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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 for the First Circuit

The Honorable Diane S. Goodstein

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

LAURA ABERNATHY.....Plaintiff / *Appellant*,

v.

ERVIN W. LAMBERT, SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
E. LAMBERT, JR., DECEASED.....Defendant / *Respondent*.

PETITION FOR REHEARING

NOW COMES Appellant, Laura Abernathy (“Ms. Abernathy”), by and through her undersigned counsel, pursuant to Rule 221(a), SCACR, following the filing of this Court’s Order filed January 10, 2024 dismissing this appeal (the “Subject Opinion”), and hereby timely petitions for rehearing of this matter, contending most respectfully that the Court overlooked and/or misapprehended material points, namely that the denial of Ms. Abernathy’s Motion to Consolidate will mean that factual issues about which she has requested a jury trial will be decided nonjury, denying her the right to a jury trial on those issues.¹

¹ Further, because the determination of whether a jury trial has been denied to Appellant is closely tied to the facts of the appeal, this Court may consider permitting the appealability issue to be decided with the merits of the appeal, when the briefing is complete and Court has the benefit of a Record on Appeal.

BACKGROUND

There are two lawsuits relevant to this appeal. One is set to be tried nonjury, and the other to a jury. In the first, Ms. Abernathy filed a nonjury declaratory judgment action on June 12, 2020, seeking a declaration that she was the rightful owner of a residential property in Summerville, South Carolina (“the DJ Action,” Case No. 2022-CP-18-00295). **Exh. 1.** The matter was stayed pursuant to Rule 40(j) on September 30, 2021, and was reinstated to the docket on February 15, 2022.

On September 20, 2022, Ms. Abernathy moved to amend her complaint in the DJ Action to add new parties and additional causes for (i) wrongful termination and (ii) malicious prosecution against Respondent Erwin W. Lambert, Sr. (“Mr. Lambert”) and, L&L Contractors, the company Mr. Lambert inherited from upon the death of his son, Erwin W. Lambert, Jr. (“the Decedent”). **Exh. 2.** Ms. Abernathy requested a jury trial on the new claims. The trial court denied the motion to amend on December 16, 2022, finding that the wrongful termination and malicious prosecution claims should be filed in a separate action. **Exh. 3.** Thus, at this time, Ms. Abernathy had not been denied a jury trial on her new causes of action; rather, she was simply required to file them in a separate action that could be tried to a jury. On October 14, 2022, Ms. Abernathy filed the separate action as directed by the Court and requested a jury trial (“the Wrongful Termination Action,” Case No. 2022-CP-18-01582). **Exh. 4.**

On March 16, 2023, Ms. Abernathy amended her pleading in the Wrongful Termination Action to add a third cause of action for breach of agreement. **Exh. 5.** The factual basis of the breach of agreement claim directly overlaps with the factual basis of her claim to be the equitable owner of the property in dispute in the DJ Action — both center upon the same agreement allegedly made between Mr. Abernathy and the Decedent. Ms. Abernathy alleges that agreement (“the Agreement”) provided that, in exchange for her past good performance at her job with Decedent’s

company, L&L Contractors, *and* for her continued and future assistance to be given to the Decedent and his company regarding a lawsuit they had filed, she would receive: (i) the property that is the subject of the DJ Action, *and* (ii) a monetary bonus in the event the lawsuit settled favorably. Ms. Abernathy alleges both prongs of the Agreement were breached.

On March 17, 2023, Ms. Abernathy moved to consolidate the two cases (**Exh. 6**), contending that the factual basis of the two actions overlapped to such that the factual determinations in one would be binding in the other suit, and so both should be tried to a jury. The trial court denied the motion on April 12, 2023. **Exh. 7**.

Ms. Abernathy timely noticed her appeal on April 21, 2023. **Exh. 8**. On January 10, 2024, this Court entered the Subject Order dismissing the appeal. **Exh. 9**. On January 25, this Court granted Ms. Abernathy a fifteen-day extension to file the instant petition for rehearing (**Exh. 10**), which she now files.

STANDARD OF REVIEW

A petition for rehearing shall state with particularity the points supposed to have been overlooked or misapprehended by the court. S.C.A.C.R. 221(a). While this Court usually does not entertain petitions for rehearing of a motion, it will do so when the effect of the order resolving the motion is to dismiss the appeal. SCACR 221(c).

