff herein would respectfully allege and show unto this Honorable Court as follows,
to wit:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant is a citizen and resident of Williamsburg County, South Carolina.
3. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.
4. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

5. The subject matter herein is a lot of land with improvements located in the Plum Creek Subdivision, situate wholly in Dorchester County, South Carolina, and more particularly described in Exhibit "A", attached hereto and made a part hereof by expressed reference, ("Subject"); the same having a physical address of 106 Sarmiento Lane, Summerville, South Carolina.
6. The Subject appears of record in Dorchester County in the name of Decedent Ervin W. Lambert bearing Dorchester County TMS# 125-15-01-047, the source and origin of which is that certain General Warranty Deed dated October 23, 2015; found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Pages 166-170.
7. Decedent was at all times relevant herein the sole owner and President of L&L Contractors, Inc., ("L&L"), which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.
8. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.
9. Decedent and Plaintiff worked closely together at L&L for many years.
10. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management and accordingly there was a relationship of trust and confidence as and between Decedent and Plaintiff.
11. With respect to the Subject, Decedent made specific and unambiguous representations, assurances, guarantees and promises to Plaintiff prior to and after the closing on the Subject in October, 2015; that because Plaintiff had earned and was due a significant bonus from L&L, in lieu of a cash bonus for extraordinary and financially significant services to and for the benefit of Decedent and L&L, Plaintiff would become a fifty

(50%) owner in the Subject at or around closing and thereafter a sole and absolute owner of the Subject.

12. In reliance on the aforementioned representations, assurances, guarantees and promises, Plaintiff accepted the arrangement in lieu of an earned cash bonus for extraordinary work performed; she trusted Decedent to follow through; she expended certain monies, including the earnest money deposit which was credited to the buyer at closing, the home inspection fee and property taxes and Plaintiff immediately after closing moved into the Subject, where she has resided as her primary residence continuously since.
13. Decedent tragically and unexpectedly perished before the documents were executed accomplishing of record the arrangement made and contemplated as between Decedent and Plaintiff with respect to the Subject.
14. On June 4, 2020, Plaintiff was served with certain pleadings and papers originating from the Dorchester County Magistrate's Office in which Defendant alleges a landlord-tenant relationship with respect to the Subject, which Plaintiff expressly denies, and that Plaintiff should be evicted from the Subject.
15. The service of eviction papers is the first time Plaintiff became aware that Defendant or anyone else denied that Plaintiff is the equitable owner of the Subject, which denial is contrary to the knowledge, awareness, acquiescence and recognition of the arrangement between Decedent and Plaintiff with respect to the Subject.
16. For the reasons set forth herein and such other proofs to be presented at trial, Plaintiff asserts that she is the equitable owner of the Subject.
17. If Defendant continues to maintain that Plaintiff is a mere tenant in the Subject and he denies her legitimate rights with respect to the Subject, a justiciable controversy exists and will continue to exist as between the parties.

JURISDICTION AND VENUE

18. This Court is possessed of jurisdiction over the parties and the subject matter.

19. Venue is proper.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

20. Plaintiff repeats the averments contained in ¶¶ 1-19 above as if fully set forth herein *verbatim*.

21. Plaintiff brings this action pursuant to the provisions of the *S.C. Code Ann. § 15-53-10, et seq., "Uniform Declaratory Judgments Act"* for a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a *constructive trust* in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a *resulting trust* in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established.

FOR A SECOND CAUSE OF ACTION
(Quiet Title)

22. Plaintiff repeats the averments contained in ¶¶ 1-21 above as if fully set forth herein *verbatim*.

23. Plaintiff further brings this action pursuant to the provisions of *S.C. Code Ann. § 15-53-10, et seq., "Uniform Declaratory Judgments Act"* and *S.C. Code Ann §15-67-10, et seq.*, for a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff against the Defendant and for the purpose of obtaining a declaratory order of this Court establishing that

Plaintiff is seized and possessed of a fee simple title to said properties to the exclusion of any others.

WHEREFORE, having fully set forth his Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a *constructive trust* in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a *resulting trust* in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established;
- b. For a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff and that any other be absolutely divested and forever barred from any right, title, claim, estate, interest therein; and
- c. For such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

s/ John S. West, Esq.
SC Bar No. 6035
West Law Firm, PA
207 Carolina Avenue
PO Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com
Attorneys for Plaintiff

June 12, 2020
Moncks Corner, SC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LAURA ABERNATHY,

Plaintiff,

vs.

ERVIN W. LAMBERT, SR.,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF ERVIN W.
LAMBERT, JR., Deceased,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2020-CP-18-00914

EXHIBIT "A" TO COMPLAINT

EXHIBIT A

All that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Lot 147, Plum Creek Subdivision, as more particularly appear on that certain plat entitled "Plum Creek, Phase II, Section 1" prepared by O.F. Hunter, Jr., registered land surveyor, dated February 20, 2004, recorded in the Office of the Register of Deeds for the County of Dorchester, South Carolina in Plat Book K at Page 93, and said lots each having according to said plat the metes and bounds shown thereon, and which plat is incorporated herein by reference as to all matters shown thereon.

THIS BEING the same property conveyed to the Grantor(s) herein by Deed of Lennar Carolinas, LLC f/k/a Lennar Carolina, LLC, a Delaware limited liability company and successor by conversion to Lennar Carolina, Inc. a Delaware corporation f/k/a Lennar Communities of Carolina, Inc., a Delaware corporation and successor by merger to Don Galloway Homes, LLC, a Delaware limited liability company dated the 12th day of December 2015 and recorded January 4, 2006 in Book 5126 at Page 276 in the afore said ROD Office for Dorchester County. Reference that certain Deed from Stefan Gortat and Mirosława Gortat to Ervin W. Lambert, dated October 23, 2015, recorded October 30, 2015 and found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Page 166 - 170.

TMS# 128-15-01-047

Property Address: 106 Sarmiento Lane, Summerville, SC 29483

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

LAURA ABERNATHY,)

Plaintiff,)

vs.)

ERVIN W. LAMBERT, SR.,)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF ERVIN W.)
LAMBERT, JR., Deceased,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2020-CP-18- 00 914

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas, County of Dorchester, State of South Carolina, upon the Complaint of the above named Plaintiff against the Defendant for the purpose of obtaining certain declaratory relief and quieting title to the hereinafter described properties and that the Court otherwise grant such other relief as it deems just and proper.

The real properties which constitute the subject of this action may properly be described as follows: See **Exhibit "A"** attached hereto and made a part hereof by expressed reference.

Respectfully submitted,

s/ John S. West
SC Bar No. 6035
West Law Firm, PA
207 Carolina Avenue
PO Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com
Attorneys for Plaintiff

June 12, 2020
Moncks Corner, SC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LAURA ABERNATHY,

Plaintiff,

vs.

ERVIN W. LAMBERT, SR.,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF ERVIN W.
LAMBERT, JR., Deceased,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2020-CP-18-20914

EXHIBIT "A" TO LIS PENDENS

EXHIBIT A

All that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Lot 147, Plum Creek Subdivision, as more particularly appear on that certain plat entitled "Plum Creek, Phase II, Section 1" prepared by O.F. Hunter, Jr., registered land surveyor, dated February 20, 2004, recorded in the Office of the Register of Deeds for the County of Dorchester, South Carolina in Plat Book K at Page 93, and said lots each having according to said plat the metes and bounds shown thereon, and which plat is incorporated herein by reference as to all matters shown thereon.

THIS BEING the same property conveyed to the Grantor(s) herein by Deed of Lennar Carolinas, LLC f/k/a Lennar Carolina, LLC, a Delaware limited liability company and successor by conversion to Lennar Carolina, Inc. a Delaware corporation f/k/a Lennar Communities of Carolina, Inc., a Delaware corporation and successor by merger to Don Galloway Homes, LLC, a Delaware limited liability company dated the 12th day of December 2015 and recorded January 4, 2006 in Book 5126 at Page 276 in the afore said ROD Office for Dorchester County. Reference that certain Deed from Stefan Gortat and Mirosława Gortat to Ervin W. Lambert, dated October 23, 2015, recorded October 30, 2015 and found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Page 166 - 170.

TMS# 128-15-01-047

Property Address: 106 Sarmiento Lane, Summerville, SC 29483



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION TO AMEND
ERVIN W. LAMBERT, SR., PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
ERVIN W. LAMBERT, JR., Deceased,	)	
	)	
Defendant.	)	
	)	

PLEASE TAKE NOTICE that the undersigned, as attorney for Plaintiff, will move this Court pursuant to Rules 15(a) and 18(a), S.C.R.C.P. within ten (10) days after the service hereof, or sooner as may be ordered or directed by the Court and in a manner to be determined by the Court, for an Order to amend the Complaint in this action. A proposed Amended Complaint is attached as **Exhibit A** hereto.

The grounds for this motion are that Plaintiff has additional causes of action against the Defendant that are connected with the pending action and which she is not willing to abandon. Defendant will not be prejudiced by this amendment, and justice requires the amendment be permitted.

The undersigned counsel hereby certifies that he consulted with opposing counsel prior to the filing of this motion, and consent to amend was not obtained.

[signature on following page]

Respectfully submitted:

EPTING & RANNIK, LLC

**This 20th day of September, 2022
Charleston, South Carolina**

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar # 103014)

Clinton T. Magill (SC Bar # 102770)

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	<u>(Jury Trial Demanded)</u>
ERVIN W. LAMBERT, SR., PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
ERVIN W. LAMBERT, JR., Deceased, AND	)	
<u>L&L CONTRACTORS, INC.,</u>	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.
3. On information and belief, Defendant L&L Contractors, Inc., ("L&L") ~~which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.~~
- 2.
- 3.4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.

4.5. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

5.6. The subject matter herein is a lot of land with improvements located in the Plum Creek Subdivision, situate wholly in Dorchester County, South Carolina, and more particularly described in Exhibit "A" attached hereto and made a part hereof by expressed reference, ("Subject"); the same having a physical address of 106 Sarmiento Lane, Summerville, South Carolina.

6.7. The Subject appears of record in Dorchester County in the name of Decedent Ervin W. Lambert bearing Dorchester County TMS# 125-15-01-047, the source and origin of which is that certain General Warranty Deed dated October 23, 2015; found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Pages 166-170.

7.8. Decedent was at all times relevant herein the sole owner and President of L& L ~~Contractors, Inc., ("L&L"), which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.~~

8.9. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

9.10. Decedent and Plaintiff worked closely together at L&L for many years.

10.11. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management and accordingly there was a relationship of trust and confidence as and between Decedent and Plaintiff.

11.12. With respect to the Subject, Decedent made specific and unambiguous representations, assurances, guarantees and promises to Plaintiff prior to and after the closing on

the Subject in October, 2015; that because Plaintiff had earned and was due a significant bonus from L&L, in lieu of a cash bonus for extraordinary and financially significant services to and for the benefit of Decedent and L&L, Plaintiff would become a fifty (50%) owner in the Subject at or around closing and thereafter a sole and absolute owner of the Subject.

13. In reliance on the aforementioned representations, assurances, guarantees and promises, Plaintiff accepted the arrangement in lieu of an earned cash bonus for extraordinary work performed; she trusted Decedent to follow through; she expended certain monies, including the earnest money deposit which was credited to the buyer at closing, the home inspection fee and property taxes and Plaintiff immediately after closing moved into the Subject, where she has resided as her primary residence continuously since.

14. Following the closing, Decedent placed an additional condition on his arrangement with Plaintiff and required, in order for Plaintiff to earn the bonus she believed had already earned, that she continue working at L&L and assist with the resolution of a lawsuit involving L&L ("the Lawsuit").

15. Decedent tragically and unexpectedly perished before the Lawsuit was resolved and without the documents ~~were being~~ executed to accomplishing of record the arrangement originally made and contemplated as between Decedent and Plaintiff with respect to the Subject.

16. On June 4, 2020, Plaintiff was served with certain pleadings and papers originating from the Dorchester County Magistrate's Office in which Defendant alleges a landlord-tenant relationship with respect to the Subject, which Plaintiff expressly denies, and that Plaintiff should be evicted from the Subject.

17. The service of eviction papers is the first time Plaintiff became aware that Defendant or anyone else denied that Plaintiff is the equitable owner of the Subject, which denial

is contrary to the knowledge, awareness, acquiescence and recognition of the arrangement between Decedent and Plaintiff with respect to the Subject.

~~16-18.~~ For the reasons set forth herein and such other proofs to be presented at trial, Plaintiff asserts that she is the equitable owner of the Subject.

~~17-19.~~ If Defendant continues to maintain that Plaintiff is a mere tenant in the Subject and he denies her legitimate rights with respect to the Subject, a justiciable controversy exists and will continue to exist as between the parties.

JURISDICTION AND VENUE

~~18-20.~~ This Court is possessed of jurisdiction over the parties and the subject matter.

~~19-21.~~ Venue is proper.

FOR A FIRST CAUSE OF ACTION **(Declaratory Judgment)**

~~20-22.~~ Plaintiff repeats the averments contained in, 1-19 above as if fully set forth herein verbatim.

~~21-23.~~ Plaintiff brings this action pursuant to the provisions of the S.C. Code Ann. § 15-53-10, et seq., “Uniform Declaratory Judgments Act” for a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a constructive trust in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a resulting trust in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff’s rights and interests in the Subject otherwise be made, declared and established.

FOR A SECOND CAUSE OF ACTION
(Quiet Title)

22.24. Plaintiff repeats the averments contained in Paragraphs 1-21 above as if fully set forth herein verbatim.

25. Plaintiff further brings this action pursuant to the provisions of S.C. Code Ann. § 15-53-10, et seq., the "Uniform Declaratory Judgments Act," and S.C. Code Ann §15-67-10, et seq., for a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff against the Defendant and for the purpose of obtaining a declaratory order of this Court establishing that Plaintiff is seized and possessed of a fee simple title to said properties to the exclusion of any others.

FOR A THIRD CAUSE OF ACTION
(Wrongful Termination – Lambert and L&L)

26. The foregoing paragraphs are incorporated as if fully restated herein.

27. After Decedent's death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes ("the Project"). Plaintiff was the project superintendent for the Project.

28. Among L&L's obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

29. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

30. L&L was paid by SCDOT for each truckload of material, counted monthly.

31. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

32. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

33. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit and paid for—but never received—by SCDOT.

34. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, thus getting paid twice for the same material.

35. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

36. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

37. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

38. Plaintiff was terminated in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.

39. Lambert's and/or L&L's actions violate public policy.

40. Plaintiff was wrongfully discharged from her employment.

41. Plaintiff was damaged as a result of her wrongful termination.

42. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

43. The following paragraphs are incorporated as if fully restated herein.

44. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of an inability to secure childcare, with the knowledge and consent of Lambert and L&L.

45. In order to be able to work remotely, Plaintiff brought the laptop that had been issued to her by L&L home with her.

46. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop.

23.47. Plaintiff was arrested within weeks of her termination.

48. The charges were ultimately dismissed, and the record expunged.

49. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.

50. Plaintiff was damaged as a result.

24.51. Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully set forth ~~his~~her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

a. For a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a constructive trust in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a resulting trust in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established;

b. For a declaratory order ratifying, quieting, and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff and that any other be absolutely divested and forever barred from any right, title, claim, estate, interest therein; and

c. For actual and punitive damages and attorneys' fees; and

e.d. For such other and further relief as this Honorable Court deems just and proper.

This ____ day of September, 2022
Charleston, South Carolina

EPTING & RANNIK, LLC

/s/ Jaan Rannik

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ATTORNEYS FOR PLAINTIFF



ELECTRONICALLY FILED - 2023 Apr 05 12:24 PM - DORCHESTER - COMMON PLEAS - CASE#2022CP1800295

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM
	)	IN OPPOSITION TO PLAINTIFF'S
vs.	)	MOTION TO AMEND
	)	
ERVIN W. LAMBERT, SR., PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF ERVIN E. LAMBERT, JR.,	)	
DECEASED,	)	
	)	
Defendant.	)	
	)	

The Defendant by and through his undersigned counsel submits this Memorandum of Law in Opposition to the Plaintiff's Motion to Amend filed on September 20, 2022, in the Court of Common Pleas of Dorchester County, South Carolina. Based on following facts, law, and legal analysis the Plaintiff's Motion should be denied.

FACTS AND PROCEDURAL HISTORY

The Plaintiff filed her original complaint on June 12, 2020 as a Declaratory Judgment/Quiet Title action against the Estate of Ervin W. Lambert Jr. (Deceased) arising out of ownership rights of a residence located at 106 Sarmiento Lane, Summerville, South Carolina (hereinafter "Subject"). As part of the Complaint the Plaintiff alleged that she and the Decedent had an arrangement whereby she would become a fifty (50 %) owner in the Subject around closing and thereafter a sole and absolute owner in lieu of a cash bonus for work performed while an employee at the Decedent's company, L & L Contractors Inc. However, the Recorded Deed to the Subject is in the name of Ervin Lambert only.

