

LAW OFFICES
COPELAND, STAIR, VALZ & LOVELL, LLP

DOUGLAS W. MACKELCAN
Partner
TAYLOR L. CARY

DIRECT DIAL NUMBERS
(843) 266-8228
(843) 266-8214

E-MAIL ADDRESSES
dmackelcan@csvl.law
tcary@csvl.law

40 Calhoun Street, Suite 400
CHARLESTON, SC 29401

TELEPHONE (843) 727-0307
FAX (843) 727-2995

www.csvl.law

ATLANTA OFFICE

191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303-1740
(404) 522-8220

REPLY TO SC OFFICE

May 19, 2025

VIA EMAIL and U.S. MAIL
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

RECEIVED
May 19 2025
SC Court of Appeals

Re: Nathaniel Shell v. Law Office of Neil T. Phillips, LLC; and Neil T. Phillips
York County Case No.: 2022-CP-46-03676
Appellate Case No.: 23-000859
CSVL File No: 5457-64793

Dear Ms. Kitchings:

We are counsel for Appellants Law Office of Neil T. Phillips, LLC and Neil T. Phillips (the “Appellants-Defendants”) and we write in response to your letter dated May 8, 2025 regarding the Court’s inquiry on the challenged Orders appealability. The challenged Orders are the lower court’s Order granting the Appellants-Defendants’ Motion to Dismiss and dismissing the Respondent-Plaintiff’s Complaint without prejudice, dated and filed March 28, 2023, and the lower court’s Form 4 Order denying Appellants-Defendants’ Motion to Reconsider finding the dismissal without prejudice proper, dated and filed April 25, 2023 (collectively the “Orders”). The Appellants-Respondents challenge that the Orders granting dismissal of the Respondent-Plaintiff’s Complaint should have been with prejudice, not without prejudice, under S.C. Code § 15-36-100.

The Orders are not interlocutory and immediately appealable because the lower court does not need to take any further action prior to a determination of the rights of the parties. Dismissal of an action pursuant to Rule 12(b)(6) is immediately appealable. *See, e.g., Doe v. Marion*, 361 S.C. 463, 605 S.E.2d 556 (Ct. App. 2004), *aff’d*, 373 S.C. 390, 645 S.E.2d 245 (2007); *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94 (1986); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Here, at the time the Appellants-Defendants filed their Notice of Cross-Appeal on June 2, 2023, and the filing of their Amended Notice of Cross-Appeal on June 12, 2023, the Appellants-Defendants’ rights were affected by the dismissal of Plaintiffs’ Complaint being granted *without* prejudice, rather than *with* prejudice, under

May 19, 2025

Page 2

S.C. Code § 15-36-100. As a result, Appellants-Defendants respectfully submit that the Orders are appealable, and this appeal should continue to oral arguments on the issue of whether the lower court's dismissal should have been with prejudice under S.C. Code § 15-36-100.

Sincerely,

s/Douglas W. MacKelcan

DOUGLAS W. MACKELCAN
TAYLOR L. CARY

DWM:tjr

cc: D. Alan Lazenby, Esq. (via email: alan@lazenbylawfirm.com)