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Apr 10 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Honorable Benjamin H. Culbertson,
The Honorable H. Steven DeBerry, IV

Case No. 2023-CP-26-02475

Appellate Case No. 2024-000440

Nicholas F. Wilson.....Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp. d/b/a Century 21 The Harrelson Group; Patton Development SC, LLC; Select Portfolio Servicing, Inc.; Sonia M. Raymond; Raymond Law Firm, P.A.;

..... Respondents.

**APPELLANT NICHOLAS F. WILSON’S MOTION FOR
CERTIFICATION UNDER RULE 204(B), SCACR**

/s/Wesley D. Few
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Attorneys for Appellant Nicholas F. Wilson

MOTION TO CERTIFY UNDER RULE 204

Pursuant to Rules 204(b) and 240 of the South Carolina Appellate Court Rules, Appellant Nicholas F. Wilson, through his undersigned counsel, respectfully moves this Court to certify this case for review before it is determined by the Court of Appeals. This case concerns issues of significant public interest, specifically judicial economy, and legal principles of major importance, specifically avoiding inconsistent judgments, such that certification is warranted under Rule 204(b). For the reasons set forth herein, the Court should grant certification.

I. Background Facts/Procedural History

This action stems from Appellant's purchase of property in Horry County on March 6, 2020. Appellant contracted in an addendum as follows: "Seller shall have the property surveyed, including the additional acreage listed as being included in this sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale." (R. p. 20, at ¶ 22; R. p. 50) (Underline emphasis added). Appellant was shown the "Original Survey" (dated Jan. 30, 2020; R. p. 35), which showed Appellant receiving Tract 1, described as follows:

~Plat~ of a Subdivision Survey creating Tract 1 having 8.24 Acres
and an 0.23 Acre Utility Easement Serving Address 4704 Hwy 90
Both being located in Conway Township, Horry County, S.C.
surveyed for Janet P. Gochenour.

(R. p. 12).

Instead of 8.24 acres and the "deed of the [0.49 acre, Tract D¹] driveway," (R. p. 35), Appellant receiving a lesser Tract 1, described in the "new survey," as follows:

~Plat~ of a Subdivision Survey creating Tract 1 having 7.75 Acres
and an 0.23 Acre Utility Easement – As Noted and Serving Address 4704 Hwy 90

¹ At R. p. 35 to the left of the driveway and just below S.C. Hwy 90, is the description of Tract D, as follows: "Tract "D" Existing 30' Access Road Existing Portion of Parent Tract (Ref. No. 2) Janet P. Gochenour, PIN: 362-00-00-0001, TMS 140-00-04-022, 21,337 Sq. Ft., 0.49 Acres."

and a **30' Right of Way Easement**, All being located in Conway Township, Horry County, S.C. surveyed for Janet P. Gochenour.

(R. p. 257)² (underline and bold emphasis added).

On Jan. 23, 2024, the Lender in this matter, Select Portfolio Servicing, Inc., filed a foreclosure action against Appellant's property (Case No. 2024-CP-26-00567). That action is currently pending and the Master-in-Equity has before him: (i) Wilson's Motion to Dismiss under Rule 13(a), filed Jan. 16, 2025, (ii) a foreclosure summary judgment motion by the Lender, and (iii) Wilson's Joint Motion to Stay (with 30 Exhibits), filed April 8, 2025.

II. Applicable Legal Rule

South Carolina Appellate Court Rule 204(b) provides:

In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

Rule 204(b), SCACR (underline emphasis added).

III. ARGUMENT

This case is currently pending before the South Carolina Court of Appeals. The issue is whether or not Appellant had a right to amend his pleadings before having his case permanently dismissed, *i.e.*, with prejudice, under *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). In *Skydive*, this Court stated:

A circuit court does not have "discretion" to dismiss a complaint with prejudice for

² This document is a publicly recorded instrument, at Book 291, Page 324, in Horry County, and is identified and described in Appellant's Final Brief at p. 3, and Final Reply Brief at p. 16, however, Appellant neglected to include it yet in the Designation of Matter or Record on Appeal. A motion to add it to the record is forthcoming.

failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Id. (underline emphasis added).