ARGUMENT

There are two motions at issue in this appeal – a Motion to Amend the complaint in the DJ Action, and a subsequent Motion to Consolidate the DJ Action and the Wrongful Termination Action. Ms. Abernathy contends that denial of the latter, the Motion to Consolidate, has the effect of denying her the right to a jury trial because it necessarily means certain common issues between the two suits will be tried nonjury instead of to a jury. Moving to dismiss this appeal, Respondent

contended the denial of the earlier Motion to *Amend* denied Ms. Abernathy a jury trial, and Ms. Abernathy therefore waived her right to a jury trial by not immediately appealing the earlier order.

Dismissing the instant appeal, the Subject Opinion from this Court stated:

After careful consideration, Respondent’s motion to dismiss this appeal is granted. The orders on appeal are interlocutory and not immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2) because they do not deny any party a mode of trial to which they are entitled as a matter of right. *See Frampton v. S.C. Dep’t of Transp.*, 406 S.C. 377, 385, 752 S.E.2d 294, 274 (Ct. App. 2013) (“Orders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), and must therefore be appealed immediately.” (internal quotation omitted)); [. . .].

Subject Order at 1.

There are various ways the holding of Subject Order can be understood, for example: (i) Ms. Abernathy was *not* denied a jury trial by virtue of the denial of the Motion to Consolidate from which she appealed, rendering the orders interlocutory, (ii) Ms. Abernathy *was* denied a jury trial by virtue of the earlier denial of her Motion to *Amend*, and therefore has waived her appellate rights by not immediately appealing that order, rendering the orders interlocutory, or (iii) both. Any of these three conclusions would, respectfully, be a misapprehension of the circumstances present.

I. The Denial of the Motion to Amend Did Not Deny Ms. Abernathy Her Right to a Jury Trial; Denial of the Motion to Consolidate Did.

The trial court’s December 19, 2022 order denied Ms. Abernathy’s Motion to Amend her complaint and add new claims in the DJ Action, requiring instead that she file the claims in a separate action, at which time Ms. Abernathy could request a jury trial on those claims. This she promptly did, thus preserving her right to have a jury decide those claims and the factual

underpinnings thereof. And so, the denial of the Motion to Amend did not deny Ms. Abernathy a jury trial on her new claims; it simply held that they could not be added to the existing DJ Action.

A. The Denial of the Motion to Consolidate Denies Ms. Abernathy a Jury Trial on Key Issues.

Further—and here is where the undersigned submits that the record on appeal would be of assistance to the Court in deciding this issue—the proposed amended pleading submitted along with the Motion to Amend contained only two new causes of action: (i) Wrongful Termination and (ii) Malicious Prosecution. After the Motion to Amend was denied, Ms. Abernathy filed the Wrongful Termination Action and requested a jury trial.

The operative pleading in the Wrongful Termination Action contains *three* causes of action – (i) Wrongful Termination, (ii) Malicious Prosecution, and (iii) Breach of Agreement. It is this third cause of action that particularly requires the two cases be tried together, because it relates to the same alleged Agreement that underpins Ms. Abernathy’s contentions in the DJ Action, which concerns Ms. Abernathy’s claim to be the title owner of the house in question. Ms. Abernathy contends in the DJ Action that it was Decedent’s demonstrable intent that Ms. Abernathy would become the record owner of the property and that she would have but for the Decedent’s untimely demise. Because Ms. Abernathy requested a jury trial in the Wrongful Termination Action, she is entitled to have the factual underpinnings of all of her claims in that case decided by a jury, including all factual determinations regarding the Agreement.

However, the DJ Action was filed first and will be ready for trial by the court before the Wrongful Termination Action is ready for trial by jury. The DJ Action cannot be adjudicated without the Court making findings of fact as to the Agreement between Ms. Abernathy and the Decedent. But, Ms. Abernathy is entitled to have a jury make those findings of fact, not the Court, as those findings would bind Ms. Abernathy and the jury in the Wrongful Termination suit.

