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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Opinion No. 6134 (S.C. Ct. App. filed Feb. 4, 2026)
Appellate Case No.: 2024-000742

Jerry Cozby — Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Ouellette, and Quality Haulers, Inc. — Defendants,
of which,
Kent Huntley Oliver and Thompson Construction Group, Inc. are — Respondents,

AND

Dean Alan Arender and Tamala Arender, — Petitioners,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Kent Ouellette, and DMX Transportation Services, Inc. — Defendants,
of which,
Kent Huntley Oliver and Thompson Construction Group, Inc. are — Respondents,

AND

Kent Huntley Oliver, — Respondent,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc., Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc., Defendants, — Defendants,
of which,
Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc. are — Petitioners,

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Petition for a Writ of Certiorari

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Statement of Issues on Appeal

I. Did the court of appeals err as a matter of law in finding an order erroneously compelling the joinder of multiple actions pursuant to Rule 20, SCRCP, is not immediately appealable?

Statement of the Case

Following a November 12, 2020, multi-vehicle collision on I-26 in Newberry County, three separate lawsuits and a property damage arbitration were filed. Below is a summary of the multiple actions and an initial introduction to the parties involved.

	Plaintiff(s)	**Defendants**	**Venue**
Arender Action Filed May 17, 2023	Dean Arender Tamala Arender	Kent Oliver Thompson Construction Group, Inc. Curtis Ouellette Quality Haulers, Inc. DMX Transportation Services, Inc.	Newberry
Cozby Action Filed June 22, 2022	Jerry Cozby	Kent Oliver Thompson Construction Group, Inc. Curtis Ouellette Quality Haulers, Inc.	Sumter
Oliver Action Filed June 2, 2023	Kent Oliver	Curtis Ouellette Quality Haulers, Inc. Dean Arender U.S. Xpress Leasing, Inc. U.S. Xpress, Inc.	Newberry
Property Arbitration Filed March 7, 2023	U.S. Xpress, Inc.[1]	Kent Oliver Thompson Construction Group, Inc.	Newberry

(R. pp. 18-25; 81-107; 140-169).

Dean and Tamala Arender (hereinafter, collectively "the Arenders") filed suit in Newberry County against the Thompson Defendants, Curtis Ouellette, Quality Haulers, Inc., and DMX Transportation Services ("the Arender Action"). Kent Oliver, one of the Defendants who moved to have these actions joined and consolidated in Sumter, likewise filed his suit in Newberry County against Ouellette, Quality Haulers, Inc., Arender, U.S. XPRESS Leasing, Inc. and U.S. XPRESS,

[1] While not relevant to this appeal, this property damage arbitration is technically brought by Great West Casualty Company as subrogee of U.S. Xpress, Inc.

Inc. ("the Oliver Action"). In the third case, Jerry Cozby filed suit against the Thompson Defendants, Ouellette, and Quality Haulers, Inc. in Sumter County ("the Cozby Action").

The facts of the collision giving rise to these actions are of little consequence to this appeal in its current posture. However, the residences of the parties and the employment relationships between the parties are relevant. The chart below details the parties to each action and their respective residences:

Plaintiff(s)	Residence	Defendants	Residence
Arender Action:			
Filed- Newberry			
Dean Arender	Spartanburg	Kent Oliver	Spartanburg
Tamala Arender	Spartanburg	Thompson Construction Group, Inc.	Sumter
		Curtis Ouellette	Greenville
		Quality Haulers, Inc.	Greenville
		DMX Transportation Services, Inc.	Greenville
Cozby Action:			
Filed- Sumter			
Jerry Cozby	Spartanburg	Kent Oliver	Spartanburg
		Thompson Construction Group, Inc.	Sumter
		Curtis Ouellette	Greenville
		Quality Haulers, Inc.	Greenville
Oliver Action:			
Filed- Newberry			
Kent Oliver	Spartanburg	Curtis Ouellette	Greenville
		Quality Haulers, Inc.	Greenville
		Dean Arender	Spartanburg
		U.S. Xpress Leasing, Inc.	Foreign
		U.S. Xpress, Inc.	Foreign
Property Arbitration:			
Filed- Newberry			
U.S. Xpress, Inc.[2]	Foreign	Kent Oliver	Spartanburg
		Thompson Construction Group, Inc.	Sumter

(R. pp. 18-25; 81-107; 140-169).

