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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

Maite Murphy, Circuit Court Judge

Civil Action No. 2021-CP-18-02173

Shannon Shaw..... Respondent,

v.

Amazon.com, Inc.; Amazon.com, LLC; Amazon.com Services, Inc; Amazon Logistics, Inc.; MJV Logistics, LLC; and Kevin Anthony Blekicki..... Defendants,

Of whom Amazon.com, Inc.; Amazon.com, LLC; Amazon.com Services, Inc; and Amazon Logistics, Inc. are the……. Appellants.

MOTION FOR LIMITED REMAND

Pursuant to Rules 240 and 241 of the South Carolina Appellate Court Rules, Appellants Amazon.com, Inc.; Amazon.com, LLC; Amazon.com Services, Inc; and Amazon Logistics, Inc. (collectively, "Appellants") hereby move this Court for an order issuing a limited remand in this appeal for the purpose of allowing the trial court to rule on Appellants' pending motions.

BACKGROUND

This matter was tried between December 4 and December 7, 2023. At around 8:00 p.m. on December 7, the jury returned a verdict in favor of Respondent Shannon Shaw in the total amount of $44,637,147. The jury awarded $14,412,147 in economic and noneconomic damages; $30,000,000 in punitive damages against Appellants; $50,000 in punitive damages against

Defendant MJV Logistics, Inc.; and $175,000 in punitive damages against Defendant Kevin Anthony Blekicki. On Friday, December 8, the trial court entered a Form 4 judgment stating the jury had rendered a verdict in this amount, and Appellants filed a request for ten days to file post-trial motions for judgment notwithstanding the verdict ("JNOV") and a new trial. The clerk of court initially rejected Appellants' filing because it did not include a proposed order. On Monday, December 11, Appellants refiled the request with a proposed order. Respondent opposed the request as "untimely," arguing that "[t]o be prompt, Amazon had to make the request right after the jury was discharged, before leaving the courthouse." On December 12, the trial court denied Appellants' request on the grounds argued by Respondent. Specifically, the trial court found Appellants' request was not "prompt" and, therefore, did not satisfy Rules 50(e) and 59(b), SCRCP.

Within ten days of the jury's discharge, Appellants filed the following motions: (1) a motion for the trial court to reconsider its order denying Appellants' request for ten days to file post-trial motions; (2) a motion for enlargement of time to file Appellants' request for ten days to file post-trial motions; (3) a motion to alter or amend the judgment; (4) motions for JNOV and a new trial; and (5) a motion to stay execution on the judgment.[1] The trial court has yet to rule on these motions.

Out of necessity, due to the trial court's error in not allowing new trial and JNOV motions, and because of the decision in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 778 (2004). , Appellants were obligated to file and serve a notice of appeal within thirty

[1] Because Appellants collectively filed five post-trial motions, Appellants have not attached those filings as exhibits to this Motion. Appellants can produce copies of these post-trial motions if the Court directs them to do so.

days after receiving written notice of entry of judgment to avoid a court or the opposing party taking the position the post-trial motions did not stay the time for appeal. *See* Rule 203, SCACR;

ARGUMENT

Appellants filed numerous motions to preserve their challenges for appellate review. Two of these motions—a motion to alter or amend the December 8 judgment and a motion for the court to reconsider its December 12 order—were filed pursuant to Rule 59(e). Appellants' filing and service of a notice of appeal and motion for limited remand are necessary here to protect Appellants' right to appeal and to avoid any potential argument that the Rule 59(e) motions are successive under *Elam*, 361 S.C. 9, 602 S.E.2d 778 (2004).

In *Elam*, the Court held an appeal "may be barred due to untimely service of the notice of appeal when a party—instead of serving a notice of appeal—recaptions a written JNOV/new trial motion, which has been ruled on, and resubmits it as a virtually identical, written Rule 59(e) motion." 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). The Court discouraged the routine filing of both a Rule 59(e) motion and a notice of appeal.[2] Appellants did not cavalierly serve and file the notice of appeal here, nor did they simply act out of "expedience" with regard to their Rule 59(e) motions. The *Elam* Court clarified that a Rule 59(e) motion is proper and stays the time for appeal if it raises new or different issues than prior post-trial motions or seeks a ruling on issues not yet ruled upon by the trial court. *Id.* Appellants believe their Rule 59(e) motions fall within this description, but they cannot be certain that the court will necessarily agree

[2] *See id.* at 20 n.2, 602 S.E.2d at 778 n.2 ("We are aware that a party may attempt to file both a Rule 59 motion and a notice of appeal. If this does occur, one or the other will be inappropriate depending on whether the motion is both timely under Rule 59 and permissible under our ruling today. It is, of course, the party's responsibility to determine whether a Rule 59 motion or notice of appeal is appropriate under the facts of the case, and we caution parties not to attempt to avoid this responsibility by the simple expedient of filing both.").

The *Elam* Court reinforced the catastrophic consequences that occur if a party incorrectly believes its Rule 59(e) motion is proper. *Id.* at 25, 602 S.E.2d at 780 ("If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling."). Unfortunately, while a party may analyze the propriety of a Rule 59(e) motion before filing it, the party's belief in the propriety of the motion is of no value if a court disagrees. Thus, if there is a possibility that a Rule 59(e) motion may be deemed improper and that the deadline to appeal may "unwittingly" expire, a party has no choice but to serve and file a notice of appeal.

Appellants believe their Rule 59(e) motions are proper and comport with *Elam* because the motion to reconsider raises new or different issues than other post-trial motions, and the motion to alter or amend seeks a ruling on issues not yet ruled upon by the trial court. *See id.* at 26, 602 S.E.2d at 781 (finding a Rule 59(e) motion stayed the time to appeal because it "involve[d] a first, written Rule 59(e) motion, not a second one," and the moving party "did not simply resubmit a virtually identical, written Rule 59(e) motion raising the same issues on which it already had obtained a ruling by virtue of a previous, written JNOV/new trial motion"). Appellants therefore believe their motions stay the time for appeal. *See* Rule 203(b)(1), SCACR. However, opposing counsel or the court may not agree under these circumstances. In an abundance of caution and to fully protect their right to appeal and due to the trial court not allowing more time to file motions and the position the plaintiff has taken regarding the untimeliness of the post-trial motions and whether the court is empowered to enlarge time for the request for ten days to file JNOV and new trial motions, Appellants served and filed a notice of appeal. They now seek a limited remand

allowing the trial court to rule upon their pending motions. A limited remand will ensure the trial court has an opportunity to rule on all outstanding issues before presenting this Court with a complete appeal, furthering the interests of justice and judicial economy.

CONCLUSION

Appellants respectfully request this Court hold the appeal in abeyance and remand for a limited ruling on all pending motions. Appellants further request the Court stay any briefing deadlines during the pendency of the remand.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Amazon.com, Inc.; Amazon.com, LLC; Amazon.com Services, Inc; and Amazon Logistics, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified, pursuant to the Supreme Court Order 2022-05-06-04, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **Amazon.com, Inc.; Amazon.com, LLC; Amazon.com Services, Inc; and Amazon Logistics, Inc.'s Motion for Limited Remand**

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January 8, 2024

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Subject: Shannon Shaw v. Amazon.Com, Inc.; et al. - Case No. 2021-CP-18-02173
Attachments: 2024.01.08 Motion for a Limited Remand (Shaw).pdf; 2024.01.08 Proof of Service - Motion (Amazon).pdf

Good afternoon.

Attached for service upon you in the above matter is a Motion for Limited Remand and Proof of Service.

Thank you.

NELSON MULLINS

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