Accordingly, it was only when this third cause of action was not allowed to be combined with the claim in the DJ Action that Ms. Abernathy was denied a jury trial. This did not occur until the denial of the Motion to Consolidate. Therefore, the trial court's denial of the Motion to *Amend* did not deny Ms. Abernathy the right to a jury, the subsequent denial of the Motion to *Consolidate* did.

The order is therefore immediately appealable, and this appeal should not be dismissed.

II. *Flagstar*

The Subject Order cites the case of *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 553 S.E.2d 331 (2000) for the proposition that “the bifurcation of issues and discovery is not immediately appealable because no party was denied the right to a jury trial.” Subject Order at 1. That case is distinguishable from the present case.

Flagstar involved an order by the trial court bifurcating the case into two distinct trials—each to be decided by a jury²—because it found there was a threshold coverage issue that should be determined before the parties engaged in extensive discovery and a lengthy trial as to other coverage questions. Accordingly, the court bifurcated the case. Because both phases would be decided by a jury, the Supreme Court held that order was not immediately appealable because no party had been denied the right to a jury trial.

Here, in contrast, the first “phase” would be *nonjury*, and factual determinations made therein would bind the jury and the parties in the second “phase.” Accordingly, the cases are distinguishable, and the underlying order *is* immediately appealable.

² “Flagstar proposed that **a jury** would first determine whether Exclusion C operated to preclude coverage. . . . If not, trial would proceed on to the issues of whether the acts constituted ‘occurrences’ or ‘personal injury’ under the policy.” *Flagstar*, 341 S.C. at 70, 553 S.E.2d at 332 (emphasis added).

CONCLUSION

For these reasons, Ms. Abernathy respectfully submits that it was error to dismiss the appeal, requests rehearing on Respondent’s Motion to Dismiss, and requests that the Motion to Dismiss be denied. Should the Court deem it appropriate, Ms. Abernathy has no objection to the Motion to Dismiss being denied without prejudice to raise the issue of appealability in the briefing.

Respectfully submitted:

EPTING & RANNIK, LLC

This 9th day of February, 2024
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik
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46A State Street
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ATTORNEYS FOR PLAINTIFF/APPELLANT

EXHIBIT 1

Respectfully submitted,

s/ John S. West
SC Bar No. 6035
West Law Firm, PA
207 Carolina Avenue
PO Box 1869
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Attorneys for Plaintiffs

June 12, 2020
Moncks Corner, South Carolina

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.
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PO Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com
Attorneys for Plaintiff

June 12, 2020
Moncks Corner, SC

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

EXHIBIT 2

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]

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

Respectfully submitted:

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

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
Jaan G. Rannik (SC Bar # 103014)
Clinton T. Magill (SC Bar # 102770)
46A State Street
Charleston, SC 29401
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ATTORNEYS FOR PLAINTIFF

EXHIBIT 3

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

EXHIBIT 4

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
F: (843) 377-1310
jgr@epting-law.com
ctm@epting-law.com

ATTORNEYS FOR PLAINTIFF

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)
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P: (843) 377-1871
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ATTORNEYS FOR PLAINTIFF

EXHIBIT 5

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
 Charleston, SC 29401
 P: (843) 377-1871
 F: (843) 377-1310
jgr@epting-law.com
ctm@epting-law.com

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 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

EXHIBIT 6

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
CONSOLIDATE AND FOR AN
EXPEDITED HEARING**

ERVIN W. LAMBERT, SR., Personal
Representative of the Estate of Ervin W.
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

P: (843) 377-1871

F: (843) 377-1310

jgr@epting-law.com

COUNSEL FOR LAURA ABERNATHY

EXHIBIT 7

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

EXHIBIT 8

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Apr 21 2023

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the First Circuit

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295

LAURA ABERNATHY.....Plaintiff /Appellant,

v.

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

NOTICE OF APPEAL

Plaintiff, Laura Abernathy, appeals from two orders of the Honorable Diane S. Goodstein, one dated April 12, 2023 (**Exh. A**, denying Plaintiff’s Motion to Consolidate and requesting a jury trial) and the other dated December 19, 2022 (**Exh. B**, denying Plaintiff’s Motion to Amend).