[2] While not relevant to this appeal, this property damage arbitration is technically brought by Great West Casualty Company as subrogee of U.S. Xpress, Inc.

At the time of the subject collision, several parties were alleged to be working within the course and scope of their employment,[3] which prompted the inclusion of their employers as party defendants. (R. pp. 26-33; 34-43; 140-69; 170-178). Specifically, Defendant Thompson Construction Group, Inc. employed Kent Oliver; Quality Haulers, Inc. and DMX Transportation Services, Inc. employed Curtis Ouellette; and U.S. Xpress, Inc. employed Dean Arender. As employers are generally immune from tort liability to their employees, the employee plaintiffs did not and could not name their employers as party defendants in the suits they brought. Therefore, the Arenders and Jerry Cozby could have brought their actions in Newberry, Spartanburg, Sumter, or Greenville Counties. Kent Oliver could have brought his action in Newberry, Spartanburg, or Greenville Counties. However, Kent Oliver could not have brought his action in Sumter County.

After the initiation of the above actions, Kent Oliver and his employer Thompson Construction Group, Inc. (hereinafter, collectively, "the Thompson Defendants") moved to join and consolidate the Arender Action, the Cozby Action, and the Oliver Action around the Cozby Action, in Sumter County.[4] This interlocutory appeal arises from the circuit court granting that motion.

The Thompson Defendants filed the motion to join and consolidate on August 18, 2023. (R. pp. 187-190). Dean and Tamala Arender, in their capacities as Plaintiffs in the Arender Action, filed a written memorandum opposing the joinder and consolidation on October 6, 2023. (R. pp. 199-212). U.S. Xpress, Inc., US Xpress Leasing, Inc., and Dean Arender, in their capacities as Defendants in the Oliver Action, likewise filed a memorandum opposing the joinder and

[3] Or, some agency relationship which at common law or pursuant to federal regulations makes the corporate entity vicariously liable for the torts of the employee or agent.

[4] The property damage arbitration was not joined, as it was still in arbitration. The Thompson Defendants noted in their motion that they anticipated an appeal from that arbitration and would thereafter move to join that action upon its appeal to the circuit court. (R. pp. 249-250).

consolidation of the actions in Sumter. (R. pp. 213-220). The circuit court in Sumter heard arguments from the parties to the various actions on October 9, 2023. (R. p. 2). At the October 9, 2023, hearing, Cozby joined in U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., and the Arenders' arguments opposing the Thompson Defendants' motion for joinder and consolidation. (R. pp. 280-81). On February 13, 2024, the circuit court issued an order joining the actions around the Cozby Action in Sumter County pursuant to Rule 20, SCRCP.[5] (R. p. 13).

On February 23, 2024, the Arenders filed a motion to reconsider pursuant to Rule 59(e), SCRCP, with the circuit court in Sumter. (R. p. 221-238). The court denied that motion on April 4, 2024. (R. pp. 15-17). On May 3, 2024, the Arenders filed a notice of appeal, appealing the order joining the actions in Sumter. U.S. Xpress, Inc., US Xpress Leasing, Inc., and Dean Arender, in their capacities as Defendants in the Oliver Action, likewise noticed their appeal on the same day. The court of appeals thereafter consolidated the multiple appeals.

The Thompson Defendants filed a motion to dismiss the appeal as interlocutory on May 28, 2024. The Arenders, U.S. Xpress, Inc., and U.S. Xpress Leasing, Inc. opposed the dismissal and filed returns in opposition to that motion. The court of appeals issued an August 26, 2024, order denying the motion to dismiss. After briefing, the court of appeals decided the present action without oral arguments, dismissing the appeal by published opinion on February 4, 2026. On February 19, 2026, the Arenders, U.S. Xpress, Inc., and U.S. Xpress Leasing, Inc. timely filed petitions for rehearing. The court of appeals denied the petitions for rehearing by written order filed on March 31, 2026.

[5] The order was filed and served upon the parties to the original Cozby Action in Sumter on February 13, 2024. It was filed and served in the Arender Action on February 21, 2024. (R. p. 1).

