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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG
COUNTY
Court of Common Pleas

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

Appellate Case No. 2025-000627

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.

RESPONDENT'S MEMORANDUM OF
APPEALABILITY

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Respondent, pursuant to the Court’s letter dated April 10, 2025, hereby submits the following memorandum addressing the issues of appealability of the four orders appealed from the Court of Common Pleas for Spartanburg County.

RELEVANT FACTUAL AND
PROCEDURAL BACKGROUND

Respondent, PNC Bank, N.A., successor by merger to PNC Equipment Finance, LLC (“Respondent”) commenced its action in the Court of Common Pleas for Spartanburg County [Case No. 2024-CP-42-01645] against Appellants, S & J Asphalt Paving, LLC, Jose Luis Guerrero, and Scott Robert Ronson (collectively “Appellants”) on April 19, 2024, by filing a Summons and Complaint, which was subsequently served upon Appellants. A copy of the Summons and Complaint is attached as Exhibit A to *Appellants’ Memorandum Addressing Appealability* filed with this Court on April 16, 2025, and incorporated herein by reference. Appellants filed their Answer and Counterclaim on May 21, 2024, a copy of which is attached as Exhibit D to *Appellants’ Memorandum Addressing Appealability* filed with this Court on April 16, 2025, and incorporated herein by reference.

On May 24, 2024, Appellants filed a *Motion for Judgment on the Pleadings Pursuant to Rule 12(c), SCRPC, or Alternatively, Motion to Dismiss Pursuant to Rule 12(b)(6), SCRPC, and Plaintiff’s [sic] Motion to Strike Immaterial Portions of Plaintiff’s Complaint Pursuant to Rule 12(f), SCRPC* (collectively the “Rule 12 Motions”). On July 23, 2024, Respondent filed its *Response in Opposition to Defendants’ [Appellants] Rule 12 Motions*. On July 30, 2024, Respondent filed its *Motion to Amend the Complaint*.

On July 31, 2024, a hearing on the Rule 12 Motions was held before the Honorable J.

Derham Cole and after arguments of counsel, Judge Cole took the matter under advisement. On September 19, 2024, a hearing on Respondent's *Motion to Amend the Complaint* was held before the Honorable Grace Knie, who took no action on said motion pending Judge Cole's decisions on the Appellants' Rule 12 Motions. On November 21, 2024, the Court entered an Order denying the Appellants' Rule 12 Motions.

On November 21, 2024, Appellants' counsel filed a *Motion to Reconsider* Judge Cole's denial of the *Defendants' [Appellants'] Motion for Judgment on the Pleadings* portion of the Appellants' Rule 12 Motions. On February 20, 2025, the Court entered an Order allowing the Respondent's *Motion to Amend the Complaint* to amend the name of the Plaintiff [Respondent] to PNC Bank, N.A., successor by merger to PNC Equipment Finance, LLC. On February 25, 2025, the Appellants filed their *Motion to Reconsider* the Court's Order filed on February 20, 2025, which allowed *Plaintiff's [Respondent's] Motion to Amend the Complaint*. On March 31, 2025, the Court entered an *Order Denying Defendants' [Appellants'] Motion to Reconsider the Court's Order Filed on February 20, 2025* [Order Allowing Respondent's Motion to Amend the Complaint]. On April 8, 2025, the Court entered an *Order Denying Defendants' [Appellants'] Motion to Reconsider Judge Cole's November 21, 2024 Order* [Order Denying the Appellants' Motion for Judgment on the Pleadings].

On April 8, 2025, Appellants filed an Amended Notice of Appeal as to the following

Orders:

- a. **February 20, 2025 Order** allowing the Plaintiff's [Respondent's] Motion to Amend the Complaint to amend the name of the Plaintiff [Respondent] to PNC Bank, N.A., successor by merger to PNC Equipment Finance, LLC.
- b. **March 31, 2025 Order** Denying Defendants' [Appellants'] Motion to Reconsider the Court's Order Filed on February 20, 2025 [Order Allowing Plaintiff's [Respondent's]

Motion to Amend the Complaint].

- c. **November 21, 2024 Order** denying Defendants' [Appellants'] Motion for Judgment on the Pleadings portion of the Defendants' [Appellants'] Rule 12 Motions.
- d. **April 8, 2025 Order** Denying Defendants' [Appellants'] Motion to Reconsider Judge Cole's November 21, 2024 Order denying the Defendants' [Appellants'] Motion for Judgment on the Pleadings.

On April 10, 2025, this Court issued a directive to counsel to serve and file memoranda addressing the issue of appealability as to the Orders challenged on appeal. On April 16, 2025, Appellants filed with this Court *Appellants' Memorandum Addressing Appealability*.

