

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 10 2025

SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

G. D. Morgan, Circuit Court Judge

Case No. 2024-CP-39-0019
Appellate Case No. 2024-002188

Ortagus BennettAppellant

v.

Hyper Formance, LLCRespondent

MOTION TO DISMISS APPEAL

Respondent hereby moves for the South Carolina Court of Appeals to issue an Order dismissing this Appeal as to Judge Morgan’s December 10, 2024 Order denying Appellant’s Motion for Claim and Delivery as that Order is not immediately appealable.

S.C. Code Ann. § 14-3-330(1) provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits . . . ;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

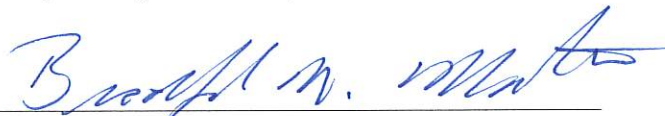
The denial of an action for claim and delivery on procedural grounds has been found by the South Carolina Supreme Court not to be a final decision on the merits. *See Gault v. Spoon*, 168 S.C. 160, 167 S.E. 229 (1932) (rejecting defendant's plea of res judicata against the plaintiff in the plaintiff's second action in claim and delivery, where the first action failed because the plaintiff failed to execute the bond required by statute, because the first action was not allowed to proceed to a conclusion and therefore decided nothing).

This Court's ruling on the Plaintiff's motion for claim and delivery will not avoid unnecessary litigation. *See Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649 (2002); *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014). The Plaintiff's complaint alleging breach of contract and improper retention of the vehicle remain to be tried.

Accordingly, the appeal of Judge Morgan's December 10, 2024, order denying Appellant's motion to for claim and delivery should be dismissed as interlocutory and not immediately appealable.

Respectfully submitted,

Dated: 10 March 25



Bradford N. Martin, Esq.
Laura W. H. Teer, Esq.
Bradford Neal Martin & Associates, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
Attorneys for Respondent
Hyper Formance, LLC