Argument

II. The Court of Appeals Erred as a Matter of Law in Holding that an Order that Erroneously Compels the Joinder of Multiple Actions Pursuant to Rule 20, SCRCP, is Not Immediately Appealable.

The court of appeals erred as a matter of law in holding that an order that erroneously compels the joinder of multiple actions pursuant to Rule 20, SCRCP is not immediately appealable. The Arenders respectfully request the Court grant their Petition to remedy that error, as this appeal presents novel questions of law, it presents important questions for law, and immediate review preserves judicial resources. (*Arender v. Oliver et. al.*, Opinion No. 6134 (S.C. Ct. App. Feb. 4, 2026) ("We have found no published opinion in South Carolina reviewing the appealability of an order granting permissive joinder.").

a. Standard for Appealability

Pursuant to S.C. Code Ann. section 14-3-330, the appellate courts have jurisdiction in actions at law and shall review those action upon appeal following:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . ;
> (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.

S.C. Code Ann. § 14-3-330. Stated summarily, section 14-3-330 provides for the appeal of final orders, interlocutory orders that involve the merits, interlocutory orders affecting a substantial right of the appellant, and other specific scenarios detailed in subsections (3) and (4), which are inapplicable to the present action. The Arenders do not allege the order is a final order but argue

it is an immediately appealable intermediate order, as it affects the merits and affects their substantial rights. Section 14-3-330(1) and (2) are not mutually exclusive; the order is immediately appealable if it falls within one or both. *See Link v. School Dist. Of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

An order "involving the merits" is one that "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense" and is immediately appealable. *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). Interlocutory orders are likewise immediately appealable if they affect the mode of trial or if they affect a substantial right that right cannot be vindicated on appeal after the end of the case. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 475 (Ct. App. 2011). An appeal of an order that affects the mode of trial is, or may be, waived if not immediately appealed. *Shah v. Richland Mem'l Hosp.*, 350 S.C. 139, 564 S.E.2d 681 (Ct. App. 2002).

In evaluating the immediate appealability of this order, an assessment of the merits and the effect of the order becomes necessary. This is not a case where an appeal is filed following the grant or denial of a routine motion. This is not a case where an appeal is filed following the grant or denial of an appropriate but rare or novel motion. This case involves the grant of a motion based upon wholly improper procedure. The Thompson Defendants and the circuit court used Rule 20, SCRCP, as a vehicle to accomplish what the rule does not authorize. As a direct consequence, there is no case law addressing the immediate appealability of an order of similar nature. Indeed, counsel has been unable to even find an order, appealed or unappealed, or a motion, granted or denied, of like kind and premised upon Rule 20, SCRCP. Therefore, an assessment of the merits or effects of the order is required. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015) (holding appellate review is not "constrained

by how the order is styled," noting "appellate court[s] should look to the effect of an interlocutory order to determine its appealability," and concluding the appellate courts are "free to evaluate [a] trial court's order as what it is—not merely what it appears to be").

b. Merits of Appeal and Effect of the Order

The Thompson Defendants moved for consolidation and joinder of the Cozby action, the Arender action, and the Oliver action around the Cozby action in Sumter County. At oral arguments, counsel for the Thompson Defendants acknowledged that actions cannot be both consolidated and joined, and thereafter asked only for joinder under Rule 20(a), SCRCP, but continued to rely upon the factors controlling consolidation. (R. p. 257 (counsel for the Thompson Defendants, "All we're doing is trying to consolidate all the parties around one another."); R. p. 281 (counsel for the Thompson Defendants, "I think I'm asking the court we filed for consolidation and joinder. I'm asking the Court for joinder. Because that takes care of any venue issues here."); R. p. 284 (counsel for the Thompson Defendants, "Now the question is; is there – is there an appropriate venue here in Sumter? And there is, if the court consolidates it here, I still don't understand why they don't want the case here in Sumter.")). The court ruled on the joinder motion only, acknowledging the Thompson Defendants abandoned their arguments for consolidation. The order, nonetheless, assessed the motion under standards applicable to motions to consolidate and conflates, at the direction of the Thompson Defendants, the requirements for joinder and the requirements for consolidation and under Rule 42(a), SCRCP. (R. p. 10 ("Joinder is desirable for the parties and the court."); R. p. 11 ("The Court agrees with Thompson that joinder for both discovery and trial is justified under the circumstances presented in these cases. Plainly it will be less burdensome for all parties and the Court to join these proceedings. Joinder will reduce the

cost to the parties, conserve judicial resources…."); R. p. 12 ("the court finds the benefits of joinder outweigh any concerns associated with a single trial.")).