Plaintiff moved to consolidate two separate actions involving the same parties and overlapping facts, one which is to be tried non-jury and one which is to be tried to a jury, being concerned that the nonjury trial would decide factual issues that Plaintiff is entitled to have decided by a jury. Plaintiff therefore requested a jury trial as part of its consolidation motion. The April 12, 2023 order denied that motion. That ruling is immediately appealable because it denied a request for a jury trial, affecting a substantial right. S.C. Code § 14-3-330(2); *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997); *see also Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74,

78, 533 S.E.2d 575, 577 (2000) (noting that the “majority of cases requiring immediate appeal involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate”).

The December 19, 2022 order denied Plaintiff’s motion to amend. While a denial of a motion to amend is not ordinarily appealable prior to final judgment, this order may now be considered in conjunction with the April 12 order because this Court may hear the appeal of an otherwise unappealable order when a separate appealable order is before it. *Cox v. Woodman of the World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

Defendant received notice of the latter order on April 12, 2023 and timely notices this appeal.

The transcripts are being requested.

Respectfully submitted:

EPTING & RANNIK, LLC

April 21, 20223
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik
Clinton T. Magill
46A State Street
Charleston, SC 29401
Phone: 843-377-1871
Fax: 843-377-1310
jgr@epting-law.com
ctm@epting-law.com

ATTORNEY FOR PLAINTIFF/APPELLANT

RECEIVED

Apr 21 2023

SC Court of Appeals

EXHIBIT A

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

RECEIVED

Apr 21 2023

SC Court of Appeals

EXHIBIT B

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

IN THE COURT OF COMMON PLEAS
CASE NO.: 2022-CP-18-00295

**ORDER DENYING PLAINTIFF’S
MOTION TO AMEND AND FOR
JOINDER**

RECEIVED
Apr 21 2023
SC Court of Appeals

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

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Apr 21 2023

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the First Circuit

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295

LAURA ABERNATHY.....Plaintiff /Appellant,

v.

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

NOTICE OF APPEAL

I certify that I have served Appellant’s Notice of Appeal, with all supporting exhibits, dated August 21, 2023, on opposing counsel via e-mail, this 21th day of April, 2023, addressed to Respondents’ attorneys of record as follows:

Lionel S. Lofton, Esq. – lionel@loftonandlofton.com

V. Lynn Lofton, Esq. – lynn@loftonandlofton.com

A copy of the e-mail is attached to this Proof of Service as Exhibit A.

By s/Angela

Angela Gross
Legal Assistant to
Jaan G. Rannik
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Angela Gross

From: Angela Gross
Sent: Friday, April 21, 2023 3:52 PM
To: 'Lionel Lofton'; Lynn Lofton
Cc: Angela Gross; Terri Ackerman; Jaan Rannik
Subject: Abernathy v. Lambert / Case No. 2022-CP-18-00295
Attachments: 2023 04 21 - Ltr to Ct. App. filing NOA.pdf; 2023 04 21 - Ltr to Lower Court filing NOA.pdf; 2023 04 21 - Notice of Appeal.pdf; EXH A - 2023 04 12 - Form 4 - Order Denying Motion to CONSOLIDATE.pdf; EXH B - 2022 12 19 - Order Denying Motion to Amend.PDF; 2023 04 21 - Ltr to Court Reporter re 4-6-23 hearing transcript.pdf; 2023 04 21 - Ltr to Court Reporter re 10-4-22 hearing transcript.pdf

Counsel:

Attached for service please find the following:

- Appellant's Notice of Appeal, with supporting exhibits, dated April 21, 2023;
- Letter to the S.C. Court of Appeals dated April 21, 2023;
- Letter to the Charleston County Clerk of Court filing Notice of Appeal dated April 21, 2023;
- Letter to Court Reporter requesting transcript of October 4, 2022 hearing; and
- Letter to Court Reporter requesting transcript of April 6, 2023 hearing.

A Proof of Service will follow under separate email.

With kindest regards,



Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esq.
Jaan G. Rannik, Esq.
Clinton T. Magill, Esq.
EPTING & RANNIK, LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
agg@epting-law.com

From: Lionel Lofton <lionel@loftonandlofton.com>
Sent: Monday, March 6, 2023 9:52 AM
To: Jaan Rannik <jgr@epting-law.com>; Lynn Lofton <lynn@loftonandlofton.com>; mbarfield@barnwell-whaley.com
Cc: Angela Gross <agg@epting-law.com>; Terri Ackerman <terri@loftonandlofton.com>
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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EXHIBIT 9

The South Carolina Court of Appeals

Laura Abernathy, Appellant.