In December of 2020, Defendant filed it's Answer and Counterclaim also seeking to Quiet Title to the Subject. Both parties served written discovery in February of 2021. On March 1, 2021 the parties filed the first Consent Scheduling Order. On August 4, 2021, the Defendant sent the Plaintiff one Request to Admit, which was "Denied as worded" on August 30, 2021. Both parties still needed additional time to take depositions in the case so an Amended Consent Scheduling Order was submitted to the Court for it's review. On September 3, 2021 the Court Denied the order and suggested that the parties agree to 40 (j) the case. A conference call was had with Attorney John West, Plaintiff's first attorney and Defense Counsel. Both parties agreed to 40 (j) the case pursuant to a consent order. Further, counsel for both parties agreed to continue with discovery while the case was 40(j) so that the case would be ready to proceed to trial once it was restored. Moreover, Mr. West also agreed that Mr. Lambert's deposition would be limited to the 106 Sarmiento Lane residence and what could lead to relevant evidence concerning its ownership.¹ Depositions for both the Plaintiff and the Defendant were scheduled to be taken on October 29, 2021.

On September 22, 2021 the Defendant received files that it had subpoenaed from the Bank of Greeleyville related to the Subject and the Plaintiff. Mr. West was emailed a copy of the documents the same date.² On October 12, 2021 Mr. West called the Defendant's office to discuss

¹A wrongful death lawsuit had been filed on behalf of the Estates of some of the passengers who were aboard the airplane which Decedent was flying when he perished. The Defendant wanted to ensure Plaintiff was not going to try to use the DJ action to elicit information pertaining to the wrongful death lawsuit. Plaintiff has also given an affidavit in regard to the allegations in this wrongful death lawsuit.

²The documents revealed numerous Residential Buy Sell Agreements between Plaintiff and the Decedent that were dated after the closing on the house. Plaintiff had filled out loan applications with the Bank of Greeleyville. These agreements proved that Plaintiff knew she didn't have any ownership in the property.

the status of the case. Mr. West stated that he longer represented the Plaintiff and did not believe that the depositions could go forward.

On February 15, 2022, Mr. Rannik, Plaintiff's new counsel, restored this case to the Roster. Once the case was restored, Defendant requested that Mr. Rannik provide dates so that depositions could be taken. Emails went back and forth between the parties for months until Mr. Rannik finally agreed that he would make his client available for her deposition on August 29, 2022.

On July 21, 2022 the Plaintiff served on the Defendant a Second Set of Interrogatories and Requests for Production, the majority of which had nothing to do with the subject matter of this action nor could lead to relevant evidence in this action.

In late August, the parties filed a Motion for Consent Scheduling Order along with an accompanying Proposed Consent Order. As part of this motion the parties represented to the Court that the short extensions requested were not intended to cause delay and would work no prejudice on any party or on the orderly administration of justice. The Order further stated that discovery would be concluded by October 15, 2022, Mediation by November 30, 2022, and that the case would not be placed on the trial roster until December 15, 2022.

Defendant took the depositions of the Plaintiff and her friend Eileen Kolpacke on August 29, 2022 regarding the Subject of the action as set forth in the original pleadings. In early September Counsel for the Plaintiff notified Defense Counsel that he wanted to take the deposition of the Personal Representative, Ervin Wayne Lambert Sr (hereinafter "Mr. Lambert"). Based on the scope of Plaintiff's Second Set of discovery requests, Defense Counsel emailed Plaintiff's Counsel to ensure that he intended to limit the deposition of Mr. Lambert to that which would be relevant to the subject matter of this case and/or may lead to evidence relevant to the subject matter of this case.

Counsel for the Plaintiff responded that he would not be able to agree to this limitation and that he intended to amend the pleadings and add additional parties and causes of action.

On September 13, 2022, Counsel for Plaintiff emailed its Notice of Deposition for Mr. Lambert's deposition to take place on October 13, 2022. On September 20, 2022 Plaintiff filed a motion to amend her complaint pursuant to Rules 15 (a) and 18 (a) of the *SCRCP*. The motion to amend seeks to add causes of action for Wrongful Termination and Malicious Prosecution. Furthermore, it seeks to add L &L Contractors Inc. as an additional defendant. Subsequently, Counsel for the Defendant sent Counsel for the Plaintiff an email stating that Mr. Lambert's Deposition could not go forward without a ruling on the Plaintiff's Motion to Amend. Defendant also requested a status conference be scheduled with the Court to discuss these matter since this case was under a strict scheduling order.

LEGAL STANDARD

The Plaintiff's motion to amend her complaint is governed by Rule 15 (a) of the South Carolina Rules of Procedure (*SCRCP*). The pertinent section of the rule provides that "a party may amend [her] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." *Rule 15 (a) SCRCP*. "Generally the allowance of an amendment to a pleading is a matter largely in the discretion of the trial court. Such discretion should not be arbitrarily exercised, either in the granting or refusing of motions made for that purpose, but should be exercised so as to prevent surprise and promote justice. "In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion." *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988). "The prejudice contemplated in Rule 15 is not

that the non-moving party is forced to defend the merits of a valid claim.” *Patton v. Miller*, 420 S.C. at 491, 804 S.E.2d at 262. Rather, it “is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” *Id.* at 493, 804 S.E.2d at 263.

LEGAL ANALYSIS

The liberality in allowing a complaint to be amended is not without limitations. Such liberal amendment is subject to such limitations as arise from the time at which they are sought and from their subject matter. Moreover, liberality allowed by Rule 15(a) of the *SCRCP* does not entitle a party to be dilatory in asserting claims or to neglect the case for a long period of time. Amendments to complaints should not be allowed as a reward for indifference or neglect. In determining whether to grant a motion to amend the Court should take into account whether there has been good faith and reasonable diligence by all the parties. If the non-moving party can prove bad faith, undue delay, or prejudice on the part of the moving party the motion to amend should be denied. In the case *sub judice*, the facts and procedural history paint a picture of dilatory tactics, prejudice and bad faith.

DEFENDANT IS PREJUDICED BY THE TIMING OF THIS AMENDMENT

Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing. Amendments will not be allowed where they are prejudicial to the rights of the adverse party. In considering potential prejudice, the court should consider whether the opposing party has had the opportunity to prepare for the issue being raised formally. *Duncan v. CRS Serrine Engineer, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (Ct. App. 1999). A common example of

a prejudicial amendment is one that “raises a new legal theory that would require the gathering and analysis of facts not already considered by the [Defendant, and] is offered shortly before or during trial.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986).³

This case has been pending since July 12, 2020 when the Plaintiff filed her initial Complaint. Since that time there have been two scheduling orders and a 40 (J) The last scheduling order was signed by this Court on August 25, 2022 and placed a very short time line on discovery, mediation and trial. Discovery is currently due to be concluded by October 15, 2022. Defendant has taken all of its depositions and is ready to move for Summary Judgment and if that is denied is ready for trial. Plaintiff has yet to take any depositions in this case or prosecute this case at all. Adding additional causes of action that can stand alone from this DJ action along with adding another Defendant who has not participated in Discovery is very prejudicial to the Defendant and the administration of justice.

It is clear that counsel for the Plaintiff had to be retained and meet with his client prior to restoring the case. Everything which counsel is now trying to add at the thirteenth hour by way of an amended complaint was known by Plaintiff at the time she met with counsel. If counsel had done any reasonable due diligence he too should have had all this information available to him. Instead, counsel for the Plaintiff filed his motion to amend some six months after this case was restored to the docket, after it had already appeared on the back-up roster, and after the Court just signed the most recent Consent Scheduling Order.

Counsel for Plaintiff hinted to the Court during the Status Conference that he didn’t become aware of the additional causes of action and additional Defendant until he prepped his client for her

³Rule 15 (a) of the *SCRCP* is substantially the same Rule as the Federal Rule.

deposition. This statement is hard to fathom. It doesn't make any sense to restore a case until some form of due diligence is done. Rule 40(j) gives the party a year to restore the case without any prejudice. The Defendant started requesting dates from Mr. Rannik in late March for depositions. It wasn't until June 29, 2022, some three months after requesting dates for the Plaintiff's deposition that Plaintiff's counsel made his client available to be deposed in late August 2022. The Plaintiff's deposition took place on August 29, 2022. The Plaintiff sent out its Second set of Interrogatories and Requests for Production on July 21, 2022. This Second Set of discovery for the most part had nothing to do with the present DJ action currently before the Court and everything to do with the Plaintiff's proposed Amended Complaint which was not even filed until September 20, 2022.

Additionally, the new causes of action which the Plaintiff wants to add with his motion to amend are still within the statute of limitations period. The Plaintiff can still file those actions within the applicable statute of limitations. The sole purpose of boot-strapping these issues this late in the game is because the Plaintiff changed her story during her deposition, completely negating her original allegations in her original pleadings. Plaintiff cannot survive a motion for summary judgment on this DJ action. Furthermore, it is clear that the Plaintiff is trying to use this amended complaint as leverage to try to stay in the house which she has unlawfully resided in since the death of Ervin Lambert Jr. in October of 2018.

Finally Defendant has focused on defending a DJ action dealing with the ownership of a piece of real estate for over two years. To now change the scope of this litigation to bring in unrelated causes of action that were available to Plaintiff at the time of the original filing on June 12, 2020 is extremely prejudicial and suspect based on the procedural history of this case.

CONCLUSION

Based on the arguments, law, and prejudicial effect that this amendment would create right before this case is supposed to go to trial. We would respectfully request that this Court deny the Plaintiff's Motion to Amend.

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COUNSEL FOR PLAINTIFF

Charleston, South Carolina

October 3, 2022

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-18-00295

ORDER DENYING PLAINTIFF'S MOTION TO AMEND AND FOR JOINER

ORDER DENYING PLAINTIFF'S MOTION TO AMEND AND FOR JOINER

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ORDER DENYING PLAINTIFF'S MOTION TO AMEND AND FOR JOINER

BACKGROUND

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alleged that she and Ervin W. Lambert Jr. had an arrangement whereby she would become a fifty (50%) owner in the Subject around closing and thereafter a sole and absolute owner. Plaintiff alleged that this arrangement was in lieu of a cash bonus for work she performed while employed at Ervin W. Lambert Jr.'s company, L&L Contractors Inc.¹ The Subject of this action was purchased in 2015 and the General Warranty Deed for the Subject was properly recorded on October 23, 2015, in the Office of the Register of Deeds for Dorchester County in the name of Ervin Lambert *only*.

Around October 25, 2018, Ervin W. Lambert Jr. (hereinafter "Decedent") died intestate in a plane crash in the Atlantic Ocean. Shortly thereafter, Decedent's father, Ervin Wayne Lambert Sr. (hereinafter "Mr. Lambert" or "PR") was appointed as Personal Representative of his Estate. Mr. Lambert was also given authority to manage, operate and conduct business on behalf of L&L Contractors Inc. and was given authority to execute any and all documents necessary to continue business operations and to preserve the value of the estate in the best interests of the heirs.

In December of 2020, Defendant filed its Answer and Counterclaim also seeking to Quiet Title to the Subject. Both parties served written discovery in February of 2021. On March 1, 2021, the parties filed their first Consent Scheduling Order with the Court. Because the parties still needed additional time to take depositions in this case, an Amended Consent Scheduling Order was submitted to the Court for its review in early September of 2021. On September 3, 2021, the Court denied the order and suggested that the parties agree to 40(j) the case. John West, Plaintiff's first attorney and Defense Counsel agreed to 40(j) the case pursuant to a consent order and to complete discovery prior to restoring the case. The parties believed that this was the best way to ensure that the case would be ready to proceed to trial once it was restored.

¹ Plaintiff continued to work at L&L Contractors Inc. for Ervin W. Lambert Sr. until she was terminated in April of 2020.

Mr. West also agreed to limit Mr. Lambert's deposition to the 106 Sarmiento Lane dispute and that which could lead to relevant evidence concerning its ownership². Depositions for both parties were scheduled to take place on October 29, 2021. On October 12, 2021, Mr. West informed Defense Counsel that he no longer represented the Plaintiff and that he didn't believe the depositions could go forward as previously scheduled for October 29, 2021.

On February 15, 2022, Mr. Rannik, Plaintiff's new counsel, restored the case to the non-jury roster. On August 16, 2022, an electronic notice was sent out by the Dorchester County Clerk's Office stating that this case was on the Back-Up Non-Jury Roster for the week of September 19, 2022. Mr. Rannik reached out to Defense Counsel about seeking a Consent Scheduling Order from the Court. Defense Counsel agreed to the terms and the parties filed a Motion for Consent Scheduling Order along with an accompanying Proposed Consent Order on August 25, 2022. As part of this motion the parties represented to the Court that the "short extensions requested were not intended to cause delay and would work no prejudice on any party or on the orderly administration of justice". The order further provided that discovery would be completed by October 15, 2022, mediation by November 30, 2022, and that the case would be ready for trial after December 15, 2022.

Defendant finished the depositions needed for its case on August 29, 2022. In early September Plaintiff stated that he wished to take Mr. Lambert's deposition but that he would not limit the deposition to the scope of the pending case because he planned on amending his pleadings to add additional parties and claims.

On September 13, 2022, Plaintiff emailed its Notice of Deposition for Mr. Lambert's

² A case designated complex had been filed against the Decedent's Estate on behalf of some of the passengers who were aboard the airplane Decedent was operating when it disappeared. Defendant wanted to ensure Plaintiff was not trying to use the Declaratory Judgment action to elicit information pertaining to the airplane case because Plaintiff had already provided an affidavit in the complex case.

deposition to take place on October 13, 2022. On September 20, 2022 Plaintiff filed its Motion to Amend pursuant to Rules 15(a) and 18(a) of the *SCRCP* along with its proposed Amended Complaint. The Amended Complaint sought to add two additional defendants, Wayne Lambert Sr. individually and L&L Contractors Inc. It further sought to add two additional claims, Wrongful Termination and Malicious Prosecution. Plaintiff alleged that the two additional claims, which occurred on or about April 2020 respectively were in retaliation for (1) her refusal to certify and falsify documents or payments relating to a work project involving the removal of material from a borrow pit and (2) her refusal to delete video footage of a wreck involving one of L&L's trucks.³

Because of the Amended Complaint and scheduling order that was in place, the parties agreed that a status conference was needed with the Court. The Court held a virtual status conference with the parties on October 3, 2022, and agreed to hear the Plaintiff's Motion to Amend the following day. Defendant filed its Memorandum in Opposition to the Plaintiff's Motion to Amend on October 3, 2022. On October 4, 2022 the Plaintiff's Motion to Amend was heard and verbally denied by the Court during the virtual hearing. This Order is the product of the October 4, 2022 hearing.

STANDARD OF REVIEW FOR AMENDMENTS PURSUANT TO RULE 15(a)

The pertinent section of Rule 15(a) provides that "a party may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) *SCRCP*. However, "Rule 15(a) only permits an *existing plaintiff* to add, modify, delete, or change claims against an *existing defendant*." *Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995). "It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and

³ Plaintiff's proposed red-lined Amended Complaint was submitted as Ex. A. to its Motion to Amend filed September 20, 2022.

that the party opposing the motion has the burden of establishing prejudice.” “The prejudice contemplated in Rule 15 envisions a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Curry v. Carolina Ins. Grp. Of SC, Inc.*, 428 S.C. 60, 75-76, 832 S.E.2d 760, 768 (Ct. App. 2019). “Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.” *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 277, 754 S.E.2d 714 (Ct. App. 2014) (*reh’g denied*) citing *Ball v. Canadian Am. Exp. Co., Inc.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994). Factors that may be considered in determining whether permitting an amendment would cause prejudice to the nonmoving party include undue delay, jury confusion, and introduction of remote issues. See *Wilson v. Horsley*, 137 Wash.2d 500, 974 P.2d 316 (1999). A motion to amend a complaint may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial. See *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh’g denied*. A denial of a motion to amend under Rule 15 is within the sound discretion of the circuit court. *Oulla v. Velazques*, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct. App. 2019). “The trial judge’s finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232-233, 599 S.E.2d 462, 465 (Ct. App. 2004).

DISCUSSION

The Plaintiff argues that pursuant to Rules 15(a), 18(a), and Rule 20 of the *SCRCP*, the Court should grant its Motion to Amend to add additional causes of action for Wrongful Termination and Malicious Prosecution, and to add defendants, Mr. Lambert individually and L&L Contractors Inc. to the existing Declaratory Judgment action because all of the actions new and

old are related and arise out of the Plaintiff's retaliation claim. The Plaintiff further argues that there is no prejudice to the Defendant or bad faith because the addition of new defendants will give the Defense more time to prepare its case.

