

RECEIVED

Mar 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
G.D. Morgan, Jr., Circuit Court Judge

Civil Action No. 2023-CP-23-01039

Appellate Case No. 2023-001469

Desimber Rose Wattleton,

Appellant,

v.

A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger, Tony Scott, Ryan Little,
Atlantic Acceptance Corp., Westlake Financial Services, Roy Owens and Roy Ownes Towing,
Defendants,

Of Which A&K Auto Sales and Leasing, LLC and Westlake Financial Services are the
Respondents.

**MOTION TO CLARIFY MARCH 12, 2024 ORDER DISMISSING WESTLAKE
SERVICES, LLC dba WESTLAKE FINANCIAL SERVICES FROM APPEAL**

Appellant Desimber Rose Wattleton seeks to have the order clarified as it pertains to the
appellate process and ramifications of this Order. Pertaining to the following sequence of events:

1. On September 18, 2023., Appellant filed a Notice of Appeal of the Circuit
Court's September 15, 2023 ruling and Form 4 order on Respondent A&K
Auto Sales and Leasing, LLC's dismissal from the Second Cause of Action
and Westlake Financial's dismissal from the Complaint in its entirety under
Rule 12(b)6.

2. On that same day, there was an email sent to the Clerk with a corrected PDF file attached, informing that there was a clerical error in that two of the same Order had been attached to the previous email, instead of one order for Westlake Financial, and one for A&K Auto Sales. Appellant received a Notice of Deficiency dated September 19th, 2023 informing that the appeal could not be corrected by email and that a separate Motion to correct the filing would need to be filed. Appellant adhered to this notice by filing a Motion to Correct the Notice of Appeal on September 26, 2023.
3. As far as Appellant can ascertain, to this day there was never a clear ruling on that Motion to Correct the Notice of Appeal. However, before any ruling or response was received to Appellant's Motion to Correct, Appellant filed a Second Notice of Appeal after having received what was believed to be a full and complete Dismissal via email from Respondent Westlake Financial on October 4th, 2023. This was accepted as filed by the Appeals Court and Appellant was not notified of any deficiency of her Motion to Correct the Notice of Appeal, nor her Second Notice of Appeal. Therefore, Appellant had no reason to believe that either had not been accepted by the Appeals Court.
4. The Appellant was never notified at any time that the Appeals Court "never accepted Appellant's October 4, 2023 filing as a valid notice of appeal." It is highly possible that Appellant, as a pro se litigant, missed a response by the Court or misunderstood the process, but it was Appellant's understanding that the October 4th Notice of Appeal was accepted unless she received a Deficiency Notice stating otherwise.

5. Although a clerical issue with the Initial Filing on September 18th, 2023 was caught, corrected, and a Motion to Correct was filed as instructed by the deficiency notice, Appellant appears to have missed the deadline to file a timely appeal while waiting for a ruling on her Motion to Correct the Initial Notice of Appeal, and a response to Westlake's Motion to Dismiss Appellant's Second Notice of Appeal. In addition, it appears that the Court issued contradicting Orders, in that it has ruled that the Circuit Court's Order "was interlocutory but appealable," and also issued an Order in response to Appellant's Motion to Correct Notice of Appeal stating, "To the extent that Appellant's intention is to file an amended notice of appeal of the aforementioned order, the motion is denied because the order is not immediately appealable." Plaintiff was completely unclear what her obligations were with regards to timely filings in light of these orders, and it would appear that the Appellant is being penalized for filing both too early and too late. Nevertheless, Appellant does not wish to have this Order reversed, only to clarify its judicial repercussions.
6. It is stated in the March 12th, 2023 Order that "The circuit court found that the only claim remaining against Westlake – breach of the implied covenant of good faith and fair dealing – was not an independent cause of action.... Thus, even if this court were to reverse the circuit court's September 15, 2023 dismissal of Appellant's cause of action for breach of covenant, it would have no practical effect on the case."

However, Appellant did in fact have a separate Cause of Action before the Appeals Court pertaining specifically to the September 15, 2023 Order, which was the Fourth Cause of Action in Plaintiff's pleading. This cause of action related to Westlake Financials' violation of the Fair Credit Reporting Act, which was unrelated to a contract and separate and apart from the Second Cause of Action.