ARGUMENT

The right to appeal arises from and is controlled by statutory law. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). An appeal ordinarily may be pursued only after a party has obtained a final judgment. S.C. Code Ann. § 14-3-330(1) (1976); S.C. R. Civ. P. 72; S.C. App. Ct. R. 201(a). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002); *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014) (“An order is not immediately appealable when appellants ‘have not “arrived at the end of the road” and [would] be able to appeal the decision after the trial [wa]s finished.’” (quoting *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004))). Piecemeal appeals should be avoided, and most errors can be corrected by the remedy of a new trial. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

In the present matter, each of the four orders that Appellants are appealing are interlocutory. By statute, an appeal from an interlocutory order is permitted in certain circumstances, including when the order is one involving the merits or affecting a substantial right. Brunson v. Am. Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (2005). S.C. Code Ann. § 14-3-330(2) provides for the immediate appeal of an interlocutory 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 action. Pocisck v. Sea Coast Const. of Beaufort, 380 S.C. 584, 587-88, 671 S.E.2d 98, 100-01 (Ct.App.2008). None of the four orders appealed in this matter make a final determination of the action, or prevent a judgment from which an appeal might be taken. Nor do any of the orders appealed in this matter discontinue the action, grant or refuse a new trial, or strike out any answer or any part thereof of any pleading in the action. Rather, the orders appealed in this matter simply amend the name of the Plaintiff; they do not involve the merits of the case or affect any of the substantial rights and are, thus, not appealable at this time.

I. Order allowing Plaintiff's [Respondent's] Motion to Amend Complaint is not immediately appealable.

Judge Kelly's *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* is interlocutory and not immediately appealable. An order granting leave to amend a party's pleading is interlocutory and generally not appealable until final judgment. Collins v. Sigmon, 299 S.C. 464, 385 S.E.2d 835 (1989); *see, e.g., Buist v. Williams*, 83 S.C. 321, 65 S.E. 343 (1909); Schein v. Lamar, 284 S.C. 252, 325 S.E. (2d) 573 (Ct. App. 1985); and Lake City Dev. Corp. v. Gilbert Const. Co., 283 S.C. 10, 320 S.E. (2d) 494 (Ct. App. 1984).

In the matter at present, the *Order Allowing Plaintiff's [Respondent's] Motion to Amend the*

Complaint was granted after Judge Kelly heard oral arguments from all parties and reviewed briefs submitted in support and in opposition. The sole issue before Judge Kelly, and the only amendment made to the complaint, was the naming of the Plaintiff. The *Order Allowing Plaintiff's [Respondent's] Motion to Amend the Complaint* permitted Plaintiff to amend its name to PNC Bank, N.A., successor by merger to PNC Equipment Finance, LLC. The amendment clarified the caption and the naming convention of the Plaintiff. It did not address the substance or merits of the underlying claims, counterclaims, or defenses, and it did not add anything additional to the case.

In its pleadings, at oral argument, and in *Appellants' Memorandum Addressing Appealability*, Appellants incorrectly characterize the *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* as an order allowing substitution of a party. Appellants argue that by allowing the amendment, the court “*effectively struck the portion of the Appellants' answer which asserted a defense on the grounds that PNC Equipment Finance, LLC [Respondent] was not the real party in interest [and]... discontinued Appellants' counterclaims...*” and therefore the order is immediately appealable. Appellants' Memorandum Addressing Appealability, p. 5. Again, this is an incorrect characterization of the court's order because the order amended the name of the Plaintiff, it did not substitute a new party. Appellants further argue that this order is appealable pursuant to *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 567, 725 S.E.2d 926, 928-29 (2012) and *Watts v. Copeland*, 170 S.C. 449, 456-57, 170 S.E. 780, 783 (1993). The case law in *Neeltec* and *Watts* is not applicable to this appeal because the facts of the cited cases are not analogous to the underlying facts in this matter and the order being appealed in the cited cases was an order involving the substitution of parties. Again, the order being appealed in this matter is an order

allowing an amendment to the complaint to amend the name of the Plaintiff [Respondent], not a substitution of parties.

Further, at no point in time did the Court enter an order striking a portion of Appellants' Answer, nor did it enter an order that discontinued the Appellants' Counterclaim. The *Order Allowing Plaintiff's [Respondent's] Motion to Amend the Complaint* does not change the parties, the alleged facts, the claims, or the Defendants. To the contrary, the parties, alleged facts, claims, and defendants remain the same. Based on the above, the *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* is interlocutory, does not affect a substantial right of Appellants and therefore is not immediately appealable.

II. Order denying Defendants' [Appellants'] Motion for Judgment on the Pleadings is not immediately appealable.

Judge Kelly's November 20, 2024, Order denying *Defendants' [Appellants'] Motion for Judgment on the Pleadings* (“*Judgment on the Pleadings Order*”) is interlocutory and not immediately appealable. As previously argued, “[a]bsent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable . . . orders listed in S.C. Code Ann. § 14–3–330.” *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds by *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). An order denying a Rule 12(c) motion does not fall into any of those categories. *Rose v. Thrash*, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987) (holding that denial of a motion for judgment on the pleadings is not directly appealable under S.C. Code Ann. § 14–3–330); see also *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334–35, 426 S.E.2d 777, 780 (1993) (“A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial.”). Indeed,

Appellants concede this point in *Appellants' Memorandum Addressing Appealability*. Appellants' Memorandum Addressing Appealability pp. 4, 6.

