

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

H. Steven DeBerry, IV, Circuit Court Judge
Civil Action Number: 2020CP2101817

Appellate Case No.: 2023-001954

Barbara L. Sarb Appellant/Respondent,

vs.

Julie W. Phillips and Joseph M. Phillips Respondents/Appellants.

MOTION TO CONSOLIDATE

Appellant/Respondent, Barbara L. Sarb, (hereinafter “Sarb”) respectfully moves this court, pursuant Rule 42(a) of the South Carolina Rules of Civil Procedure, to consolidate the above-styled action (hereinafter, the “1954 Appeal”) with the following case for all purposes: Appellate Case No. 2023-001713 (hereinafter, the “1713 Appeal”) (hereinafter, collectively referred to as the “Appeals”).

Consolidation under Rule 42(a), SCRPC, may be ordered whenever actions involving a common question of law or fact are pending before the court. *Ellis by Ellis v. Oliver*, 307 S.C. 365, 415 S.E.2d 400 (1992). The moving party has the burden of persuading the court that consolidation is desirable. *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D.Wis.1972).

In support of the motion, Sarb presents the following:

1. The underlying case from which the Appeals derive is the same. The underlying case consisted of a four-day jury trial. The jury awarded \$70,000 to Sarb and \$1,000 to the Respondents/Appellants, Julie W. Phillips and Joseph M. Phillips (hereinafter “Phillips”). Both parties filed motions for judgment notwithstanding the verdict.
2. The Honorable Judge DeBerry denied both motions for judgment notwithstanding the verdict via order dated October 2, 2023.
3. Thereafter, on October 12, 2023, both Sarb and the Phillips filed motions for attorney’s fees and costs.
4. Prior to receiving a ruling on either party’s motion for attorney’s fees and costs, but before the deadline to do so, on November 1, 2023, the Phillips filed a Notice of Appeal of the October 2, 2023 order denying their post-trial motion for judgment notwithstanding the verdict.
5. On November 3, 2023, and still prior to receiving a ruling on either party’s motion for attorney’s fees and costs, Sarb filed a Notice of Cross Appeal of the same order and Judge DeBerry’s order of judgment filed September 15, 2023.
6. On November 21, 2023, Judge DeBerry filed his order and judgment on the parties’ motions for attorney’s fees and costs.
7. On December 15, 2023, Sarb filed a Notice of Appeal of the November 21 order and judgment.
8. On December 19, 2023, the Phillips filed a Notice of Cross Appeal of the same order and judgment.
9. Both cases are currently pending in this Court.

10. Had the order and judgment on the parties' motions for attorney's fees and costs been rendered prior to the deadline to appeal, Sarb, and presumably the Phillips, would have included the same in the initial notice of appeal – in the interest of judicial economy as well as saving the parties' time and money.
11. The Appeals were filed close in time (approximately 6 weeks apart) and are essentially in the same or similar procedural posture.
12. The Phillips have ordered the trial transcript in the 1713 Appeal, but otherwise no substantive action has been taken in that case, similar to the 1954 Appeal.
13. Although no hearing was held on the motions for attorney's fees and costs, and therefore no additional transcript requested, the four-day trial transcript will be relevant to both Appeals.
14. The same facts, evidence, trial, and verdict all directly bear on the issue of attorney's fees and cost award. Therefore, the record on appeal for both Appeals will be substantially the same, a large part of the record being the four-day trial transcript. This Honorable Court will need to review the same material in order to fully adjudicate both Appeals. Therefore, judicial economy would warrant only one review of the record on appeal rather than multiple reviews.
15. The result of the 1713 Appeal could directly impact the result of this 1954 Appeal, or render it moot.
16. The proposed consolidation will avoid unnecessary costs and delay and will further judicial economy.

WHEREFORE, for the foregoing reasons, Sarb respectfully requests that this Court consolidate this 1954 Appeal with the 1713 Appeal.

Due to vacation schedules, the undersigned was unable to consult with opposing counsel with regard to this motion and therefore, is unaware if they consent or oppose to same.

Respectfully submitted,

s/ Valerie G. Giovanoli
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December 29, 2023
Columbia, SC

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PROOF OF SERVICE

I hereby certify that on December 29, 2023, I served Appellant/Respondent’s Motion to Consolidate upon counsel for Respondents/Appellants by delivering a copy of same by electronic service to the primary e-mail addresses listed in the Attorney Information System (AIS) as follows:

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s/ Valerie Garcia Giovanoli
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