The Defendant argues that Plaintiff's new causes of action and additional defendants are totally unrelated to the existing Declaratory Judgment action. The Declaratory Judgment action has to do with a piece of real estate that was purchased by the Decedent back in 2015 while the new action arises out of Plaintiff's termination of employment at L&L which occurred in 2020. The new action also involves two additional parties, Mr. Lambert in his individual capacity and L&L Contractors Inc. Defendant further argues that to allow these actions to come in this late in the game would be highly prejudicial to the Defendant because he has completed discovery, the case is up for trial in less than two months, the case has been pending for over two years, and this amendment could have been made much earlier if Plaintiff had used reasonable diligence. See *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (a prejudicial amendment is one that "raises a new legal theory that would require the gathering and analysis of facts not already considered by the [Defendant, and] is offered shortly before or during trial"); *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh'g denied.*; (Amendment may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial).⁴ Finally, the Defendant argues that the new causes of action can be tried in a separate law suit and are still within the applicable statute of limitations period.

FINDINGS AND CONCLUSIONS

After reviewing the law, pleadings, memoranda and arguments by Counsel the Court

⁴ Rule 15(a) of the SCRCF is substantially the same rule as the Federal rule.

makes the following findings and conclusions:

First, I find that these are separate and distinct law suits and as such should be tried separately. The topics, legal issues and parties are quite different. The pending Declaratory Judgment action arises out of ownership rights to a residence which was purchased by the Decedent in 2015 and recorded by General Warrant Deed in the Decedent's name "only" in the Dorchester County Register of Deeds in 2015. Plaintiff's allegations in that case revolve around an alleged arrangement she had with the Decedent and the Decedent only in regard to that residence. The only connection that these new claims have with this action, is the fact that Mr. Lambert just happens to be managing L&L Contractors now and is PR of the Decedent's Estate.

Secondly, given the fact that this case is almost three years old, and that a jury is going to have to decide without getting confused is yet another reason that these matters should be filed separately. In the Declaratory Judgment action with regards to whether or not the Plaintiff had an equitable ownership is light years away from a wrongful discharge action. Furthermore, the Plaintiff will not be prejudiced because the Plaintiff can still file this new law suit within the applicable statute of limitations and should not have an issue with any collateral estoppel.

Third, while you are allowed to amend freely under Rule 15, you shouldn't be able to shoehorn additional parties that are fairly unrelated with additional causes of action which are in great part unrelated to the existing lawsuit, which is supposed to be ready for trial. Moreover, it is absolutely prejudicial to the Defendant to add these unrelated causes of action and these parties to the existing Declaratory Judgment action. Furthermore, I believe that in combining these actions and parties creates a substantial likelihood that the jury would be confused.

With that said, the Plaintiff's Motion to Amend are DENIED. All of the Plaintiffs issues can still be brought in a separate lawsuit, which would be much cleaner and easier for a jury to

understand. Bringing unrelated causes of action and parties to this action right before trial would be prejudicial and not serve the ends of Justice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Amend be hereby **DENIED**.

IT IS SO ORDERED!

Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

December_____, 2022



Dorchester Common Pleas

Case Caption: Laura Abernathy VS Ervin W Lambert Sr , defendant, et al

Case Number: 2022CP1800295

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
ERVIN W. LAMBERT, SR., individually and	)	
as Personal Representative of the Estate of	)	
Ervin W. Lambert, Jr., Deceased, AND L&L	)	
CONTRACTORS, INC.,	)	
	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.
3. On information and belief, Defendant L&L Contractors, Inc., ("L&L") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina with a principal place of business in Berkeley County, South Carolina.
4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.

5. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

6. Decedent was at all times relevant herein the sole owner and President of L&L

7. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

8. Decedent and Plaintiff worked closely together at L&L for many years.

9. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management.

JURISDICTION AND VENUE

10. This Court is possessed of jurisdiction over the parties and the subject matter.

11. Venue is proper.

FOR A FIRST CAUSE OF ACTION **(Wrongful Termination – Lambert and L&L)**

12. The foregoing paragraphs are incorporated as if fully restated herein.

13. After Decedent's death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes ("the Project"). Plaintiff was the project superintendent for the Project.

14. Among L&L's obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

15. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

16. L&L was paid by SCDOT for each truckload of material, counted monthly.

17. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

18. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

19. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit but never received by SCDOT.

20. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, despite Defendants demanding payment from SCDOT for the same material.

21. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

22. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

23. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

24. Plaintiff was terminated by Lambert and/or L&L in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.
25. Lambert's and/or L&L's actions violate public policy.
26. Plaintiff was wrongfully discharged from her employment.
27. Plaintiff was damaged as a result of her wrongful termination.
28. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A SECOND CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

29. The following paragraphs are incorporated as if fully restated herein.
30. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of the Covid-19 pandemic and an inability to secure childcare, with the knowledge and consent of Lambert and L&L.
31. In order to be able to work remotely, Plaintiff brought the laptop , desktop computer, and printer that had been issued to her by L&L home with her.
32. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop and desktop computer.
33. Plaintiff was arrested within weeks of her termination.
34. The charges were ultimately dismissed, and the record expunged.
35. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.
36. Plaintiff was damaged as a result.

37. Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully set forth her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For actual and punitive damages and attorneys' fees; and
- b. For such other and further relief as this Honorable Court deems just and proper.

This 14th day of October, 2022
Charleston, South Carolina

EPTING & RANNIK, LLC

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar # 103014)

Clinton T. Magill (SC Bar # 102770)

46A State Street

Charleston, SC 29401

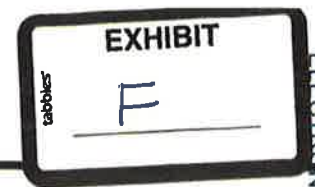
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jgr@epting-law.com

ctm@epting-law.com

ATTORNEYS FOR PLAINTIFF



ELECTRONICALLY FILED - 2023 Apr 05 12:24 PM - DORCHESTER - COMMON PLEAS - CASE#2022CP1800295

Lynn Lofton

From: Lionel Lofton
Sent: Monday, March 6, 2023 9:52 AM
To: Jaan Rannik; Lynn Lofton; mbarfield@barnwell-whaley.com
Cc: Angela Gross; Terri Ackerman
Subject: RE: Abernathy v. Lambert

Jaan,

This issue has already been ruled on by Judge Goodstein during the Motion to Amend Hearing.

Thanks,
Lionel

From: Jaan Rannik [mailto:jgr@epting-law.com]
Sent: Friday, March 3, 2023 2:13 PM
To: Lionel Lofton <lionel@loftonandlofton.com>; Lynn Lofton <lynn@loftonandlofton.com>; mbarfield@barnwell-whaley.com
Cc: Angela Gross <agg@epting-law.com>; Terri Ackerman <terri@loftonandlofton.com>
Subject: Abernathy v. Lambert

Dear Lionel, Lynn, and Michael (and it's nice to meet you, Michael!),

Now that summary judgment has been ruled upon in the DJ action and the wrongful termination case has been filed, I intend to move to consolidate the two cases. I expect you will not consent, but if I am mistaken, please let me know and I will prepare a consent order.

Best regards,
Jaan

Jaan G. Rannik, Esq.
EPTING & RANNIK, LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
jgr@epting-law.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-01582
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
ERVIN W. LAMBERT, SR., individually and	)	
as Personal Representative for the Estate of	)	
Ervin W. Lambert, Jr., Deceased, and L&L	)	
CONTRACTORS, INC.,	)	
	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.
3. On information and belief, Defendant L&L Contractors, Inc., ("L&L") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina with a principal place of business in Berkeley County, South Carolina.
4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.

5. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

6. Decedent was at all times relevant herein the sole owner and President of L&L

7. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

8. Decedent and Plaintiff worked closely together at L&L for many years.

9. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management.

JURISDICTION AND VENUE

10. This Court is possessed of jurisdiction over the parties and the subject matter.

11. Venue is proper.

FOR A FIRST CAUSE OF ACTION (Wrongful Termination – Lambert and L&L)

12. The foregoing paragraphs are incorporated as if fully restated herein.

13. After Decedent's death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes ("the Project"). Plaintiff was the project superintendent for the Project.

14. Among L&L's obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

15. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

16. L&L was paid by SCDOT for each truckload of material, counted monthly.

17. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

18. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

19. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit but never received by SCDOT.

20. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, despite Defendants demanding payment from SCDOT for the same material.

21. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

22. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

23. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

24. Plaintiff was terminated by Lambert and/or L&L in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.
25. Lambert's and/or L&L's actions violate public policy.
26. Plaintiff was wrongfully discharged from her employment.
27. Plaintiff was damaged as a result of her wrongful termination.
28. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A SECOND CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

29. The following paragraphs are incorporated as if fully restated herein.
30. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of the Covid-19 pandemic and an inability to secure childcare, with the knowledge and consent of Lambert and L&L.
31. In order to be able to work remotely, Plaintiff brought the laptop, desktop computer, and printer that had been issued to her by L&L home with her.
32. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop and desktop computer.
33. Plaintiff was arrested within weeks of her termination.
34. The charges were ultimately dismissed, and the record expunged.
35. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.
36. Plaintiff was damaged as a result.

37. Plaintiff is entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Agreement)

38. The following paragraphs are incorporated as if fully restated herein.

39. Given her central role at L&L, Ms. Abernathy was tasked with coordinating with counsel and providing substantial assistance in the prosecution of a lawsuit L&L filed to recover monies owed to it ("the Lawsuit").

40. As her work assisting with the Lawsuit would be in addition to her existing workload, Decedent (then-President of L&L) promised, in writing, that she would be entitled to a bonus related to any recovery obtained in the Litigation.

41. She was instrumental in achieving a substantial recovery for L&L in the Litigation.

42. Prior to the Litigation being resolved, Decedent was killed in a plane crash.

43. Ms. Abernathy was terminated in 2020, never having received the bonus she was promised relating to the Litigation.

44. Ms. Abernathy is entitled to payment of the bonus promised to her relating to the Litigation.

WHEREFORE, having fully set forth her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For actual and punitive damages and attorneys' fees; and
- b. For such other and further relief as this Honorable Court deems just and proper.

This 16th day of March, 2023
Charleston, South Carolina

EPTING & RANNIK, LLC

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar # 103014)

Clinton T. Magill (SC Bar # 102770)

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ATTORNEYS FOR PLAINTIFF



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	PLAINTIFF'S MOTION TO
ERVIN W. LAMBERT, SR., Personal	)	CONSOLIDATE AND FOR AN
Representative of the Estate of Ervin W.	)	EXPEDITED HEARING
Lambert, Jr., Deceased,	)	
	)	
Defendant.	)	

Plaintiff Laura Abernathy ("Ms. Abernathy") moves pursuant to Rule 42(a), S.C.R.C.P., for an Order consolidating this case with Case number 2022-CP-18-01582, also filed by Ms. Abernathy against Defendant Ervin Wayne Lambert et al. and requests a jury trial. The two cases share parties, counsel in common, common questions of fact and/or law, and Ms. Abernathy contends that the attempted eviction that is the subject of this case is part of a common scheme of retaliation along with the forms alleged in Case number 2022-CP-18-01582.

Accordingly, it would be more just and more efficient for the parties and the Court for these matters to be consolidated and tried together to a jury. Ms. Abernathy so moves and requests an expedited hearing.

Plaintiff sought Defendants' consent prior to filing this motion, but consent was not obtained.

[signature on following page]

This 17th day of March, 2023
Charleston, South Carolina

Respectfully submitted:

/s/ Jaan Rannik
Jaan G. Rannik
EPTING & RANNIK, LLC
46A State Street
Charleston, SC 29401
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jgr@epting-law.com

COUNSEL FOR LAURA ABERNATHY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2022-CP-18-00295
	)	
	)	
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO AMEND AND FOR
vs.	)	JOINDER
	)	
ERVIN W. LAMBERT, SR.,	)	
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF ERVINE E.	)	
LAMBERT, JR. Deceased,	)	
	)	
Defendant.		

This Matter came before the Court on October 4, 2022, during a virtual hearing on Plaintiff's Motion to Amend pursuant to Rules 15(a), 18(a), and 20 of the *South Carolina Rules of Civil Procedure (SCRCP)*. Present on behalf of the Plaintiff was Jaan Rannik, Esquire and Lionel S. Lofton, Esquire, on behalf of the Defendant. After reviewing the pleadings, motions and memoranda filed by counsel, the law as it relates to the issues presented, and oral arguments presented during the hearing, the Court finds that Plaintiff's Motion to Amend to join additional defendants and claims and Plaintiff's Motion for joinder additional parties are DENIED for the reasons set forth herein.

BACKGROUND

The Plaintiff initiated this action on June 12, 2020, as a Declaratory Judgment/Quiet Title action against Ervin W. Lambert Sr., Personal Representative of the Estate of Ervin W. Lambert Jr. (Deceased) arising out of ownership rights of a residence located at 106 Sarmiento Lane, Summerville, South Carolina (hereinafter "Subject"). As part of the complaint, the Plaintiff

alleged that she and Ervin W. Lambert Jr. had an arrangement whereby she would become a fifty (50%) owner in the Subject around closing and thereafter a sole and absolute owner. Plaintiff alleged that this arrangement was in lieu of a cash bonus for work she performed while employed at Ervin W. Lambert Jr.'s company, L&L Contractors Inc.¹ The Subject of this action was purchased in 2015 and the General Warranty Deed for the Subject was properly recorded on October 23, 2015, in the Office of the Register of Deeds for Dorchester County in the name of Ervin Lambert *only*.

Around October 25, 2018, Ervin W. Lambert Jr. (hereinafter "Decedent") died intestate in a plane crash in the Atlantic Ocean. Shortly thereafter, Decedent's father, Ervin Wayne Lambert Sr. (hereinafter "Mr. Lambert" or "PR") was appointed as Personal Representative of his Estate. Mr. Lambert was also given authority to manage, operate and conduct business on behalf of L&L Contractors Inc. and was given authority to execute any and all documents necessary to continue business operations and to preserve the value of the estate in the best interests of the heirs.

In December of 2020, Defendant filed its Answer and Counterclaim also seeking to Quiet Title to the Subject. Both parties served written discovery in February of 2021. On March 1, 2021, the parties filed their first Consent Scheduling Order with the Court. Because the parties still needed additional time to take depositions in this case, an Amended Consent Scheduling Order was submitted to the Court for its review in early September of 2021. On September 3, 2021, the Court denied the order and suggested that the parties agree to 40(j) the case. John West, Plaintiff's first attorney and Defense Counsel agreed to 40(j) the case pursuant to a consent order and to complete discovery prior to restoring the case. The parties believed that this was the best way to ensure that the case would be ready to proceed to trial once it was restored.

¹ Plaintiff continued to work at L&L Contractors Inc. for Ervin W. Lambert Sr. until she was terminated in April of 2020.

Mr. West also agreed to limit Mr. Lambert's deposition to the 106 Sarmiento Lane dispute and that which could lead to relevant evidence concerning its ownership². Depositions for both parties were scheduled to take place on October 29, 2021. On October 12, 2021, Mr. West informed Defense Counsel that he no longer represented the Plaintiff and that he didn't believe the depositions could go forward as previously scheduled for October 29, 2021.

On February 15, 2022, Mr. Rannik, Plaintiff's new counsel, restored the case to the non-jury roster. On August 16, 2022, an electronic notice was sent out by the Dorchester County Clerk's Office stating that this case was on the Back-Up Non-Jury Roster for the week of September 19, 2022. Mr. Rannik reached out to Defense Counsel about seeking a Consent Scheduling Order from the Court. Defense Counsel agreed to the terms and the parties filed a Motion for Consent Scheduling Order along with an accompanying Proposed Consent Order on August 25, 2022. As part of this motion the parties represented to the Court that the "short extensions requested were not intended to cause delay and would work no prejudice on any party or on the orderly administration of justice". The order further provided that discovery would be completed by October 15, 2022, mediation by November 30, 2022, and that the case would be ready for trial after December 15, 2022.

Defendant finished the depositions needed for its case on August 29, 2022. In early September Plaintiff stated that he wished to take Mr. Lambert's deposition but that he would not limit the deposition to the scope of the pending case because he planned on amending his pleadings to add additional parties and claims.