Consolidation is a discretionary matter for the court to decide only after the moving party has met their burden. *See Keels v. Pierce*, 315 S.C. 339, 343, 433 S.E.2d 902, 904 (1993). The same is not true for compelling joinder. The order concludes that joinder "would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources." (R. p. 10). In a motion for consolidation of cases, "the moving party has the burden of persuading the court that consolidation is desirable." *See Keels*, 315 S.C. at 342, 433 S.E.2d at 904 (citing *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D. Wis. 1972)). However, "general considerations of efficiency or convenience of parties or witnesses do not require joinder under rule 19." James F. Flanagan, *South Carolina Civil Procedure* 160 (3d ed. 2010).

The crux of the Arenders argument is that Rule 20, SCRCP, is a wholly inappropriate vehicle to effectuate the Thompson Defendants' desires. In essence, the Thompson Defendants moved for, and the court granted, an order allowing the Thompson Defendants to compel joinder because "the requirements of Rule 20(a) are satisfied, and the [c]ourt may exercise its discretion to join these cases." The Thompson Defendants and the circuit court argue joinder under Rule 20 is permissive and therefore may be compelled by the court upon the motion of a defendant. Such argument is incorrect and has no basis in the Rules of Civil Procedure or the law. The inappropriateness of the motion and order is the reason why no appellate cases address the immediate appealability of an order granting or denying a defendant's motion to join multiple actions in a different venue.

Rule 20, SCRCP, permits plaintiffs to join in one action when they assert rights arising from the same transaction or occurrence and a common question or law or fact will arise in the action. Rule 20(a), SCRCP. Likewise, a plaintiff may join more than one defendant in the same action, when common questions arise, or the matter arises from the same transaction or occurrence. *Id.* Rule 20, SCRCP, provides no mechanism for the court to compel the joinder of parties or the joinder of whole actions, and it provides no mechanism for a defendant to move for joinder.

Joinder may be "compelled only if the strict requirements of Rule 19 are met." Flanagan, *supra*, at 168. When those strict requirements are not met, the plaintiff may choose which plaintiffs may join her suit and may choose her defendant, so long as the transaction or occurrence and common question requirements are met. "Ordinarily, the defendant cannot force another joint tortfeasor into the litigation." *Id.* "In rare circumstances, others must be joined because Rule 19 requires the presence of a particular person for complete resolution of the matter." *Id.* If a defendant wishes to join other parties despite the objection of a plaintiff, "Rule 22 Interpleader, and Rule 24 Intervention, may be used to join other parties over the plaintiff's objection." *Id.* at 169. Rule 20 does not permit a defendant or the court to compel the joinder of plaintiffs, defendants, or actions.

The circuit court acknowledged the Arender's argument that Rule 20 cannot be used to compel joinder and that joinder is only compelled under Rule 19, but dismissed it, stating that Rule 20's permissiveness gives the court discretion to allow or refuse joinder. As a general statement of law, that is correct, but only as to joinder proposed by a plaintiff. Rule 20 does not give the court discretion to join plaintiffs, defendants, or actions upon a motion by a defendant or *sua sponte*. The court, in its discretion, may deny a plaintiff's motion to join additional parties, but it may not use its discretion pursuant to Rule 20, SCRCP to allow a defendant to join plaintiffs,

defendants, or actions. The circuit court, therefore, adopted a wholly incorrect procedure for joining the three actions. That error necessitates immediate review.