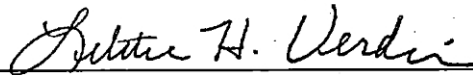
v.

Ervin W. Lambert, Sr., Personal Representative of The
Estate of Ervin E. Lambert, Jr. Deceased, Respondent.

Appellate Case No. 2023-000655

ORDER

After careful consideration, Respondent's motion to dismiss this appeal is granted. The orders on appeal are interlocutory and not immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2) because they do not deny any party a mode of trial to which they are entitled as a matter of right. *See Frampton v. S.C. Dep't of Transp.*, 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013) ("Orders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), and must, therefore, be appealed immediately." (internal quotation omitted)); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) (explaining the analysis of issues of denial of a mode of trial "proceeds by determining whether or not a party is erroneously denied a trial by jury in a law case, or is erroneously required to proceed before a jury in an equity case"); *id.* (holding that a party appealing an order requiring the bifurcation of issues and discovery is not immediately appealable because no party was denied the right to a jury trial); *id.* at 73, 533 S.E.2d at 333 (stating an immediate appeal pursuant to § 14-3-330(2) is "permitted only where the alleged error cannot be corrected by a new trial" and "[t]o hold otherwise would require this Court to, *inter alia*, predetermine the admissibility of evidence in advance of trial, to pass upon matters of pretrial discovery and to engage in 'piecemeal litigation'" (citing *Breland v. Love Chevrolet*, 339 S.C. 89, 529 S.E.2d 11 (2000))).



FOR THE COURT

FILED
Jan 10 2024

Columbia, South Carolina

cc:

Jaan Gunnar Rannik, Esquire

Lionel S. Lofton, Esquire

V. Lynn Lofton, Esquire

Clinton Thomas Magill, Esquire

EXHIBIT 10

The South Carolina Court of Appeals

Laura Abernathy, Appellant.

v.

Ervin W. Lambert, Sr., Personal Representative of The
Estate of Ervin E. Lambert, Jr. Deceased, Respondent.

Appellate Case No. 2023-000655

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2022CP1800295

ORDER

The time for serving and filing the appellant's petition for rehearing is hereby extended until February 09, 2024.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Jaan Gunnar Rannik, Esquire

Lionel S. Lofton, Esquire

V. Lynn Lofton, Esquire

Clinton Thomas Magill, Esquire

FILED
Jan 24 2024

RECEIVED

Feb 09 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas for the First Circuit**

The Honorable Diane S. Goodstein

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

LAURA ABERNATHYPlaintiff /*Appellant*,

v.

ERVIN W. LAMBERT, SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
E. LAMBERT, JR., DECEASED.,Defendant/*Respondent*.

PROOF OF SERVICE

I certify that I have served Appellant’s Petition for Rehearing on opposing counsel via e-mail this 9th day of January, 2024, addressed to Respondents’ attorneys of record as follows:

Lionel S. Lofton, Esq. – lionel@loftonandlofton.com

V. Lynn Lofton, Esq. – lynn@loftonandlofton.com

A copy of the e-mail is attached to this Proof of Service as Exhibit A.

By s/Angela

Angela Gross
Legal Assistant to
Jaan G. Rannik
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

EXHIBIT A

Angela Gross

From: Angela Gross
Sent: Friday, February 9, 2024 2:51 PM
To: lynn@loftonandlofton.com; lionel@loftonandlofton.com
Cc: Jaan Rannik; Angela Gross
Subject: Abernathy v. Lambert / Appellate Case No.: 2023-000655 (Petition for Rehearing)
Attachments: 2024 02 09 - Petition for Rehearing (003).pdf; 2024 02 09 - Exhibits to Petition for Rehearing (Abernathy).pdf

Dear Counsel,

Attached for service please find Appellant's Petition for Rehearing, with supporting exhibits, in the above referenced appeal. A proof of service will follow under separate email.

With kindest regards,



Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esq.
Jaan G. Rannik, Esq.
Clinton T. Magill, Esq.
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