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SC Court of Appeals

ELECTRONICALLY FILED - 2025 Apr 01 1:50 PM - SPARTANBURG - COMMON PLEAS - CASE#2024CP4201645

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge
J. Derham Cole, Sr., Circuit Judge

Case No. 2024-CP-42-01645

PNC Bank, N.A., successor by
merger to PNC Equipment Finance,
LLC,

Respondent,

v.

S & J Asphalt Paving, LLC, Jose
Luis Guerrero, and Scott Robert
Ronson,

Appellants.

NOTICE OF APPEAL

S & J Asphalt Paving, LLC, Jose Luis Guerrero, and Scott Robert Ronson appeal the Order of the Honorable R. Keith Kelly, Circuit Judge, dated February 19, 2025, substituting PNC Bank, N.A. as Plaintiff in this matter. Appellants received written notice of entry of this Order on February 20, 2025. Appellants further appeal the Order of the Honorable R. Keith Kelly, Circuit Judge, denying Appellant's Motion to Reconsider (filed on February 25, 2025) dated March 31, 2025. Appellants received written notice of the entry of this Order on March 31, 2025. Appellants further appeal the Order of the Honorable J. Derham Cole, Sr., Circuit Judge, dated November 20, 2024, denying Appellants Motion for Judgment on the Pleadings. Appellants received written notice of entry of this Order on November 21, 2024. Appellants filed a Motion to Reconsider Judge Cole's Order on November 21, 2024, and this motion remains pending before the Circuit Court.

Respectfully submitted,

s/ W.H. McAbee III

Willie H. McAbee III (S.C. Bar #103662)

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Attorney for the Appellants

Date: April 1, 2025

Greenville, South Carolina

Other Counsel of Record:

Rachel E. Rogers (S.C. Bar #106048)

Melissa Tulis Smith (S.C. Bar #104464)

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Attorneys for the Respondent

Certificate of Electronic Notification

Recipients

Rachel Rogers - Notification transmitted on 04-01-2025 01:51:06 PM.

Melissa Smith - Notification transmitted on 04-01-2025 01:51:06 PM.

Willie McAbee - Notification transmitted on 04-01-2025 01:51:06 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

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A filing has been submitted to the court RE: 2024CP4201645

Official File Stamp: 04-01-2025 01:50:49 PM

Court: CIRCUIT COURT

Common Pleas

Spartanburg

Case Caption: Pnc Equipment Finance, Llc VS S & J Asphalt Paving, Llc , defendant, et al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

Filed by or on behalf of: Willie Horton McAbee, III

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

Willie Horton McAbee, III for S & J Asphalt Paving, Llc et al

Rachel Elizabeth Rogers for Pnc Equipment Finance, Llc

Melissa Tulis Smith for Pnc Equipment Finance, Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:



DAVID R. PRICE, JR., P.A.
ATTORNEYS AT LAW

DAVID R. PRICE, JR.
SAMUEL B. TOOKER

WILLIE H. McABEE, III

April 1, 2025

VIA E-MAIL (ctappfilings@sccourts.org) AND U.S MAIL

South Carolina Court of Appeals

Attn: The Honorable Jenny Abbott Kitchings

Clerk of Court's Office

Post Office Box 11629

Columbia, South Carolina 29211

RECEIVED

Apr 01 2025

SC Court of Appeals

RE: *PNC Bank, N.A., as successor by merger to PNC Equipment Finance, LLC, v. S&J Asphalt Paving, LLC, et al.*
Civil Action No.: 2024-CP-42-01645
Enclosures: (1) Notice of Appeal
(2) Order Denying Defendants' Motion for Judgment on the Pleadings
(3) Order Granting Plaintiff's Motion to Amend
(4) Order Denying Defendants' Motion to Reconsider Order Granting Plaintiff's Motion to Amend
(5) Notice of Electronic Filing ("NEF") of Appellants' Notice of Appeal

Dear Ms. Kitchings:

I represent S&J Asphalt Paving, LLC; Jose Luis Guerrero; and Scott Robert Ronson, the Appellants in the above action. Appellants are appealing the enclosed orders issued by the Court of Common Pleas for Spartanburg County.

Appellants are appealing the Order of the Honorable J. Derham Cole, Sr., Circuit Judge, denying Appellants Motion for Judgment on the Pleadings. Appellants are further appealing the Order of the Honorable R. Keith Kelly, Circuit Judge, granting Plaintiff's Motion for Leave to Amend and Judge Kelly's Order denying the Defendants' Motion to Reconsider.

Appellants received written notice of Judge Cole's Order on November 21, 2024. Appellants filed a Motion to Reconsider Judge Cole's Order on November 21, 2024, and this motion remains pending before the Circuit Court. Appellants received written notice of the entry of Judge Kelly's Order on February 20, 2025. Appellants filed a Motion to Reconsider Judge

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Kelly's Order on February 25, 2025. Appellants received written notice of the entry of Judge Kelly's Order denying Appellants' Motion to Reconsider on March 31, 2025.

Generally, "[a]n order permitting amendment of pleadings is interlocutory and generally is not appealable until final judgment." *Collins v. Sigmon*, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989). However, the Order of Judge Kelly allowing the Plaintiff to amend its pleading is essentially an Order substituting PNC Bank, N.A. for the prior plaintiff PNC Equipment Finance, LLC pursuant to Rule 17(a), *SCRCP*. An order of substitution is appealable under S.C. Code Ann. § 14-3-330(2)(a), and failure to take such interlocutory appeal bars consideration of the issue on appeal from final judgment. *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 567, 725 S.E.2d 926, 928 (2012); *see also Watts v. Copeland*, 170 S.C. 449, 456-57, 170 S.E. 780, 783 (1933) (holding substitution of plaintiff must be immediately appealed or is considered waived).

Furthermore, the denial of a motion for judgment on the pleadings is also interlocutory and not immediately appealable. *Rose v. Thrash*, 291 S.C. 459, 459-60, 354 S.E.2d 378, 378 (1987). However, an appellate court may consider an order that is not directly appealable if there is an appealable order before the appellate court and a ruling on appeal will avoid unnecessary litigation. *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163-64 (Ct. App. 2014). Appellants would respectfully submit that Judge Cole's Order denying Appellant's Motion for Judgment on the Pleadings falls within this exception.

Please find enclosed with the copy of this letter being sent via U.S. Mail a check in the amount of Two-Hundred and Fifty (\$250.00) Dollars for the filing fee. I would kindly ask that you please file the Appellants Notice of Appeal, the attached Orders, and the NEF as proof of service in this matter.¹ We are in the process of ordering the transcripts in this matter and will submit proof of the order of such transcripts in accordance with Rule 207, *SCACR*.

Please do not hesitate to contact me should anything further be required.

Sincerely,



Willie H. McAbee, III

Enclosures

CC: Clients (via e-mail only)
Rachel E. Rogers, Esq. (via e-mail only)
Melissa Tulis Smith, Esq. (via e-mail only)
Byron L. Saintsing, Esq. (via e-mail only)
Thomas A. Gray, Esq. (via e-mail only)

¹ Appellants have served the Notice of Appeal, along with filing the Notice of Appeal with the clerk of the lower court, by e-filing the same with the Court of Common Pleas for Spartanburg County. Appellants submit the NEF for this electronic filing as proof of service pursuant to *In re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024)*, S.C. Sup. Ct. Order filed April 24, 2024.