On September 13, 2022, Plaintiff emailed its Notice of Deposition for Mr. Lambert's

² A case designated complex had been filed against the Decedent's Estate on behalf of some of the passengers who were aboard the airplane Decedent was operating when it disappeared. Defendant wanted to ensure Plaintiff was not trying to use the Declaratory Judgment action to elicit information pertaining to the airplane case because Plaintiff had already provided an affidavit in the complex case.

deposition to take place on October 13, 2022. On September 20, 2022 Plaintiff filed its Motion to Amend pursuant to Rules 15(a) and 18(a) of the *SCRCP* along with its proposed Amended Complaint. The Amended Complaint sought to add two additional defendants, Wayne Lambert Sr. individually and L&L Contractors Inc. It further sought to add two additional claims, Wrongful Termination and Malicious Prosecution. Plaintiff alleged that the two additional claims, which occurred on or about April 2020 respectively were in retaliation for (1) her refusal to certify and falsify documents or payments relating to a work project involving the removal of material from a borrow pit and (2) her refusal to delete video footage of a wreck involving one of L&L's trucks.³

Because of the Amended Complaint and scheduling order that was in place, the parties agreed that a status conference was needed with the Court. The Court held a virtual status conference with the parties on October 3, 2022, and agreed to hear the Plaintiff's Motion to Amend the following day. Defendant filed its Memorandum in Opposition to the Plaintiff's Motion to Amend on October 3, 2022. On October 4, 2022 the Plaintiff's Motion to Amend was heard and verbally denied by the Court during the virtual hearing. This Order is the product of the October 4, 2022 hearing.

STANDARD OF REVIEW FOR AMENDMENTS PURSUANT TO RULE 15(a)

The pertinent section of Rule 15(a) provides that "a party may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) *SCRCP*. However, "Rule 15(a) only permits an *existing plaintiff* to add, modify, delete, or change claims against an *existing defendant*." *Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995). "It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and

³ Plaintiff's proposed red-lined Amended Complaint was submitted as Ex. A. to its Motion to Amend filed September 20, 2022.

that the party opposing the motion has the burden of establishing prejudice.” “The prejudice contemplated in Rule 15 envisions a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Curry v. Carolina Ins. Grp. Of SC, Inc.*, 428 S.C. 60, 75-76, 832 S.E.2d 760, 768 (Ct. App. 2019). “Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.” *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 277, 754 S.E.2d 714 (Ct. App. 2014) (*reh’g denied*) citing *Ball v. Canadian Am. Exp. Co., Inc.*, 314 S.C 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994). Factors that may be considered in determining whether permitting an amendment would cause prejudice to the nonmoving party include undue delay, jury confusion, and introduction of remote issues. See *Wilson v. Horsley*, 137 Wash.2d 500, 974 P.2d 316 (1999). A motion to amend a complaint may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial. See *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh’g denied*. A denial of a motion to amend under Rule 15 is within the sound discretion of the circuit court. *Oulla v. Velazques*, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct. App. 2019). “The trial judge’s finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232-233, 599 S.E.2d 462, 465 (Ct. App. 2004).

DISCUSSION

The Plaintiff argues that pursuant to Rules 15(a), 18(a), and Rule 20 of the *SCRCP*, the Court should grant its Motion to Amend to add additional causes of action for Wrongful Termination and Malicious Prosecution, and to add defendants, Mr. Lambert individually and L&L Contractors Inc. to the existing Declaratory Judgment action because all of the actions new and

old are related and arise out of the Plaintiff's retaliation claim. The Plaintiff further argues that there is no prejudice to the Defendant or bad faith because the addition of new defendants will give the Defense more time to prepare its case.

The Defendant argues that Plaintiff's new causes of action and additional defendants are totally unrelated to the existing Declaratory Judgment action. The Declaratory Judgment action has to do with a piece of real estate that was purchased by the Decedent back in 2015 while the new action arises out of Plaintiff's termination of employment at L&L which occurred in 2020. The new action also involves two additional parties, Mr. Lambert in his individual capacity and L&L Contractors Inc. Defendant further argues that to allow these actions to come in this late in the game would be highly prejudicial to the Defendant because he has completed discovery, the case is up for trial in less than two months, the case has been pending for over two years, and this amendment could have been made much earlier if Plaintiff had used reasonable diligence. See *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (a prejudicial amendment is one that "raises a new legal theory that would require the gathering and analysis of facts not already considered by the [Defendant, and] is offered shortly before or during trial"); *Wal-Mart Super Center v. Long*, 852 So.2d 568, (2003) *reh'g denied.*; (Amendment may be prejudicial if it would burden the party with more discovery, preparation, expense, etc. and when the amendment is sought after the majority of discovery is completed and the case is up for trial).⁴ Finally, the Defendant argues that the new causes of action can be tried in a separate law suit and are still within the applicable statute of limitations period.

FINDINGS AND CONCLUSIONS

After reviewing the law, pleadings, memoranda and arguments by Counsel the Court

⁴ Rule 15(a) of the SCRCF is substantially the same rule as the Federal rule.

makes the following findings and conclusions:

First, I find that these are separate and distinct law suits and as such should be tried separately. The topics, legal issues and parties are quite different. The pending Declaratory Judgment action arises out of ownership rights to a residence which was purchased by the Decedent in 2015 and recorded by General Warrant Deed in the Decedent's name "only" in the Dorchester County Register of Deeds in 2015. Plaintiff's allegations in that case revolve around an alleged arrangement she had with the Decedent and the Decedent only in regard to that residence. The only connection that these new claims have with this action, is the fact that Mr. Lambert just happens to be managing L&L Contractors now and is PR of the Decedent's Estate.

Secondly, given the fact that this case is almost three years old, and that a jury is going to have to decide without getting confused is yet another reason that these matters should be filed separately. In the Declaratory Judgment action with regards to whether or not the Plaintiff had an equitable ownership is light years away from a wrongful discharge action. Furthermore, the Plaintiff will not be prejudiced because the Plaintiff can still file this new law suit within the applicable statute of limitations and should not have an issue with any collateral estoppel.

Third, while you are allowed to amend freely under Rule 15, you shouldn't be able to shoehorn additional parties that are fairly unrelated with additional causes of action which are in great part unrelated to the existing lawsuit, which is supposed to be ready for trial. Moreover, it is absolutely prejudicial to the Defendant to add these unrelated causes of action and these parties to the existing Declaratory Judgment action. Furthermore, I believe that in combining these actions and parties creates a substantial likelihood that the jury would be confused.

With that said, the Plaintiff's Motion to Amend are DENIED. All of the Plaintiffs issues can still be brought in a separate lawsuit, which would be much cleaner and easier for a jury to

understand. Bringing unrelated causes of action and parties to this action right before trial would be prejudicial and not serve the ends of Justice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Amend be hereby **DENIED**.

IT IS SO ORDERED!

Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

December_____, 2022



Dorchester Common Pleas

Case Caption: Laura Abernathy VS Ervin W Lambert Sr , defendant, et al

Case Number: 2022CP1800295

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM
	)	IN OPPOSITION TO PLAINTIFF'S
vs.	)	MOTION TO AMEND
	)	
ERVIN W. LAMBERT, SR., PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF ERVIN E. LAMBERT, JR.,	)	
DECEASED,	)	
	)	
Defendant.	)	
_____	)	

The Defendant by and through his undersigned counsel submits this Memorandum of Law in Opposition to the Plaintiff's Motion to Amend filed on September 20, 2022, in the Court of Common Pleas of Dorchester County, South Carolina. Based on following facts, law, and legal analysis the Plaintiff's Motion should be denied.

FACTS AND PROCEDURAL HISTORY

The Plaintiff filed her original complaint on June 12, 2020 as a Declaratory Judgment/Quiet Title action against the Estate of Ervin W. Lambert Jr. (Deceased) arising out of ownership rights of a residence located at 106 Sarmiento Lane, Summerville, South Carolina (hereinafter "Subject"). As part of the Complaint the Plaintiff alleged that she and the Decedent had an arrangement whereby she would become a fifty (50 %) owner in the Subject around closing and thereafter a sole and absolute owner in lieu of a cash bonus for work performed while an employee at the Decedent's company, L & L Contractors Inc. However, the Recorded Deed to the Subject is in the name of Ervin Lambert only.

In December of 2020, Defendant filed it's Answer and Counterclaim also seeking to Quiet Title to the Subject. Both parties served written discovery in February of 2021. On March 1, 2021 the parties filed the first Consent Scheduling Order. On August 4, 2021, the Defendant sent the Plaintiff one Request to Admit, which was "Denied as worded" on August 30, 2021. Both parties still needed additional time to take depositions in the case so an Amended Consent Scheduling Order was submitted to the Court for it's review. On September 3, 2021 the Court Denied the order and suggested that the parties agree to 40 (j) the case. A conference call was had with Attorney John West, Plaintiff's first attorney and Defense Counsel. Both parties agreed to 40 (j) the case pursuant to a consent order. Further, counsel for both parties agreed to continue with discovery while the case was 40(j) so that the case would be ready to proceed to trial once it was restored. Moreover, Mr. West also agreed that Mr. Lambert's deposition would be limited to the 106 Sarmiento Lane residence and what could lead to relevant evidence concerning its ownership.¹ Depositions for both the Plaintiff and the Defendant were scheduled to be taken on October 29, 2021.

On September 22, 2021 the Defendant received files that it had subpoenaed from the Bank of Greeleyville related to the Subject and the Plaintiff. Mr. West was emailed a copy of the documents the same date.² On October 12, 2021 Mr. West called the Defendant's office to discuss

¹A wrongful death lawsuit had been filed on behalf of the Estates of some of the passengers who were aboard the airplane which Decedent was flying when he perished. The Defendant wanted to ensure Plaintiff was not going to try to use the DJ action to elicit information pertaining to the wrongful death lawsuit. Plaintiff has also given an affidavit in regard to the allegations in this wrongful death lawsuit.

²The documents revealed numerous Residential Buy Sell Agreements between Plaintiff and the Decedent that were dated after the closing on the house. Plaintiff had filled out loan applications with the Bank of Greeleyville. These agreements proved that Plaintiff knew she didn't have any ownership in the property.

the status of the case. Mr. West stated that he longer represented the Plaintiff and did not believe that the depositions could go forward.

On February 15, 2022, Mr. Rannik, Plaintiff's new counsel, restored this case to the Roster. Once the case was restored, Defendant requested that Mr. Rannik provide dates so that depositions could be taken. Emails went back and forth between the parties for months until Mr. Rannik finally agreed that he would make his client available for her deposition on August 29, 2022.

On July 21, 2022 the Plaintiff served on the Defendant a Second Set of Interrogatories and Requests for Production, the majority of which had nothing to do with the subject matter of this action nor could lead to relevant evidence in this action.

In late August, the parties filed a Motion for Consent Scheduling Order along with an accompanying Proposed Consent Order. As part of this motion the parties represented to the Court that the short extensions requested were not intended to cause delay and would work no prejudice on any party or on the orderly administration of justice. The Order further stated that discovery would be concluded by October 15, 2022, Mediation by November 30, 2022, and that the case would not be placed on the trial roster until December 15, 2022.

Defendant took the depositions of the Plaintiff and her friend Eileen Kolpacke on August 29, 2022 regarding the Subject of the action as set forth in the original pleadings. In early September Counsel for the Plaintiff notified Defense Counsel that he wanted to take the deposition of the Personal Representative, Ervin Wayne Lambert Sr (hereinafter "Mr. Lambert"). Based on the scope of Plaintiff's Second Set of discovery requests, Defense Counsel emailed Plaintiff's Counsel to ensure that he intended to limit the deposition of Mr. Lambert to that which would be relevant to the subject matter of this case and/or may lead to evidence relevant to the subject matter of this case.

Counsel for the Plaintiff responded that he would not be able to agree to this limitation and that he intended to amend the pleadings and add additional parties and causes of action.

On September 13, 2022, Counsel for Plaintiff emailed its Notice of Deposition for Mr. Lambert's deposition to take place on October 13, 2022. On September 20, 2022 Plaintiff filed a motion to amend her complaint pursuant to Rules 15 (a) and 18 (a) of the *SCRCP*. The motion to amend seeks to add causes of action for Wrongful Termination and Malicious Prosecution. Furthermore, it seeks to add L &L Contractors Inc. as an additional defendant. Subsequently, Counsel for the Defendant sent Counsel for the Plaintiff an email stating that Mr. Lambert's Deposition could not go forward without a ruling on the Plaintiff's Motion to Amend. Defendant also requested a status conference be scheduled with the Court to discuss these matter since this case was under a strict scheduling order.

LEGAL STANDARD

The Plaintiff's motion to amend her complaint is governed by Rule 15 (a) of the South Carolina Rules of Procedure (*SCRCP*). The pertinent section of the rule provides that "a party may amend [her] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." *Rule 15 (a) SCRCP*. "Generally the allowance of an amendment to a pleading is a matter largely in the discretion of the trial court. Such discretion should not be arbitrarily exercised, either in the granting or refusing of motions made for that purpose, but should be exercised so as to prevent surprise and promote justice. "In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion." *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988). "The prejudice contemplated in Rule 15 is not

that the non-moving party is forced to defend the merits of a valid claim.” *Patton v. Miller*, 420 S.C. at 491, 804 S.E.2d at 262. Rather, it “is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” *Id.* at 493, 804 S.E.2d at 263.

LEGAL ANALYSIS

The liberality in allowing a complaint to be amended is not without limitations. Such liberal amendment is subject to such limitations as arise from the time at which they are sought and from their subject matter. Moreover, liberality allowed by Rule 15(a) of the *SCRCP* does not entitle a party to be dilatory in asserting claims or to neglect the case for a long period of time. Amendments to complaints should not be allowed as a reward for indifference or neglect. In determining whether to grant a motion to amend the Court should take into account whether there has been good faith and reasonable diligence by all the parties. If the non-moving party can prove bad faith, undue delay, or prejudice on the part of the moving party the motion to amend should be denied. In the case *sub judice*, the facts and procedural history paint a picture of dilatory tactics, prejudice and bad faith.

DEFENDANT IS PREJUDICED BY THE TIMING OF THIS AMENDMENT

Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing. Amendments will not be allowed where they are prejudicial to the rights of the adverse party. In considering potential prejudice, the court should consider whether the opposing party has had the opportunity to prepare for the issue being raised formally. *Duncan v. CRS Sirrinc Engineer, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (Ct. App. 1999). A common example of

a prejudicial amendment is one that “raises a new legal theory that would require the gathering and analysis of facts not already considered by the [Defendant, and] is offered shortly before or during trial.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986).³

This case has been pending since July 12, 2020 when the Plaintiff filed her initial Complaint. Since that time there have been two scheduling orders and a 40 (J) The last scheduling order was signed by this Court on August 25, 2022 and placed a very short time line on discovery, mediation and trial. Discovery is currently due to be concluded by October 15, 2022. Defendant has taken all of its depositions and is ready to move for Summary Judgment and if that is denied is ready for trial. Plaintiff has yet to take any depositions in this case or prosecute this case at all. Adding additional causes of action that can stand alone from this DJ action along with adding another Defendant who has not participated in Discovery is very prejudicial to the Defendant and the administration of justice.

It is clear that counsel for the Plaintiff had to be retained and meet with his client prior to restoring the case. Everything which counsel is now trying to add at the thirteenth hour by way of an amended complaint was known by Plaintiff at the time she met with counsel. If counsel had done any reasonable due diligence he too should have had all this information available to him. Instead, counsel for the Plaintiff filed his motion to amend some six months after this case was restored to the docket, after it had already appeared on the back-up roster, and after the Court just signed the most recent Consent Scheduling Order.

Counsel for Plaintiff hinted to the Court during the Status Conference that he didn’t become aware of the additional causes of action and additional Defendant until he prepped his client for her

³Rule 15 (a) of the *SCRCP* is substantially the same Rule as the Federal Rule.

deposition. This statement is hard to fathom. It doesn't make any sense to restore a case until some form of due diligence is done. Rule 40(j) gives the party a year to restore the case without any prejudice. The Defendant started requesting dates from Mr. Rannik in late March for depositions. It wasn't until June 29, 2022, some three months after requesting dates for the Plaintiff's deposition that Plaintiff's counsel made his client available to be deposed in late August 2022. The Plaintiff's deposition took place on August 29, 2022. The Plaintiff sent out its Second set of Interrogatories and Requests for Production on July 21, 2022. This Second Set of discovery for the most part had nothing to do with the present DJ action currently before the Court and everything to do with the Plaintiff's proposed Amended Complaint which was not even filed until September 20, 2022.

Additionally, the new causes of action which the Plaintiff wants to add with his motion to amend are still within the statute of limitations period. The Plaintiff can still file those actions within the applicable statute of limitations. The sole purpose of boot-strapping these issues this late in the game is because the Plaintiff changed her story during her deposition, completely negating her original allegations in her original pleadings. Plaintiff cannot survive a motion for summary judgment on this DJ action. Furthermore, it is clear that the Plaintiff is trying to use this amended complaint as leverage to try to stay in the house which she has unlawfully resided in since the death of Ervin Lambert Jr. in October of 2018.

Finally Defendant has focused on defending a DJ action dealing with the ownership of a piece of real estate for over two years. To now change the scope of this litigation to bring in unrelated causes of action that were available to Plaintiff at the time of the original filing on June 12, 2020 is extremely prejudicial and suspect based on the procedural history of this case.