As set forth in Appellant's Briefs, he was not given an opportunity to amend, and the orders dismissing his claims do not address how or why "the court is certain there is no set of facts upon which relief can be granted." *Id.*

"Pre-Mature" Dispositive Rulings, and Inconsistent Judgments

The Courts of Appeal in this state are overcrowded with pre-mature decisions of the trial courts that drain the limited resources of our state's appellate courts.

At issue in this case is the fact that the real estate agent and closing attorney with duties to Appellant worked with the seller of the property and her attorney to deprive Appellant of the 0.49 acre driveway he specifically bargained for. (R. p. 35, 50). Still further, the title policy Appellant paid for does not cover this situation as it only covers / addresses the 7.75 acres of property conveyed to him in his deed, which was prepared by the seller's attorney, and recorded by the seller's attorney's office staff, such that Wilson did not have it mailed to him until over two months after the closing. (R. p. 106, 107-108).

The Lender initially filed cross-claims consistent with Appellant's Claim 10 in this action to reform the mortgage (R. p. 30, at ¶ 121), but has since indicated its desire to abandon those claims and, instead, foreclose on the mortgage covering only the 7.75 acres. If the lower court does not grant the stay, as requested by Appellant in his Joint Motion to Stay Foreclosure Action, filed April 8, 2025 in the foreclosure action (2024-CP-26-00567), and in this action in the lower court, the foreclosure action might proceed on only the 7.75 acres

before Appellant’s reformation claims can be decided in this action. *See e.g., Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 51, 747 S.E.2d 178, 186, (2013) (stating, “Before equity will reform a contract, the existence of a mutual mistake must be shown by clear and convincing evidence.”). “[A]mbiguity or uncertainty has nothing to do with the reformation of a written instrument, but rather reformation is adjudged because the instrument, by reason of mistake or fraud, does not embody the true agreement of the parties.” *Id.* at 185.

Undisputed documentary evidence from the files of Respondents in this matter establishes Appellant’s ability to show beyond a reasonable doubt that not one, but two fiduciaries, failed to ensure he received the specific benefit of his bargain, *i.e.*, “the true agreement of the parties.” *Id.* A deed of 7.75 acres is not “no less than 8 acres,” (R. p. 50), and Appellant Wilson also did not get the “deed of the driveway as part of the sale.” (R. p. 50).

IV. Conclusion

For these reasons, Appellant requests the Court grant this motion for certification.

Respectfully submitted,

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Attorneys for Appellant Nicholas F. Wilson

April 10, 2025
Greenville, South Carolina

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Attorneys for Appellant Nicholas F. Wilson

PROOF OF SERVICE

The undersigned hereby certifies that on April 10, 2025, **Appellant Nicholas F. Wilson's Motion for Certification under Rule 204(B), SCACR** was served on all counsel of record, Court of Appeals Clerk of Court and Supreme Court of South Carolina Clerk via Email as follows:

The Honorable Patricia A. Howard
Supreme Court of South Carolina
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals, Clerk of Court
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Cassy Young

April 10, 2025
Columbia, South Carolina

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April 10, 2025

Via Email-Filing:

The Honorable Patricia A. Howard
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RE: Nicholas F. Wilson v. Janet P. Gochenour et al
Appellate Case No.: 2024-000440
Circuit Court Case No. 2023-CP-26-02475
Our File No.: 00334-001

Dear Ms. Howard:

Attached, please find Appellant's Motion under Rule 204 to Certify this case for expedited appellate review. The filing fee check will be hand delivered.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/cgy

CC: All Counsel of Record (*Via Email*)
S.C. Court of Appeals (*Via Email*)
Pro Se Parties
Client (*Via Email*)