Alternatively, Appellants hope to “piggyback” this appeal [Judgment on the Pleadings Order] onto its appeal of Judge Kelly’s *Order Allowing Plaintiff’s [Respondent’s] Motion to Amend Complaint* “to avoid unnecessary litigation.” Appellants’ Memorandum Addressing Appealability pp. 6-7. In support of this attempt, Appellants rely on the court’s opinion in *Watson, supra*, which states that “an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt *and* a ruling on appeal will avoid unnecessary litigation.” *Watson*, 407 S.C. at 459, 756 S.E.2d at 163 (emphasis added). While Appellants succeed in case law, they lose in application.

Foremost, and for the reasons stated above, there is no other appealable issue before this Court because the *Order Allowing Plaintiff’s [Respondent’s] Motion to Amend Complaint* is not immediately appealable. As argued above, and as conceded by Appellants’ counsel in *Appellants’ Memorandum Addressing Appealability*, orders granting leave to amend party pleadings—including complaints—are interlocutory and may not be appealed until after final judgment. *Collins*, 299 S.C. at 466, 385 S.E.2d at 836. Judge Kelly’s *Order Allowing Plaintiff’s [Respondent’s] Motion to Amend Complaint* is exactly that, an order allowing a party to *amend* its complaint. Therefore, because the *Order Allowing Plaintiff’s [Respondent’s] Motion to Amend Complaint* is interlocutory and not immediately appealable, Appellants are unable to attach the *Judgment on the Pleadings Order* to any other properly appealable issue before this Court and thus should not be heard.

Even if this Court were to determine that the *Order Allowing Plaintiff’s [Respondent’s]*

Motion to Amend Complaint is immediately appealable, the Appellants' attempt to piggyback the *Judgment on the Pleadings Order* onto the *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* would still be inappropriate, because the matters at issue with respect to the *Judgment on the Pleadings Order* are wholly intertwined with those to be determined at trial. Thus, unnecessary litigation would not be avoided because the issues still need to be fully litigated. See *Watson*, 407 S.C. at 459, 756 S.E.2d at 164.

Therefore, because both the *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* and the *Judgment on the Pleadings Order* are interlocutory orders, neither can rely on the other to accelerate this Court's review, and both are unappealable at this time.

III. Orders denying Defendants' [Appellants'] Motions to Reconsider are not immediately appealable.

The *Order Denying Defendants' Motion to Reconsider the Court's Order Filed on February 20, 2025*, and the *Order denying Appellants-Defendants' Motion to Reconsider the Order Denying Defendants' Motion for Judgment on the Pleadings* (collectively, the "Reconsideration Orders") are extensions of the *Order Allowing Plaintiff's [Respondent's] Motion to Amend Complaint* and the *Judgment on the Pleadings Order*. Therefore, for the same reasons stated above, the *Reconsideration Orders*, like their predecessors, are not eligible to be heard on appeal at this time.

CONCLUSION

For the foregoing reasons, all four orders that are being appealed are interlocutory. None of the orders appealed in this matter make a final determination of the action, or prevent a judgment from which an appeal might be taken. Nor do any of the orders appealed in this matter discontinue the action, grant or refuse a new trial, or strike out any answer or any part thereof of any pleading in the action. The orders appealed in this matter amend the name of the Plaintiff, do not alter the merits of the case or affect any substantial rights of Appellants and are, thus, not appealable at this time. Based on the same, Respondent respectfully requests that the Court deny consideration of the appeals in their entirety.

April 21, 2025

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served Respondent's Memorandum on Appealability upon Appellants' by sending the same to Appellants' attorney of record at the e-mail address listed for said counsel in the AIS system the 21st day of April 2025, in accordance with *In re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024)* (d)(4), S.C. Sup. Ct. Order filed April 24, 2024. A copy of the email to opposing counsel is attached hereto and incorporated by reference. I further certify that I have caused a copy of the

Respondent's Memorandum on Appealability to be sent to counsel for the Appellants by depositing the same in the United States Mail, with sufficient postage attached, addressed as follows: David R. Price, Jr. P.A., 1001 East Washington Street, Greenville, South Carolina 29601.

Respectfully submitted,

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Date: April 21, 2025

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Rachel Rogers

From: Rachel Rogers
Sent: Monday, April 21, 2025 10:27 AM
To: Willie H. McAbee, III
Cc: Cara Geloni; Thomas A. Gray; Byron L. Saintsing; Melissa Tulis Smith
Subject: Respondent's Memorandum on Appealability ; PNC Bank, N.A. v. S & J Asphalt Paving, LLC, Appellate Case No.: 2025-000627
Attachments: Respondents Memorandum on Appealability.pdf

Will:

Attached please find Respondent's Memorandum on Appealability, including Proof of Service in accordance with 262(b), SCACR. We will be placing a copy in the mail to you as well.

Best,

Rachel Rogers

Attorney

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