CONCLUSION

Based on the arguments, law, and prejudicial effect that this amendment would create right before this case is supposed to go to trial. We would respectfully request that this Court deny the Plaintiff's Motion to Amend.

LOFTON & LOFTON, P.C.

BY: s/Lionel S. Lofton
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COUNSEL FOR PLAINTIFF

Charleston, South Carolina

October 3, 2022

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
2022-CP-18-00295

Laura Abernathy,
Plaintiff

-vs-

Ervin W. Lambert, Sr.
Defendant

)
) TRANSCRIPT OF RECORD
)
) April 6, 2023
)
) St. George, South
) Carolina (Via WebEx)

B E F O R E:

The Honorable Diane Schafer Goodstein, Judge

A P P E A R A N C E S:

Jaan Rannik, Esquire
Attorney for the Plaintiff

Lionel S. Lofton, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

EXHIBIT E

1 MR. RANNIK: Good evening, Judge Goodstein.

2 THE COURT: Thanks for being here.

3 MR. RANNIK: And thank you for hearing
4 us today, and I'm going to try and be quick, and may
5 it please the Court. You probably remember the parties
6 were previously before the Court on a motion to amend
7 the complaint, added some additional causes of action.
8 And the Court found that the claims weren't closely
9 related enough to the lawsuit, and so they should be
10 kept separate, and so Ms. Abernathy filed a separate
11 suit.

12 Now the motion that we're here to
13 consolidate on is those claims -- I'm not here to
14 reargue what the Court has ruled on. The Court was very
15 thorough in its ruling, and I'm not going to waste the
16 Court's time on that. But there's a new claim in that
17 additional lawsuit that is much closer to the claims in
18 this suit, and Ms. Abernathy wanted them consolidated,
19 so I'm here to ask the Court for that.

20 First, a quick recap about what this case
21 is about. This case is about whether Plaintiff ought
22 to be considered the record owner of the house. She
23 was -- she contends that she was promised the house
24 as a bonus in leu of a cash bonus by her employer.
25 The owner of the company, who was her employer,

1 then died, and the transfer was never effected,
2 and so the property remained in the decedent's name,
3 and she claimed she is the property owner.

4 She contended also though that there was
5 a change to the original agreement about that initially
6 it was you've earned this bonus, I'm going to get you
7 a house. And then around the time of closing, the deal
8 changed a little bit to being, well, okay, you need
9 to also help me out with this thing first, which was
10 that her employer was bringing a lawsuit for some funds
11 that they were owed that they hadn't been paid. She's
12 the most knowledgeable person; she was the right-hand
13 man of the owner. And so he said if you'll be the
14 liaison with the lawyers and keep this going, you know,
15 you do that, I'll get you the house.

16 There's one more element of that particular
17 promise though, Judge, which is he said, and I'll give
18 you a cash bonus as well if we recover. So following
19 the motion -- she contends that she upheld her end of
20 that deal, and the house should be hers. In a separate
21 suit, she's brought a claim for a breach of the
22 agreement of the monetary portion of that promise,
23 and that's new. This was brought in the motion to amend
24 last month in that separate action.

25 Now, the Court is going to be hearing

1 some commonalities of facts relating to this new claim
2 and the claim in this case. The -- underlying each of
3 them are related because they both involve Ms. Abernathy
4 participating in this lawsuit on behalf of her company.
5 We both claim there's going to have to be testimony
6 about evidence regarding the relationship of these
7 parties, of Plaintiff and decedent, of promises that
8 were made in exchange for Ms. Abernathy's assistance,
9 and Ms. Abernathy's work relating to that suit and the
10 outcome of that.

11 So, Judge, rather than there being two
12 separate trials where the evidence is presented multiple
13 times, Ms. Abernathy moves to consolidate the case for
14 a jury trial on this basis. And, Judge, this case is
15 supposed to be called for trial. So, I wanted to bring
16 this claim to the Court's attention in case it changes
17 the Court's orientation on the questions and to the
18 record. And that's also why I requested an expedited
19 hearing, and I'm so grateful to the Court for fitting
20 me in. So with that, I'll stop talking. Thank you.

21 THE COURT: Thanks, Mr. Rannik. Yes,
22 Mr. Lofton.

23 MR. LOFTON: Good afternoon, Your Honor.

24 THE COURT: Yes, sir.

25 MR. LOFTON: Judge, you know, this is déjà

1 vu. The only thing that's changed since the October
2 the 4th hearing is that he's added an additional cause
3 of action. And, Judge, this is what is so frustrating
4 about this case. This DJ action was filed back on June
5 the 12th of 2020. Every one of these claims that he's
6 now filing were available back then. So when he lost
7 the joined motion the other day, he goes out and finds
8 another claim to file to try to get the cases
9 consolidated. The DJ action is a non-jury case.
10 What he's got in the other pleadings is a jury trial
11 case. So we're going to end up with two trials whether
12 you consolidate them or not.

13 But, Judge, the bottom line is we're first
14 up on a non-jury list for a case that was filed back in
15 2020, and all this is doing is just delaying, delaying,
16 delaying. And what's happened, Judge, is this woman,
17 who has absolutely no ownership interest in this house
18 that is the subject of the DJ action. And that's all
19 that's in the DJ action, the house. It doesn't have
20 anything to do with wrongful termination or anything
21 else.

22 She has lived in this house, rent free.
23 We have covered -- the estate has covered all of
24 the costs, the insurance, the taxes. We put a roof
25 on the house. My estate is just suffering because

1 I can't get this woman out of the house. So we need to
2 have this DJ action heard, and we need to have it heard
3 as soon as possible. We don't need a consolidation;
4 we don't need to drag this thing out any longer.
5 It just needs to be disposed of, and it needs to be
6 disposed of now.

7 THE COURT: Yes, sir, Mr. Rannik.

8 MR. RANNIK: Thank you, Judge. Judge,
9 of course, the estate has a history. I've only been
10 involved since it got reinstated after a 40(j). But
11 had I known these claims existed, I would have brought
12 them. I don't hold back claims in the hopes of delaying
13 a suit that my client herself brought.

14 Judge, as to the issue of there's going
15 to have to be multiple trials anyway because of equity
16 versus law, one, I think to the extent there are
17 overlapping questions of fact, those can be heard
18 together. They can be determined together; they can
19 be tried once. Of course, the Court is going to make
20 the decision as to the equitable claim, and the jury
21 can make the decisions as to the legal claims.

22 But my client has a right to a jury trial
23 on her legal claims, and she would want those questions
24 of fact to be determined by a jury. And so I think,
25 yes, there would have to be a different decision maker,

1 but there could be one trying this case.

2 THE COURT: Thank you so much. I would
3 respectfully deny the motion. The case needs to be
4 tried, gentlemen.

5 MR. LOFTON: Your Honor, could we get a date
6 certain from you? You're familiar with this case,
7 and it just keeps dragging and dragging and dragging.
8 Would you give us a date?

9 THE COURT: I think you're first up.

10 MR. LOFTON: Well, the problem is --
11 but Mr. Rannik has protection for this upcoming term
12 of court.

13 THE COURT: Okay. What I will do is I'll
14 get Becky to relay your concerns to the chief
15 administrative judge for civil court, and tell them
16 you're ready. How long will it take to try, gentlemen?
17 That's important for her to know.

18 MR. RANNIK: I don't think more than a day,
19 Judge.

20 MR. LOFTON: I would say a day and a half,
21 depending on what kind of witnesses they put up, Judge.

22 THE COURT: I'm going to tell Judge Murphy
23 -- I'm going to have Becky relay to Judge Murphy that
24 this case, be mindful, it's going to take two days
25 to try. And I think the next time that we have a term

1 for a week is going to be March [sic.] the 16th. Yes,
2 no, maybe? No, she's saying -- she's telling me hush.
3 She's telling me I don't know what I'm talking about.

4 THE CLERK: It's May 6 -- May 8th.

5 THE COURT: May 8th, did you say?

6 THE CLERK: No, that's general sessions.

7 THE COURT: She didn't say that either.
8 She's telling me hush again.

9 THE CLERK: May 30th is the next term.

10 THE COURT: May what?

11 THE CLERK: May 30th.

12 THE COURT: May 30th. You need to share --
13 you need two days set aside. All right, gentlemen.

14 MR. RANNIK: Thank you, Judge.

15 THE COURT: I urge you to e-mail Judge
16 Murphy as a followup or her law clerk, Jewell.
17 Thank you, guys.

18 MR. LOFTON: Thanks, Judge. Have a nice
19 weekend.

20 (End of Transcript of Record)

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 6th of April, 2023, via WebEx.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 6, 2023

A handwritten signature in blue ink, appearing to read 'Yvestre M. Torres', is written over a horizontal line.

Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO AMEND
	)	
ERVIN W. LAMBERT, SR., PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
ERVIN W. LAMBERT, JR., Deceased,	)	
	)	
Defendant.	)	
	)	

PLEASE TAKE NOTICE that the undersigned, as attorney for Plaintiff, will move this Court pursuant to Rules 15(a) and 18(a), S.C.R.C.P. within ten (10) days after the service hereof, or sooner as may be ordered or directed by the Court and in a manner to be determined by the Court, for an Order to amend the Complaint in this action. A proposed Amended Complaint is attached as **Exhibit A** hereto.

The grounds for this motion are that Plaintiff has additional causes of action against the Defendant that are connected with the pending action and which she is not willing to abandon. Defendant will not be prejudiced by this amendment, and justice requires the amendment be permitted.

The undersigned counsel hereby certifies that he consulted with opposing counsel prior to the filing of this motion, and consent to amend was not obtained.

[signature on following page]

EXHIBIT F

Respectfully submitted:

EPTING & RANNIK, LLC

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar # 103014)

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ATTORNEYS FOR PLAINTIFF

This 20th day of September, 2022
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

)

FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER

)

CASE NO.: 2022-CP-18-00295

LAURA ABERNATHY,

)

)

Plaintiff,

)

)

v.

)

)

AMENDED COMPLAINT

(Jury Trial Demanded)

ERVIN W. LAMBERT, SR., PERSONAL

)

REPRESENTATIVE OF THE ESTATE OF

)

ERVIN W. LAMBERT, JR., Deceased, AND

)

L&L CONTRACTORS, INC.,

)

)

Defendants.

)

)

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.

2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.

3. On information and belief, Defendant L&L Contractors, Inc., (“L&L”), which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.

2.

3.4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., (“Decedent”) died intestate in a plane crash in the Atlantic Ocean.

~~4.5.~~ Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

~~5.6.~~ The subject matter herein is a lot of land with improvements located in the Plum Creek Subdivision, situate wholly in Dorchester County, South Carolina, and more particularly described in Exhibit "A" attached hereto and made a part hereof by expressed reference, ("Subject"); the same having a physical address of 106 Sarmiento Lane, Summerville, South Carolina.

~~6.7.~~ The Subject appears of record in Dorchester County in the name of Decedent Ervin W. Lambert bearing Dorchester County TMS# 125-15-01-047, the source and origin of which is that certain General Warranty Deed dated October 23, 2015; found of record in the Office of the Register of Deeds for Dorchester County in Book 9976 at Pages 166-170.

~~7.8.~~ Decedent was at all times relevant herein the sole owner and President of L& L Contractors, Inc., ("L&L"), which on information and belief is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.

~~8.9.~~ Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

~~9.10.~~ Decedent and Plaintiff worked closely together at L&L for many years.

~~10.11.~~ Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management and accordingly there was a relationship of trust and confidence as and between Decedent and Plaintiff.

~~11.12.~~ With respect to the Subject, Decedent made specific and unambiguous representations, assurances, guarantees and promises to Plaintiff prior to and after the closing on

the Subject in October, 2015; that because Plaintiff had earned and was due a significant bonus from L&L, in lieu of a cash bonus for extraordinary and financially significant services to and for the benefit of Decedent and L&L, Plaintiff would become a fifty (50%) owner in the Subject at or around closing and thereafter a sole and absolute owner of the Subject.

13. In reliance on the aforementioned representations, assurances, guarantees and promises, Plaintiff accepted the arrangement in lieu of an earned cash bonus for extraordinary work performed; she trusted Decedent to follow through; she expended certain monies, including the earnest money deposit which was credited to the buyer at closing, the home inspection fee and property taxes and Plaintiff immediately after closing moved into the Subject, where she has resided as her primary residence continuously since.

~~12.~~14. Following the closing, Decedent placed an additional condition on his arrangement with Plaintiff and required, in order for Plaintiff to earn the bonus she believed had already earned, that she continue working at L&L and assist with the resolution of a lawsuit involving L&L (“the Lawsuit”).

~~13.~~15. Decedent tragically and unexpectedly perished before the Lawsuit was resolved and without the documents were-being executed to accomplishing of record the arrangement originally made and contemplated as between Decedent and Plaintiff with respect to the Subject.

~~14.~~16. On June 4, 2020, Plaintiff was served with certain pleadings and papers originating from the Dorchester County Magistrate's Office in which Defendant alleges a landlord-tenant relationship with respect to the Subject, which Plaintiff expressly denies, and that Plaintiff should be evicted from the Subject.

~~15.~~17. The service of eviction papers is the first time Plaintiff became aware that Defendant or anyone else denied that Plaintiff is the equitable owner of the Subject, which denial

is contrary to the knowledge, awareness, acquiescence and recognition of the arrangement between Decedent and Plaintiff with respect to the Subject.

~~16.~~18. For the reasons set forth herein and such other proofs to be presented at trial, Plaintiff asserts that she is the equitable owner of the Subject.

~~17.~~19. If Defendant continues to maintain that Plaintiff is a mere tenant in the Subject and he denies her legitimate rights with respect to the Subject, a justiciable controversy exists and will continue to exist as between the parties.

JURISDICTION AND VENUE

~~18.~~20. This Court is possessed of jurisdiction over the parties and the subject matter.

~~19.~~21. Venue is proper.

FOR A FIRST CAUSE OF ACTION **(Declaratory Judgment)**

~~20.~~22. Plaintiff repeats the averments contained in, 1-19 above as if fully set forth herein verbatim.

~~21.~~23. Plaintiff brings this action pursuant to the provisions of the S.C. Code Ann. § 15-53-10, et seq., “Uniform Declaratory Judgments Act” for a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a constructive trust in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a resulting trust in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established.

FOR A SECOND CAUSE OF ACTION
(Quiet Title)

22,24. Plaintiff repeats the averments contained in Paragraphs 1-21 above as if fully set forth herein verbatim.

25. Plaintiff further brings this action pursuant to the provisions of S.C. Code Ann. § 15-53-10, et seq., the “Uniform Declaratory Judgments Act,” and S.C. Code Ann §15-67-10, et seq., for a declaratory order ratifying, quieting and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit “A” in the name of the Plaintiff against the Defendant and for the purpose of obtaining a declaratory order of this Court establishing that Plaintiff is seized and possessed of a fee simple title to said properties to the exclusion of any others.

FOR A THIRD CAUSE OF ACTION
(Wrongful Termination – Lambert and L&L)

26. The foregoing paragraphs are incorporated as if fully restated herein.

27. After Decedent’s death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes (“the Project”). Plaintiff was the project superintendent for the Project.

28. Among L&L’s obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

29. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

30. L&L was paid by SCDOT for each truckload of material, counted monthly.

31. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

32. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

33. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit and paid for—but never received—by SCDOT.

34. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, thus getting paid twice for the same material.

35. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

36. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

37. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

38. Plaintiff was terminated in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.

39. Lambert's and/or L&L's actions violate public policy.

40. Plaintiff was wrongfully discharged from her employment.

41. Plaintiff was damaged as a result of her wrongful termination.

42. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

43. The following paragraphs are incorporated as if fully restated herein.

44. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of an inability to secure childcare, with the knowledge and consent of Lambert and L&L.

45. In order to be able to work remotely, Plaintiff brought the laptop that had been issued to her by L&L home with her.

46. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop.

~~23.47.~~ Plaintiff was arrested within weeks of her termination.

48. The charges were ultimately dismissed, and the record expunged.

49. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.

50. Plaintiff was damaged as a result.

24.51. Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully set forth ~~his~~her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

a. For a declaratory order determining the rights, relations and status of the parties with respect to the Subject; for a declaratory order specifically declaring and imposing a constructive trust in favor of the Plaintiff in and to the Subject; and/or specifically declaring and imposing a resulting trust in favor of the Plaintiff in and to the Subject and/or specifically declaring and determining in the adjustment of the equities that Plaintiff's rights and interests in the Subject otherwise be made, declared and established;

b. For a declaratory order ratifying, quieting, and confirming title to the real properties, situate, lying and being wholly within Dorchester County, South Carolina as more particularly described in Exhibit "A" in the name of the Plaintiff and that any other be absolutely divested and forever barred from any right, title, claim, estate, interest therein; ~~and~~

c. For actual and punitive damages and attorneys' fees; and

e.d. For such other and further relief as this Honorable Court deems just and proper.