7. As stated in Appellant's Appeal, Westlake Financial was assigned an account by Agora Data, Inc. and during the service of that account reported erroneously to Appellant's credit report. It is Appellant's position that there was a duty to accurately report, and also diligently investigate and remove any erroneous tradelines from Appellant's credit report and Westlake Financial failed to do so, which Appellant maintains was adequately alleged and properly plead according to Rule 8 in Plaintiff's complaint before the Circuit Court.
8. The March 12th Order only addresses the question of whether a contract existed between the Appellant and Westlake Financial, and whether or not Appellant can appeal a previous order by the Circuit Court. The Appeals court has ruled in favor of Westlake Financial as it pertains to the dismissal of Westlake from the Second Cause of Action specifically, which Appellant accepts. However, Westlake Financial was dismissed on the premise of Rule 12b6 from all causes of action brought by the Plaintiff.
9. Appellant alleges in the Fourth Cause of Action of her Circuit Court pleading, that Westlake Financial violated the Fair Credit Reporting Act, whereby Westlake Services reported a delinquent auto loan tradeline to Experian, Equifax, and Transunion for 90 days, which directly and negatively impacted

the Appellant's credit worthiness and prevented Appellant from obtaining financing. As it pertains to this specific Cause of Action, a reversal of the September 15th, 2023 Circuit Court Order would in fact have a practical impact on the case, as it is an entirely separate Cause of Action, wholly unrelated to the question of contractual obligation, and only pertains to the unlawful actions of Westlake as a debt servicer.

Accordingly, Appellant requests the Court to clarify whether the March 12th Order dismissing Westlake from the appeal precludes Appellant from the right to bring future legal action against Westlake for violations of the Fair Credit Reporting Act in the proper venue, which was also alleged in Plaintiff's complaint, from which Westlake was dismissed under Rule 12(b)6 by the September 15, 2023 Circuit Court Order, and then subsequently appealed and thoroughly argued in Appellant's brief on September 18, 2023, which Westlake appears to have been given the benefit of a favorable ruling while not being required to defend the Appeal with a Response Brief, does not appear to have been considered in the decision of the Appeals Court, and is unaddressed in the March 12th Order of Dismissal.

RESPECTFULLY SUBMITTED,

s/Desimber Rose Wattleton
Desimber R. Wattleton
P.O. Box 1075
Greenville, SC 29687
864-373-8921
desimberrose@gmail.com

March 18, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 18 2024

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
G.D. Morgan Jr., Circuit Court Judge

Civil Action No. 2023-CP-23-01039

Appellate Case No. 2023-001469

Desimber Rose Wattleton, Appellant,

v.

A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger, Tony Scott,
Ryan Little, Atlantic Acceptance Corp., Westlake Financial Services, Roy Owens
and Roy Owens Towing, Defendants,

Of Which A&K Auto Sales and Leasing, LLC and Westlake Financial Services are the
Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Motion to Clarify March 12, 2024 Order
Dismissing Westlake Services, LLC dba Westlake Financial Services from Appeal on
Respondents Westlake Financial Services and A&K Auto Sales, by email and US Mail
to the addresses below.

Shannon N. Peake – murrell@smithrobinsonlaw.com
G. Murrell Smith, Jr. – murrell@smithrobinsonlaw.com
Smith Robinson
2530 Devine Street
Columbia, SC 29204
Counsel for Westlake Financial, LLC

Robert Childs, III – robert@lawyerchilds.com
Childs Law Firm
20 Center Street
Travelers Rest, SC 29690
Counsel for A&K Auto Sales, LLC

[Signature of Counsel on Following Page]

March 18, 2024

Respectfully submitted,

s/ Desimber R. Wattleton
Desimber Rose Wattleton
P.O. Box 1075
Greenville, SC 29687
(864) 373-8921



Desimber Rose <desimberrose@gmail.com>

Wattleton v. A&K Auto et al. - C/A No. 2023-CP-23-01039 / Appellate Case No. 2023-001469: Appellant's Motion to Clarify March 12, 2024 Order of Dismissal

1 message

Desimber Rose <desimberrose@gmail.com>

Mon, Mar 18, 2024 at 11:31 AM

To: Shanon Peake <shanon.peake@smithrobinsonlaw.com>, Jennifer Lisandrelli <jennifer.lisandrelli@smithrobinsonlaw.com>, Murrell Smith <Murrell@smithrobinsonlaw.com>
Cc: "robert@lawyerchilds.com" <Robert@lawyerchilds.com>, Terry Rouse <terry@lawyerchilds.com>, Patsy Ahearn <Patsy@lawyerchilds.com>

Good Morning,

Please find attached for service the *Appellant's Motion to Clarify March 12, 2024 Order Dismissing Westlake Services, LLC dba Westlake Financial Services from Appeal*, dated March 18, 2024.

Best Regards,

Desimber Rose Wattleton, Pro Se
Post Office Box 1075
Taylors, South Carolina 29687
(864) 373-8921

**Motion to Clarify March 12 Order - Wattleton v. Westlake.pdf**

168K