This ____ day of September, 2022
Charleston, South Carolina

EPTING & RANNIK, LLC

/s/ Jaan Rannik
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	2020-CP-18-00914
	)	
	)	
	)	
	)	
LAURA ABERNATHY,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ERVIN W. LAMBERT, SR.,	)	
PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF ERVIN W. LAMBERT,	)	
JR., deceased,	)	
DEFENDANT.	)	

October 4, 2022
Via WebEx

B E F O R E:

THE HONORABLE DIANE GOODSTEIN, JUDGE.

A P P E A R A N C E S:

JAAN GUNNAR RANNIK, ESQ.
Attorney for the Plaintiff

LIONELL LOFTON, ESQ.
Attorney for the Defendant

EXHIBIT G

HOLLIE M. JENKINS
Court Reporter II

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G

1
2 THE COURT: This is a motion to amend, as I
3 understand it, that counsel wanted to get heard because
4 they've had a 40(j). They've got a current scheduling
5 order. There's now a motion that has been filed where the
6 Plaintiff is seeking to add parties as well as causes of
7 action. And as I understand it from our status conference
8 yesterday, there is an objection.

9 So I'm going to turn it over to the Plaintiff as I
10 understand it's the Plaintiff who wishes to amend.

11 MR. RANNIK: Thank you, Judge. Good morning, Your
12 Honor, and may it please the Court?

13 THE COURT: Yes.

14 MR. RANNIK: Ms. Abernathy has moved the Court, as
15 you said, for leave to amend a complaint to add additional
16 causes of action that are related to the pending
17 declaratory judgment cause of action.

18 Now, she alleges that she was retaliated against when
19 she refused to do certain things that her employer, Mr.
20 Lambert, and his company, L&L Contractors, directed her to
21 do. Specifically, she alleges that she was required to
22 falsify reports to cover up that L&L was charging two
23 different companies for the same materials and that she
24 was directed to destroy video evidence of a traffic
25 incident involving one of L&L's trucks.

1 Now, she contends that the retaliation against her
2 occurred within two months of this refusal and took three
3 forms. The first was the termination of her employment.
4 The second was having her arrested in the weeks thereafter
5 on charges that were dismissed. And third, instituting
6 proceedings to have her evicted from her house, a house
7 which she alleges she was given as a bonus by L&L's prior
8 CEO, which was Mr. Lambert's son. Ms. Abernathy is a
9 single mom with a teenage daughter. The effects on her of
10 this retaliation were and remain significant.

11 Now, Your Honor, Rule 18, of course, permits Ms.
12 Abernathy to join all of her claims against Mr. Lambert
13 into one action in order to promote judicial economy and
14 economy for the parties. And again, all of her claims,
15 new and existing, share this underlying factual nexus,
16 which is that she was retaliated against. The new claims
17 are properly asserted not only against Mr. Lambert, but
18 also against the company, L&L Contractors. So that would
19 mean adding L&L to the suit as well.

20 As the statute of limitations is approaching on the
21 additional causes of action, we move the Court to allow
22 the requested amendment so that these matters might be
23 decided at one time, removing the possibility of
24 inconsistent results and allowing all of the claims to be
25 presented in this proper context.

1 Now, Your Honor, I understand that the primary
2 objection to this amendment is the timing. But, Your
3 Honor, there's no prejudice to Mr. Lambert of the time,
4 obviously, under Rule 15, which would require the
5 amendment to put the non-moving party at a disadvantage in
6 defending the claims, a disadvantage that wouldn't have
7 been faced if the motion had been made sooner.

8 Now, I would take exception to Mr. Lambert's
9 characterization that this is an action at the 13th hour
10 in an attempt to add additional matters into a trial
11 that's going to occur in the coming weeks that he will not
12 have the opportunity to prepare for.

13 As I understand it, the amendment would actually
14 require additional time for discovery because of new
15 parties being added and, of course, Ms. Abernathy,
16 obviously, doesn't object to that.

17 But, again, the declaratory judgment piece is part of
18 a larger pool and ought to be tried together for context
19 and to avoid inconsistent results.

20 Now, I'd like to address just a couple of the points
21 raised in Mr. Lambert's memorandum filed last night by
22 Mr. Lofton. First, yes, Ms. Abernathy did, of course,
23 know of the facts that she wishes to allege in her amended
24 pleading at the time that the case was reinstated, of
25 course, she did. But did she understand or know to

1 express to me that they were all part of the same course
2 of conduct or ought to be asserted or could be asserted in
3 one suit? No, she didn't. Do I wish I had made that
4 connection sooner? Sure. I knew of the potential causes
5 of action around July of this year after I had met with
6 Ms. Abernathy to begin discussing her deposition, which we
7 had arranged around the end of June sometime. I didn't
8 make the connection that they were part of a larger pool
9 until the days leading up to her deposition.

10 But the fact that this motion was made a month or two
11 later than it might have been, is that highly prejudicial
12 to the Defense? We would contend that it is not,
13 especially when as an additional party would be added if
14 this amendment were granted, there will be more time to
15 prepare the Defense. There will be no prejudice. Nor is
16 it bad faith, Your Honor.

17 I'm incredibly fortunate to work with a senior
18 partner directly, who is -- he's slowing down his practice
19 and he's giving me the opportunity to run the practice and
20 manage a pretty substantial case load. And it's a
21 wonderful opportunity. And I have to hold my hands up and
22 say that my ability to juggle a large case load needs some
23 improvement. And I did get behind the eight ball on
24 several cases as a result of a flurry of activity in March
25 through July of this year.

1 And again, I wish I could have made this motion a
2 little bit sooner, but it's not bad faith. It's not
3 prejudicial to the defense. Judge, the law doesn't
4 require perfection, it requires reasonable diligence and
5 it requires that amendments be liberally granted when
6 there's no prejudice to the Defense.

7 In this context, Your Honor, we would contend that
8 there is no prejudice to Mr. Lambert and we would request
9 that Ms. Abernathy be granted leave to amend her
10 complaint.

11 Thank you very much.

12 THE COURT: Thank you.

13 Yes, sir, Mr. Lofton.

14 MR. LOFTON: Good morning, Your Honor.

15 May it please the Court?

16 THE COURT: Yes, sir.

17 MR. LOFTON: Just so you understand, because counsel
18 uses Mr. Lambert when -- there are two Mr. Lamberts. One
19 of them is deceased, died in an airplane crash, and then
20 there's Mr. Lambert, Sr., his father, who is the personal
21 representative of the estate. And that is the Defendant
22 in the cause of action pending in the DJ case.

23 So what -- what has happened -- and, quite frankly,
24 Judge, I noticed this morning that I didn't mention it in
25 the memorandum we filed last night. But the two

1 defendants that he wants to add are L&L Contractors, which
2 is a company, and Mr. Lambert, Sr., who is the personal
3 representative of the estate.

4 The problem is that neither one of the causes of
5 action that he wishes to join has anything to do with the
6 Lambert estate, the Defendant in this case. Both of those
7 causes of action deal with the termination, which was done
8 by L&L Contractors, Mr. Lambert, Sr., who is running L&L
9 Contractors, but has absolutely nothing to do with the DJ
10 action that they brought in connection with the piece of
11 real estate. So that, number one, is the most important
12 thing because that should be in a separate complaint. It
13 shouldn't even be involved in this complaint. It has
14 nothing to do with this DJ action.

15 So, you know, from the standpoint of prejudice,
16 Judge, what they want to do is add an entire new cause of
17 action, two of them, in an action that has nothing to do
18 with the pending action. So we think it would be highly
19 prejudicial.

20 And, you know, I told Mr. Rannik one day in an e-mail
21 because we were having so much trouble scheduling
22 depositions, I told him, I said, You've got to be the
23 busiest lawyer in South Carolina. Nobody has no time.
24 Because we tried to do all of these things way back when
25 and he had problems with scheduling and all of that.

1 And I don't fault him for that, it's just that at
2 this stage, Judge, the one person that's not going to be
3 prejudiced is Ms. Abernathy. The statute of limit
4 limitations has not run on the two causes of action that
5 she wants to bring against two other defendants, not my
6 Defendant, not the estate that is in this DJ action.

7 So there's no prejudice to her at all. All the
8 prejudice flows to us because we're not able to conclude
9 this case that's been going on now for two years.

10 And, Judge, if you look at Rule 18(a), it says
11 joinder of claims, a party asserting a cause of action as
12 an original claim, counterclaim, cross claim or third
13 party claim may join either as independent or as
14 alternative claims as many claims, legal or equitable, as
15 he has against the opposing party. Well, these claims are
16 not against us. They're against two other defendants.

17 So Judge, we would respectfully say that this motion
18 to amend should be denied. It's not only prejudicial, but
19 it doesn't affect us. It affects the -- it affects the
20 two new defendants that he wants to add in his complaint.
21 The statute hasn't run. He's got plenty of time to file a
22 new complaint and add those two defendants with those two
23 causes of action.

24 THE COURT: Let me ask you these question, the DJ
25 action has to do with the foreclosure on the real estate;

1 is that right?

2 MR. LOFTON: Judge, here's what happened.

3 THE COURT: Okay.

4 MR. LOFTON: Prior to his death, Mr. Lambert
5 purchased a piece of real estate.

6 THE COURT: Okay.

7 MR. LOFTON: The deed is in Mr. Lambert's name, the
8 deceased Mr. Lambert.

9 THE COURT: Right. Okay.

10 MR. LOFTON: The Plaintiff claims that she has an
11 interest in that property because Mr. Lambert promised it
12 to her in lieu of a bonus. Okay?

13 THE COURT: Okay.

14 MR. LOFTON: That's our position. The problem with
15 all of that is that -- and I told you we took the
16 deposition the other day of Ms. Abernathy. And the
17 records which we would submit if we had time to put
18 together all of the stuff before the hearing would show
19 that after Mr. Lambert purchased the property, the house
20 that she now lives in, that there were buy/sell agreements
21 entered into between Ms. Abernathy and Mr. Lambert for her
22 to purchase the property.

23 In addition to that, there are bank records from the
24 Bank of Greeleyville where she applied for several loans
25 in order to be able to purchase the property.

1 THE COURT: Okay.

2 MR. LOFTON: So that's the status of the DJ action.

3 THE COURT: Okay.

4 MR. LOFTON: Her claim is some sort of an equitable
5 right to that property.

6 THE COURT: Okay. And that's -- and so it's a DJ
7 action involving the purchase of the property. And as one
8 of the allegations in the DJ action, is there -- are there
9 allegations regarding the reason that they haven't honored
10 the -- the agreement is because of -- employment
11 retaliation, is that in there?

12 MR. LOFTON: No, Your Honor. That -- that employment
13 retaliation, if you want to call it that, that happened
14 years after --

15 THE COURT: Okay.

16 MR. LOFTON: -- the property was purchased. And that
17 was done after Mr. Lambert Jr. died in his airplane crash.
18 He wasn't even around. And that was done by L&L
19 Contractors, which was his company.

20 THE COURT: I understand.

21 MR. LOFTON: But at that point in time, he wasn't
22 running the company.

23 THE COURT: Okay. And the -- and the property is --
24 was titled to the Lambert gentleman, who is now deceased?

25 MR. LOFTON: That is correct. The deed is recorded

1 in his name and his name alone.

2 THE COURT: Okay.

3 MR. RANNIK: Your Honor --

4 THE COURT: Got it.

5 Yeah, go ahead, Mr. Rannik, yes.

6 MR. RANNIK: Thank you, Judge.

7 The piece that is missing from what Mr. Lofton has
8 mentioned there, which is that in this same time frame
9 that she was terminated and arrested, an eviction action
10 was filed by Mr. Wayne Lambert, Sr., the Defendant in this
11 case. That -- it is all part of this -- so the eviction
12 action was filed. Ms. Abernathy filed a declaratory
13 judgment in court seeking to quiet title and seeking a
14 declaration that she was the equitable owner of this
15 property.

16 THE COURT: Right.

17 MR. RANNIK: Now, the property was deeded in the --
18 Mr. Lambert, the younger, the decedent's name, but it was
19 not Mr. Lambert, the decedent, who sought to evict her.
20 It was Mr. Wayne Lambert at the same time he was
21 terminating her and seeking to have her arrested.

22 That he acted in one sense in a capacity as a
23 personal representative and in another sense in the
24 capacity as an employer, it's still Mr. Lambert's actions.
25 The suit is still against Mr. Lambert and it's all part of

1 one retaliatory action. And they are not separate in the
2 way that is being contended. They should be tried
3 together.

4 MR. LOFTON: Your Honor, in that regard, the problem
5 was when the eviction action was taken, Mr. Lambert, as
6 the personal representative of the estate, was responsible
7 for obtaining all of the assets of the estate so they
8 could be run through the probate court. And that's why
9 the eviction action was brought. It doesn't have anything
10 to do with her firing. It doesn't have anything to do
11 with any kind of malicious prosecution. That was the
12 action he brought as the personal representative of the
13 estate trying to collect all of the assets of the estate.

14 THE COURT: Let me ask this question, at what time --
15 give me a couple of dates. When was the Plaintiff fired
16 or discharged?

17 MR. LOFTON: April of 2020.

18 THE COURT: All right. April of 2020.

19 And -- all right. And when was Mr. Lambert -- when
20 was he killed?

21 MR. LOFTON: October of 2018.

22 THE COURT: And when was the property purchased?

23 MR. LOFTON: I believe it was 2015, Judge. I don't
24 have that deed in front of me, but I believe it was 2015.

25 MR. RANNIK: I agree with that.

1 THE COURT: And, Mr. Rannik, do you agree that the
2 statute of limitations would not have run on a wrongful
3 termination or retaliatory termination?

4 MR. RANNIK: Judge, I do believe those claims would
5 still be timely, yes. The statute has not run.

6 THE COURT: Okay. And those claims would be -- those
7 claims would be still viable against the other Defendants,
8 Mr. Lambert, who is the PR, and the company?

9 MR. RANNIK: Yes, they would, Judge. I believe
10 Ms. Abernathy would be prejudiced in not being able to --
11 in the current declaratory judgment by not being able to
12 present the context of the wrongful termination because,
13 again, the eviction action was filed -- Mr. Lambert, the
14 decedent, died in 2018. If, in fact, this was a part of
15 just cleaning up the estate and seeking assets, they could
16 have filed the eviction action at any time in the next two
17 years; instead, they waited until the weeks after
18 Ms. Abernathy was terminated and sought to be arrested.

19 This is an equitable cause of action. It's a quiet
20 title for an equitable interest in the property and the
21 circumstances are highly, highly relevant to the equities.
22 To not be able to present those in one action would deny
23 Ms. Abernathy the chance to make her case.

24 THE COURT: Okay. And this case was filed when?

25 MR. LOFTON: It was filed originally in June of 2020.

1 THE COURT: All right.

2 MR. RANNIK: And it was reinstated, Judge, of course,
3 in February of this year.

4 THE COURT: Sure.

5 MR. RANNIK: Which is when I became counsel of
6 record.

7 THE COURT: I understand. Well -- all right,
8 Mr. Rannik, let me ask you this question, when you try
9 this case, as I understand the declaratory judgment
10 action, it is the position of the Plaintiff that she had
11 an arrangement with the decedent and the decedent, in
12 essence, based on your allegations, agreed to give her
13 this property. Yes?

14 MR. RANNIK: Correct.

15 THE COURT: And that -- and that whatever equitable
16 arrangement existed existed between the -- the decedent
17 and your client. Yes?

18 MR. RANNIK: That is correct, Your Honor. The
19 decedent -- also, the decedent in his capacity as the CEO
20 of L&L Contractors. That's who she was employed by. She
21 was employed by L&L Contractors and got the bonus from L&L
22 Contractors.

23 THE COURT: But L&L Contractors didn't own the
24 property.

25 MR. RANNIK: Correct, it was deeded to --

1 THE COURT: L&L Contractors didn't have the right to
2 give her, in essence, this property, correct?

3 MR. RANNIK: I believe it could have. They deeded it
4 originally -- the original bill of sale, Your Honor, was a
5 contract of sale between the current owner of the property
6 in 2015 and Ms. Abernathy and Mr. Lambert as
7 co-purchasers. That could have been done as L&L and
8 Ms. Abernathy as co-purchasers. It wasn't. It was done
9 by Mr. Lambert, but the purchase was financed on L&L
10 Contractors' line of credit.

11 THE COURT: But it's titled in the decedent, correct,
12 not the company?

13 MR. RANNIK: Correct, Your Honor.

14 THE COURT: Okay. And so the -- if there's any
15 retaliatory action as the result of the -- you mentioned
16 it several times, an eviction and a potential arrest,
17 those -- those allegations would be for retaliatory
18 discharge; correct? That's against the company and
19 against the father, the PR of the estate, right?

20 MR. RANNIK: Correct, Your Honor. The retaliation
21 would be against the father as the PR, the father,
22 individually, and the company.

23 THE COURT: Got it. But the father was not -- was
24 not running, if you will, the chief executive officer was
25 not running the construction company until the death of

1 the son, correct?

2 MR. RANNIK: That is correct.

3 THE COURT: Okay. Yeah. These are separate
4 lawsuits. And while the Plaintiff may have a -- a viable
5 cause of action or causes of action against the company
6 and against the father, those would be based upon the
7 action of the father, the action of the company years
8 after the -- this transaction would have occurred. And
9 they're not connected. The mere -- the only connection is
10 that it -- it just so happens that the father's, now the
11 CEO, happens to be the PR of the estate.

12 Now, with regards to the eviction, that all goes into
13 the retaliatory discharge. And that's certainly very
14 well, maybe extremely relevant. But it would be relevant
15 as to the discharge, not relevant as to whether or not the
16 son, who at that time was deceased, intended to transfer
17 or give -- or bonus this property, it's got nothing to do
18 with it.

19 And given that this case is now about to be three
20 years old and given that in order for a jury to make a
21 determination and not get confused, this matter ought to
22 be filed separately.

23 The statute hasn't run. This matter absolutely could
24 be still filed. I think for a jury to make a
25 determination with parties who are not now in this

1 lawsuit, the topic is not in the lawsuit. The topics are
2 very different. The parties are quite different. And the
3 mere fact that the father who's now the CEO wasn't the CEO
4 at the time of these transactions, you know, his actions
5 are really quite separate. And I don't believe that the
6 ultimate trial on a retaliatory discharge, there is -- I
7 --

8 You know what I'm sitting here thinking about,
9 really, quite frankly, Mr. Rannik, is would there be
10 issues that would be decided in the DJ action that would
11 collaterally estop the Plaintiff from -- and I don't see
12 that.

13 And the reason that I don't see that is either she
14 owned it or she didn't own it. And if she equitably owned
15 it and that determination is made, then the fact that she
16 was evicted from her own property, that certainly could be
17 raised as a -- as a part of -- as a part of the wrongful
18 or retaliatory discharge.

19 In the event that she -- it is found she does not own
20 the property, the fact that she was evicted from this
21 property where she had lived for quite some time, she was
22 evicted two months after her discharge from the place
23 where she had been living that has an association with
24 this company, meaning the CEO, it's still relevant. I
25 think you would be entitled to show that there was a

1 connection. And I think that goes into the mix of a
2 retaliatory discharge.

3 So I don't -- I think for a jury with a DJ action
4 with regards to equitable ownership of a piece of
5 property, which is, I don't know, it is light years away
6 from a wrongful discharge, as I see it. But I think that
7 all of issues can be tried. And I figure it will be so
8 much easier and so much clearer for a jury and given the
9 age of this case, given the way that the Plaintiff chose
10 to bring the case, I think that for a jury, it's much
11 better for the jury to be able to focus on the findings of
12 fact with regards to the DJ action.

13 I could see these issues being very confusing if we
14 were to add unrelated causes of action and additional
15 parties to these causes of action when the matter
16 certainly can still be brought and ought to be brought
17 separately.

18 That was a lot. That was a whole bunch to say. And
19 I -- while I understand the rule about amendments, this
20 might be only the second or third time that I have denied
21 a motion to amend. I really believe that these matters
22 ought to be brought separately.

23 You know, as I see it, it's more of a joinder issue.
24 Yes, she ought to be able to amend freely, but there's --
25 you would be shoehorning additional parties that are

1 fairly unrelated and certain causes of action which are in
2 great part unrelated into a lawsuit. And I think that it
3 would make the issues and existing lawsuit, which are
4 supposed to be ready to go to trial literally in -- we're
5 in October, it's supposed to be ready to go in December.
6 I'm sure it's going to be on the roster in December. And
7 I just -- I really -- I think that -- would there be
8 prejudice to the Defendant? I think absolutely it's
9 prejudice to the Defendant to add these unrelated causes
10 of action and these parties. And my concern is that I
11 think the likelihood of a jury becoming confused is
12 substantial.

13 So all of these issues can be brought. All of these
14 issues can be tried. And I think it will make for two
15 cases, which will be much cleaner, much easier for a jury
16 to follow, and I think that it would -- the current
17 litigation, it would -- it would make a bit of a kerfuffle
18 for the current litigation.

19 So understanding that there's nothing that would
20 prevent those cases from being brought, I don't -- I don't
21 see there being a collateral estoppel issue. And I would
22 deny the motion to amend under all those circumstances.
23 Noting your exception.

24 MR. RANNIK: Thank you very much, Judge. Thank you.
25 And if I could just make one statement for the record.

1 THE COURT: Yes.

2 MR. RANNIK: I appreciate Your Honor's thoughtful and
3 reasoned consideration of this motion and these issues.
4 Your Honor mentioned joinder and Rule 20 and I just wanted
5 to make sure -- I haven't raised that yet because, again,
6 this particular argument, I was hearing for the first time
7 at the beginning of this motion hearing.

8 But I would like to just for the record state that we
9 believe pursuant to Rule 20 there would be -- this
10 amendment would include causes of action that are asserted
11 against the current and new defendants jointly, severally
12 or in the alternative and that they arise out of the same
13 transaction and, therefore, under Rule 20, a joinder would
14 be proper as well. And I understand that's not going to
15 change your ruling, I just wanted to make sure I said that
16 out loud.

17 THE COURT: I got it. I got it. You know, I just --
18 we -- we will have to agree to disagree.

19 MR. RANNIK: Well, I don't know that I have standing
20 to disagree. It's above my pay grade.

21 THE COURT: Yes, you do. Yes, you do. But that's
22 for another day, for people that grade my papers.

23 MR. RANNIK: Thank you very much.

24 THE COURT: Absolutely.

25 MR. LOFTON: Thank you, Your Honor.

1 THE COURT: All right. Now, let me -- now, that that
2 is done, may I be of assistance to help in any way so that
3 you guys are ready to rock and roll come December?

4 MR. LOFTON: Your Honor, here's the outstanding issue
5 that we will have.

6 THE COURT: That's good it's outstanding.

7 MR. LOFTON: Mr. Rannik wants to take Mr. Lambert
8 Sr.'s deposition. And we had requested and we had an
9 agreement with Mr. West that they would limit their
10 questioning and the deposition to the case at hand and not
11 go off into areas unrelated to this particular cause of
12 action.

13 And so that's going to be our position, that
14 Mr. Lambert, we're happy to make him available to sit for
15 the deposition, but we want a protective order -- we
16 request a protective order that the deposition be limited
17 to this case and any evidence that may lead to discovery
18 -- any testimony that may lead to discoverable evidence as
19 to this case, not those other two outstanding causes of
20 action.

21 MR. RANNIK: And, Your Honor, we have no problem with
22 that. When Mr. Lofton first raised that, the motion, this
23 amendment was pending and I didn't want --

24 THE COURT: Sure.

25 MR. RANNIK: -- to foreclose anything.

1 THE COURT: Sure.

2 MR. RANNIK: But I do have one clarification that I
3 would appreciate on this, though.

4 THE COURT: Absolutely.

5 MR. RANNIK: The only area I could see that I would
6 want to ask Mr. Lambert about that Mr. Lofton may object
7 to is it's our understanding, Your Honor, that this
8 particular piece of property is not actually listed as
9 part of the estate of the deceased. And we would like to
10 have that clarified in Mr. Lambert's deposition, but I
11 understand that -- his role as personal representative and
12 affidavits he has given in, you know, in the probate
13 matter --

14 THE COURT: Sure.

15 MR. RANNIK: -- are of some concern to Mr. Lofton and
16 I want to understand if that is objectionable.

17 THE COURT: He's not going to object that.

18 You're not going to object to the fact is this piece
19 of real estate included as part of the estate?

20 MR. LOFTON: No, he's welcome to ask that question
21 because I don't know the answer to it to be honest with
22 you. I'm assuming it is, but I don't know that.

23 THE COURT: Well, somebody make a note and go check
24 because you're going to have that question.

25 MR. LOFTON: I've got it, Judge, got it.

1 MR. RANNIK: And with that, Judge, we have no
2 objection to a protective order.

3 THE COURT: Okay. I think that where this piece of
4 property is and who owns it today and what has happened to
5 it is a part of the estate that the father is the PR and
6 is absolutely important for you to know. Yeah, that's --
7 and Mr. Lofton is okay with that. As a matter of fact,
8 he'll be happy. He's going to find out some information.

9 MR. LOFTON: That's right, Judge.

10 Judge, thank you for working us in. I know it was a
11 tight schedule. I'm glad court administration decided to
12 let you have a court reporter. That was pretty important.

13 THE COURT: It was -- they were fabulous and, like,
14 the best court reporter ever.

15 MR. LOFTON: And we got her up early in the morning.

16 THE COURT: She looks fabulous. She's ready to go.
17 Her day is like she's ready. She's charged and ready and
18 she's on her way. And I am so grateful that -- you know,
19 she woke up all the way in the upstate to be with us in
20 the low country.

21 Thank goodness for WebEx, am I right?

22 THE COURT REPORTER: Oh, yeah.

23 MR. LOFTON: That's great.

24 THE COURT: Do you know how many times she has woken
25 up to a call from court administration that she has

1 received at 7:00 a.m. saying yeah, you need to be in
2 Charleston by 9:30. Then she'll be communicating with
3 other court reporters who are, I don't know, like in
4 Charleston that are on the way to Greenville and they pass
5 each other on the interstate and they wave, like, okay.
6 Again, my theory is that we really work for them. They
7 just keep it on the DL.

8 Thank you.

9 MR. LOFTON: Again, thank you very much, Your Honor.

10 THE COURT: I really appreciate it.

11 MR. RANNIK: One final question, if I may?

12 THE COURT: Sure, absolutely.

13 MR. RANNIK: What form would Your Honor like the
14 order to take?

15 THE COURT: You know it -- I'm going to have to have
16 a formal order. I'd love to do a Form 4, but a Form 4
17 ain't going to get it given the -- given the law as it
18 relates to amendments. And Mr. Lofton is going to have to
19 draft one and he's going to have to run it -- give it to
20 you before or at the time he gives it to me.

21 But we're going to have to have an order because --
22 because, again, the people who grade my papers need to
23 understand that I haven't -- hopefully, that I haven't
24 completely lost my mind. They need to understand the --
25 the parties, the issues, the timing. And -- and,

1 therefore, the determination that the statute hasn't run,
2 that these cases can be brought separately in my -- my
3 belief is they ought to be brought separately and to try
4 them together particularly at this point would be
5 prejudicial. So you can put all that in an order.

6 MR. LOFTON: Thank you, Judge.

7 Can I ask the court reporter if she would send us a
8 transcript as quickly as possible?

9 THE COURT: You'll have to make the request.

10 MR. LOFTON: I'll make the request, but I just want
11 to tell her it's on the way.

12 THE COURT: The request is on the way.

13 She'll look forward to getting it.

14 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Dorchester County, South Carolina, on the 4th day of October, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 4, 2022



Penny M. Johnson
Court Reporter III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	SUMMONS
	)	(Jury Trial Demanded)
ERVIN W. LAMBERT, SR., individually and	)	
as Personal Representative of the Estate of	)	
Ervin W. Lambert, Jr., Deceased, AND L&L	)	
CONTRACTORS, INC.,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Epting & Rannik, LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

EPTING & RANNIK, LLC

This 14th day of October, 2022
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik (SC Bar # 103014)
Clinton T. Magill (SC Bar # 102770)
46A State Street
Charleston, SC 29401
P: (843) 377-1871
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jgr@epting-law.com
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ATTORNEYS FOR PLAINTIFF

EXHIBIT H

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

)

FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER

)

CASE NO.: 2022-CP-18-

LAURA ABERNATHY,

)

)

Plaintiff,

)

)

v.

)

)

**COMPLAINT
(Jury Trial Demanded)**ERVIN W. LAMBERT, SR., individually and
as Personal Representative of the Estate of
Ervin W. Lambert, Jr., Deceased, AND L&L
CONTRACTORS, INC.,

)

)

)

)

Defendants.

)

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.
3. On information and belief, Defendant L&L Contractors, Inc., ("L&L") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina with a principal place of business in Berkeley County, South Carolina.
4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.

5. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

6. Decedent was at all times relevant herein the sole owner and President of L& L

7. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

8. Decedent and Plaintiff worked closely together at L&L for many years.

9. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management.

JURISDICTION AND VENUE

10. This Court is possessed of jurisdiction over the parties and the subject matter.

11. Venue is proper.

FOR A FIRST CAUSE OF ACTION **(Wrongful Termination – Lambert and L&L)**

12. The foregoing paragraphs are incorporated as if fully restated herein.

13. After Decedent's death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes ("the Project"). Plaintiff was the project superintendent for the Project.

14. Among L&L's obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

15. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

16. L&L was paid by SCDOT for each truckload of material, counted monthly.

17. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

18. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

19. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit but never received by SCDOT.

20. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, despite Defendants demanding payment from SCDOT for the same material.

21. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

22. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

23. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

24. Plaintiff was terminated by Lambert and/or L&L in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.
25. Lambert's and/or L&L's actions violate public policy.
26. Plaintiff was wrongfully discharged from her employment.
27. Plaintiff was damaged as a result of her wrongful termination.
28. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A SECOND CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

29. The following paragraphs are incorporated as if fully restated herein.
30. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of the Covid-19 pandemic and an inability to secure childcare, with the knowledge and consent of Lambert and L&L.
31. In order to be able to work remotely, Plaintiff brought the laptop , desktop computer, and printer that had been issued to her by L&L home with her.
32. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop and desktop computer.
33. Plaintiff was arrested within weeks of her termination.
34. The charges were ultimately dismissed, and the record expunged.
35. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.
36. Plaintiff was damaged as a result.

37. Plaintiff is entitled to actual and punitive damages.

WHEREFORE, having fully set forth her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For actual and punitive damages and attorneys' fees; and
- b. For such other and further relief as this Honorable Court deems just and proper.

EPTING & RANNIK, LLC

This 14th day of October, 2022
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik (SC Bar # 103014)
Clinton T. Magill (SC Bar # 102770)
46A State Street
Charleston, SC 29401
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F: (843) 377-1310
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2022-CP-18-01582
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AMENDED SUMMONS
	)	(Jury Trial Demanded)
ERVIN W. LAMBERT, SR., individually and	)	
as Personal Representative for the Estate of	)	
Ervin W. Lambert, Jr., Deceased, and L&L	)	
CONTRACTORS, INC.,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Epting & Rannik, LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

EPTING & RANNIK, LLC

This 16th day of March, 2023
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik (SC Bar # 103014)
Clinton T. Magill (SC Bar # 102770)
46A State Street
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ATTORNEYS FOR PLAINTIFF

EXHIBIT I

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

)

FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER

)

CASE NO.: 2022-CP-18-01582

LAURA ABERNATHY,

)

)

Plaintiff,

)

)

v.

)

)

**AMENDED COMPLAINT
(Jury Trial Demanded)**ERVIN W. LAMBERT, SR., individually and
as Personal Representative for the Estate of
Ervin W. Lambert, Jr., Deceased, and L&L
CONTRACTORS, INC.,

)

)

)

)

Defendants.

)

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff would respectfully allege and show unto this Honorable Court as follows:

PARTIES, SUBJECT MATTER AND FACTUAL BACKGROUND

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. On information and belief Defendant Ervin W. Lambert, Sr. is a citizen and resident of Williamsburg County, South Carolina.
3. On information and belief, Defendant L&L Contractors, Inc., ("L&L") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina with a principal place of business in Berkeley County, South Carolina.
4. On or about October 25, 2018, Ervin Wayne Lambert, Jr., ("Decedent") died intestate in a plane crash in the Atlantic Ocean.

5. Defendant is father of the Decedent and the duly appointed Personal Representative of the Estate of Ervin Wayne Lambert, Jr., Deceased, Williamsburg County Probate Court, which estate is open and pending.

6. Decedent was at all times relevant herein the sole owner and President of L& L

7. Plaintiff was at all times relevant herein a key employee of L&L holding the position of General Superintendent and Project Manager.

8. Decedent and Plaintiff worked closely together at L&L for many years.

9. Plaintiff was at all times relevant herein a valued, loyal and trusted employee of L&L and integral in and to its operations and management.

JURISDICTION AND VENUE

10. This Court is possessed of jurisdiction over the parties and the subject matter.

11. Venue is proper.

FOR A FIRST CAUSE OF ACTION **(Wrongful Termination – Lambert and L&L)**

12. The foregoing paragraphs are incorporated as if fully restated herein.

13. After Decedent's death, L&L was the prime contractor on a SCDOT project to widen Henry E. Brown, Jr. Boulevard from two lanes to four lanes ("the Project"). Plaintiff was the project superintendent for the Project.

14. Among L&L's obligations was to provide material/dirt to the Project. L&L contracted with Richie Dennis for the material from a borrow pit owned by Richie Dennis, and that borrow pit was earmarked for the Project.

15. The borrow pit was surveyed at the start of the Project to determine the quantity of material it contained.

16. L&L was paid by SCDOT for each truckload of material, counted monthly.

17. Final payment would be made to L&L by again surveying the borrow pit owned by Richie Dennis that had been earmarked for the Project, comparing the amount of material reflected in each survey, and paying L&L for any amount removed from the pit above what L&L had already been paid.

18. In or about March 2020, upon completion of the second survey, a discrepancy was discovered between the amount of material removed from the pit and delivered to the Project.

19. After further investigation, it was determined that an additional \$1.2m worth of material above what was delivered to the Project had been removed from the borrow pit but never received by SCDOT.

20. Plaintiff spoke to both Richie Dennis and Defendant Lambert about the discrepancy and was told that Mr. Dennis and Defendant Lambert and/or Defendant L&L had been selling material from the pit to others, despite Defendants demanding payment from SCDOT for the same material.

21. Recognizing the illegality of these actions by Defendant Lambert and/or Defendant L&L, Plaintiff refused to further certify any documents or payments relating to the Project.

22. In addition, in or around February 2020, Defendant Lambert and/or L&L instructed Plaintiff to delete footage from a security camera showing an L&L dump truck knocking over several utility poles near Florence, South Carolina before SCDOT could get the footage and require L&L to pay for the damage. Plaintiff refused to do so.

23. Within approximately two months of these refusals, Plaintiff was terminated from her employment at L&L in April 2020 via telephone.

24. Plaintiff was terminated by Lambert and/or L&L in retaliation for refusing to perform illegal acts on behalf of Lambert and/or L&L.

25. Lambert's and/or L&L's actions violate public policy.

26. Plaintiff was wrongfully discharged from her employment.

27. Plaintiff was damaged as a result of her wrongful termination.

28. Plaintiff is entitled to compensatory damages, punitive damages, and attorneys' fees.

FOR A SECOND CAUSE OF ACTION
(Malicious Prosecution – Lambert and L&L)

29. The following paragraphs are incorporated as if fully restated herein.

30. On the days on and leading up to her termination, Plaintiff was working remotely from home on account of the Covid-19 pandemic and an inability to secure childcare, with the knowledge and consent of Lambert and L&L.

31. In order to be able to work remotely, Plaintiff brought the laptop, desktop computer, and printer that had been issued to her by L&L home with her.

32. Following her wrongful termination, and in further retaliation for her refusals to take part in illegal conduct as directed by Defendants, Lambert and/or L&L instituted criminal proceedings, alleging that she had stolen property from L&L because she had not returned her laptop and desktop computer.

33. Plaintiff was arrested within weeks of her termination.

34. The charges were ultimately dismissed, and the record expunged.

35. Defendants acted with malice and without probable cause or a good faith basis in instituting the criminal proceedings against Plaintiff.

36. Plaintiff was damaged as a result.

37. Plaintiff is entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Agreement)

38. The following paragraphs are incorporated as if fully restated herein.

39. Given her central role at L&L, Ms. Abernathy was tasked with coordinating with counsel and providing substantial assistance in the prosecution of a lawsuit L&L filed to recover monies owed to it (“the Lawsuit”).

40. As her work assisting with the Lawsuit would be in addition to her existing workload, Decedent (then-President of L&L) promised, in writing, that she would be entitled to a bonus related to any recovery obtained in the Litigation.

41. She was instrumental in achieving a substantial recovery for L&L in the Litigation.

42. Prior to the Litigation being resolved, Decedent was killed in a plane crash.

43. Ms. Abernathy was terminated in 2020, never having received the bonus she was promised relating to the Litigation.

44. Ms. Abernathy is entitled to payment of the bonus promised to her relating to the Litigation.

WHEREFORE, having fully set forth her Complaint herein, Plaintiff would pray that this Honorable Court inquire into all matters and things alleged herein and before the Court and enter judgment of as follows:

- a. For actual and punitive damages and attorneys’ fees; and
- b. For such other and further relief as this Honorable Court deems just and proper.

EPTING & RANNIK, LLC

This 16th day of March, 2023
Charleston, South Carolina

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar # 103014)
Clinton T. Magill (SC Bar # 102770)
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
		CASE NO.: 2022-CP-18-00295
LAURA ABERNATHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	PLAINTIFF'S MOTION TO
ERVIN W. LAMBERT, SR., Personal	)	CONSOLIDATE AND FOR AN
Representative of the Estate of Ervin W.	)	EXPEDITED HEARING
Lambert, Jr., Deceased,	)	
	)	
Defendant.	)	

Plaintiff Laura Abernathy ("Ms. Abernathy") moves pursuant to Rule 42(a), S.C.R.C.P., for an Order consolidating this case with Case number 2022-CP-18-01582, also filed by Ms. Abernathy against Defendant Ervin Wayne Lambert et al. and requests a jury trial. The two cases share parties, counsel in common, common questions of fact and/or law, and Ms. Abernathy contends that the attempted eviction that is the subject of this case is part of a common scheme of retaliation along with the forms alleged in Case number 2022-CP-18-01582.

Accordingly, it would be more just and more efficient for the parties and the Court for these matters to be consolidated and tried together to a jury. Ms. Abernathy so moves and requests an expedited hearing.

Plaintiff sought Defendants' consent prior to filing this motion, but consent was not obtained.

[signature on following page]

EXHIBIT J

This 17th day of March, 2023
Charleston, South Carolina

Respectfully submitted:

/s/ Jaan Rannik

Jaan G. Rannik

EPTING & RANNIK, LLC

46A State Street

Charleston, SC 29401

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COUNSEL FOR LAURA ABERNATHY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1800295

Laura Abernathy
PLAINTIFF(S)

Ervin W Lambert, Sr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Consolidate this matter with 2022CP1801582 is hereby denied. The parties are to reach out to Judge Murphy as Chief Administrative Judge to have this matter set for a 2- day trial.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/12/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: Laura Abernathy VS Ervin W Lambert Sr , defendant, et al

Case Number: 2022CP1800295

Type: Order/Electronic Form 4

It is so Ordered!

s/Diane S. Goodstein

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LAURA ABERNATHY

Plaintiff,

v.

ERVIN W. LAMBERT, SR., individual and as
Personal Representative of the Estate of Ervin
W. Lambert, Jr., Deceased, AND L&L
CONTRACTORS, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2022-CP-1801582

ANSWER TO AMENDED COMPLAINT

NOW COMES, ERVIN W. LAMBERT, SR., and L&L CONTRACTORS, INC., named Defendants in the above-styled action, and hereby respond to the Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

As a first defense, Defendants respond to the individually numbered paragraphs of Plaintiff's Amended Complaint as follows:

1. Defendants lack sufficient information to respond to the allegations of Paragraph 1 and therefore, deny the same and demand strict proof thereof.
2. The allegations of Paragraph 2 are admitted.
3. Defendants admit that L&L Contractors, Inc. is a corporation organized and existing under and by virtue of the laws of the State of South Carolina. Except as admitted, the allegations of Paragraph 3 are denied.
4. The allegations of Paragraph 4 are admitted.
5. The allegations of Paragraph 5 are admitted.
6. The allegations of Paragraph 6 are admitted.

EXHIBIT L

7. Defendants admit that Plaintiff was an employee of L&L and held the position of General Superintendent and Project Manager. Except as admitted, the allegations of Paragraph 7 are denied.
8. The allegations of Paragraph 8 are admitted.
9. Defendants admit that Plaintiff was an employee of L&L at the times relevant herein. Except as admitted, the allegations of Paragraph 9 are denied.
10. The allegations of Paragraph 10 state conclusions of law and, therefore, require no response. To the extent that a response may be required, Defendants deny the same and demand strict proof thereof.
11. The allegations of Paragraph 11 state conclusions of law and, therefore, require no response. To the extent that a response may be required, Defendants deny the same and demand strict proof thereof.
12. Responding to the allegations of Paragraph 12, Defendants repeat and restate each and every allegation of the preceding paragraphs as if fully set forth verbatim herein.
13. The allegations of Paragraph 13 are admitted.
14. The allegations of Paragraph 14 are admitted.
15. The allegations of Paragraph 15 are admitted.
16. The allegations of Paragraph 16 are admitted.
17. The allegations of Paragraph 17 are admitted.
18. The allegations of Paragraph 18 are admitted.
19. The allegations of Paragraph 19 are denied.
20. The allegations of Paragraph 20 are denied.

21. The allegations of Paragraph 21 are denied. Responding further, Defendants specifically deny that Defendants committed any unlawful or wrongful acts in violation of federal, state, or local law.
22. The allegations of Paragraph 22 are denied.
23. Defendants admit that Plaintiff was terminated from her employment at L&L via telephone. Except as admitted, the allegations of Paragraph 23 are denied.
24. The allegations of Paragraph 24 are denied.
25. The allegations of Paragraph 25 are denied.
26. The allegations of Paragraph 26 are denied.
27. The allegations of Paragraph 27 are denied.
28. The allegations of Paragraph 28 are denied.
29. Responding to the allegations of Paragraph 29, Defendants repeat and restate each and every allegation of the preceding paragraphs as if fully set forth verbatim herein.
30. Defendants admit Plaintiff was working remotely from home on account of the Covid-19 pandemic with the knowledge and consent of Lambert and L&L. Defendants lack sufficient information to respond to all remaining allegations of Paragraph 30 and therefore, deny the same and demand strict proof thereof.
31. The allegations of Paragraph 31 are admitted.
32. The allegations of Paragraph 32 are denied.
33. Defendants lack sufficient information to respond to the allegations of Paragraph 33 and therefore, deny the same and demand strict proof thereof.
34. Defendants lack sufficient information to respond to the allegations of Paragraph 34 and therefore, deny the same and demand strict proof thereof.

35. The allegations of Paragraph 35 are denied.
36. The allegations of Paragraph 36 are denied.
37. The allegations of Paragraph 37 are denied.
38. Responding to the allegations of Paragraph 38, Defendants repeat and restate each and every allegation of the preceding paragraphs as if fully set forth verbatim herein.
39. The allegations of Paragraph 39 are denied.
40. The allegations of Paragraph 40 are denied.
41. The allegations of Paragraph 41 are denied.
42. The allegations of Paragraph 42 are admitted.
43. Defendants admit that Plaintiff was terminated from her employment at L&L in 2020. Except as admitted, the allegations of Paragraph 43 are denied.
44. The allegations of Paragraph 44 are denied.
45. Defendants deny any allegations contained in the unnumbered “WHEREFORE” paragraph on page 5 of the Plaintiff’s Amended Complaint and specifically deny that the Plaintiff is entitled to any relief whatsoever from Defendants.
46. All allegations of the Amended Complaint not specifically admitted herein are hereby denied.

FOR A SECOND DEFENSE

Plaintiff has failed to state a claim against Defendants upon which relief may be granted.

FOR A THIRD DEFENSE

Plaintiff’s claims may be barred, in whole or in part, because Plaintiff was at all relevant times an at-will employee, whose employment could be terminated at any time, with or without cause, and with or without notice.

FOR A FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendants have not unlawfully retaliated against Plaintiff, nor have Defendants engaged in any other unlawful employment practices with regards to Plaintiff's employment. Any actions taken by Defendants with respect to Plaintiff were taken for legitimate, non-retaliatory business reasons.

FOR A FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages, if any, as required by law. Further, Defendants are entitled to a set-off or credit for any earnings Plaintiff received or should have received had Plaintiff mitigated her alleged damages.

FOR A SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff was not terminated in violation of a clear mandate of public policy.

FOR A SEVENTH DEFENSE

Plaintiff may be barred and/or estopped by her own conduct from any recovery or relief in this action. Further, some or all of Plaintiff's claims may be barred by the doctrines of estoppel, laches, waiver, and/or unclean hands.

FOR AN EIGHTH DEFENSE

Defendants have acted at all times upon the existence of reasonable grounds of belief formed at the time and in light of the circumstances known to Defendants. Further, Defendants have at all times acted in good faith and in a reasonable and prudent manner, exercising the degree of due care required in carrying out any duties allegedly owed to Plaintiff, and have at all times acted consistently with all applicable laws, guidelines, rules and standards.

FOR A NINTH DEFENSE

Plaintiff's claims may be barred, in whole or in part, because Defendants and/or agents of Defendants acted reasonably, in good faith, and without malice when reporting Plaintiff's actions to law enforcement, and such reports of potential criminal conduct to law enforcement are protected as a matter of public policy.

FOR A TENTH DEFENSE

No act or omission on the part of Defendants either caused or contributed to any alleged injury or damage Plaintiff may have sustained.

FOR AN ELEVENTH DEFENSE

Plaintiff's damages, if not in fact caused by the Plaintiff, were caused by a third-party for whom Defendants have no liability. Defendants plead those acts of others, whether intervening, superseding, or otherwise, as a complete bar to Plaintiff's recovery.

FOR A TWELFTH DEFENSE

Defendants have taken no action against Plaintiff in a willful, malicious, reckless, egregious, or wanton manner, nor have Defendants acted in bad faith or with conscious or deliberate indifference to or disregard for Plaintiff's legal rights.

FOR A THIRTEENTH DEFENSE

Plaintiff's claim for punitive damages is unavailable for some or all of the Plaintiff's claims pursuant to the United States Constitution and South Carolina Constitution.

FOR A FOURTEENTH DEFENSE

Defendants would show that any award of punitive damages is subject to the limitations set forth in S.C. Code §15-32-530.

FOR A FIFTEENTH DEFENSE

At all times relevant to Plaintiff's Amended Complaint, the actions of Defendants and Defendants' agents and/or employees were lawful, done in good faith, and conducted in accordance with all state and federal laws, regulations, and constitutions.

FOR A SIXTEENTH DEFENSE

Plaintiff's claims may be barred, in whole or in part, to the extent Plaintiff failed to commence this action within the time required by the applicable statute of limitations.

FOR A SEVENTEENTH DEFENSE

Defendants reserve the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the Federal Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Answering Defendants hereby pray for the following:

- (a) That the Amended Complaint against them be dismissed with prejudice at the cost of the Plaintiff;
- (b) That they recover costs, attorneys' fees and expenses herein incurred;
- (c) For leave to amend its pleadings to include any and all affirmative defenses that may arise and become applicable during the course and development of the lawsuit through discovery;
- (d) For a trial by jury on all issues properly so triable;
- (e) For any and all other proper relief to which the Answering Defendants may be entitled.

Barnwell Whaley Patterson & Helms, LLC

s/ K. Michael Barfield
K. Michael Barfield (S.C. Bar No. 69400)
Alexa Leigh Morris (S.C. Bar No. 105528)
211 King Street, Suite 300
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Lofton & Lofton, P.C.

s/ V. Lynn Lofton
Lionel S. Lofton (S.C. Bar No. 3383)
V. Lynn Lofton (S.C. Bar No. 68643)
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lynn@loftonandlofton.com

Counsel for Defendants

Charleston, South Carolina
March 30, 2023

Oct 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295
Appellate Case No.: 2023-000655

LAURA ABERNATHY.....Appellant,

v.

ERVIN W. LAMBERT SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
W. LAMBERT, JR., DECEASED.....Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss and Memorandum of Law in Support Thereof by electronic mail on October 26, 2023, to the following:

Jaan G. Rannik, Esquire
Clinton Thomas MaGill, Esquire
Epting & Rannik, LLC
46A State Street
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jgr@epting-law.com
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LOFTON & LOFTON, P.C.

BY: s/V. Lynn Lofton
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ATTORNEYS FOR RESPONDENT

Charleston, South Carolina

October 26, 2023

RECEIVED

Oct 26 2023

SC Court of Appeals

Lionel S. Lofton
Frances Cain Lofton
V. Lynn Lofton

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October 26, 2023

VIA EMAIL ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29201

RE: Laura Abernathy v. Ervin W. Lambert, Sr., Personal Representative of The Estate of Ervin W. Lambert, Jr., Deceased
Appellate Case No.: 2023-000655

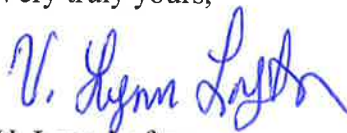
Dear Ms. Kitchings:

Enclosed please find Respondent's Motion to Dismiss and Memorandum of Law in Support Thereof along with supporting Exhibits A through L and Proof of Service in the above-captioned case.

Our filing fee in the amount of Fifty and 00/100 Dollars (\$50.00) will be mailed today.

With kindest regards, I remain

Very truly yours,


V. Lynn Lofton

VLL/tra

cc: Jaan G. Rannik, Esquire, via email
Clinton Thomas MaGill, Esquire, via email