Further complicating matters, the order fails to comply with the requirements of Rule 20(a), SCRCP. When the court orders joinder, the parties and pleadings are merged, and "all persons are joined in *one action*." Rule 20(a), SCRCP (emphasis added). South Carolina Rule of Civil Procedure 20(a) provides:

> All persons may **join in one action as plaintiffs** if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be **joined in one action as defendants** if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP (emphasis added). However, this is not a situation where persons are simply joining as plaintiffs or defendants, as is evidenced by the case captions on subsequent orders. (R. p. 1, 15). The caption shows three separate actions as if they were consolidated; the only difference now is that there is only one case number. Ascertaining how the various claims work together in one action proves difficult. Without a clear understanding of how persons were joined as plaintiffs or defendants, the parties lack an understanding of how their claims are proceeding. The circuit court's order, including the caption, fails to address how the parties are aligned. Therefore, the order either failed to join all plaintiffs and all defendants in one action, or it has so joined them—but failed to state as much—and forces plaintiffs to sue defendants they did not wish to sue. In the latter situation, Cozby, Arender, and Oliver each have been forced into litigation that violates the exclusivity provision of the workers' compensation act by forcing them to assert claims against

their employers, claims that are not viable. *Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403, 407, 608 S.E.2d 425, 427 (2005) (holding a "third-party defendant and the employer are not joint tortfeasors" and holding "there can be no right of contribution" between the employer and third-party defendant). The effect of the order reveals the necessity of an intermediate appeal.

While there appears to be no reported South Carolina opinions addressing a defendant's motion for joinder pursuant to Rule 20, SCRCP, defendants have attempted to compel joinder in some federal cases pursuant to the analogous Federal Rule of Civil Procedure 20; the federal courts summarily dismiss those motions. *E.g., Hefley v. Textron, Inc.*, 713 F.2d 1487, 1499 (10th Cir. 1983) ("[A] defendant can not [sic] use rule 20 to join a person as an additional defendant . . . joinder of defendants under rule 20 is a right belonging to plaintiffs, and only when a right to relief is asserted against each defendant."); *Moore v. Cooper*, 127 F.R.D. 422 (D.D.C. 1989) ("Defendant cannot rely upon Rule 20(a) to obtain a court order to compel the presence of [a nonparty] as a plaintiff in this matter. Rule 20(a) is a rule by which plaintiffs decide who to join as parties and is not means for defendants to structure a lawsuit."); *General Investment Co. v. Ackerman*, 37 F.R.D 38 (S.D.N.Y. 1964) (denying defendants' motion to force plaintiff to join the presence of others as a plaintiff where the missing entities would have been proper parties within Rule 20, FRCP, but were not required parties under Rule 19, FRCP); *United States v. Bigley*, 2014 WL 6801764 at *8 (D. Ariz Dec. 3, 2014) (because the entities the defendant sought to join were "not necessary parties" the defendants "may not rely on Rule 20 as a means to add defendants to this matter."); *Moss v. Spartanburg Cnty. Sch. Dist. No. 7*, 2010 WL 2136642 at *2 (D.S.C. May 25, 2010); 4 James Wm. Moore et al., Moore's Federal Practice, § 20.02[1][b], [2][a][i] (3d ed. 2012) (Rule 20 "may be used by a defendant only if the defendant has asserted a counterclaim or crossclaim in the action . . . . The defendant has no right to insist that the plaintiff join all persons

who could be joined under the permissive party joinder rule. . . . The permissive joinder rule gives the plaintiff a powerful tool to structure litigation. . . . It permits the plaintiff to join multiple parties on either . . . side.").

The circuit court erred in joining the actions pursuant to Rule 20, SCRCP. Rule 20, SCRCP, may not be utilized by defendants to join multiple actions. The order of the court must, therefore, be reversed.

c. The Order Compelling Joinder Under Rule 20, SCRCP, is Immediately Appealable.

The order compelling joinder pursuant to Rule 20, SCRCP, is immediately appealable. Because Rule 20, SCRCP, cannot be used to effectuate the goals of the Thompson Defendants and the order is premised upon improper procedure, there is no appellate opinion directly addressing the immediate appealability of a grant of a defendant's motion to join additional parties pursuant to Rule 20, SCRCP. However, there are opinions addressing the immediate appealability of orders that effect the same or similar results, but they are premised upon different or past rules, rules that would, procedurally, make the motion proper, even if substantively flawed.

The Court addressed a similar issue in 1946 in *Simon v. Strock*. There the trial court allowed the sole defendant to effectuate the joinder of the entity and individual the named defendant believed were responsible for the harms alleged in the complaint. *Simon v. Strock*, 209 S.C. 134, 138, 39 S.E.2d 209, 210 (1946). The defendant did not allege that he, the joined individual, and the joined entity were joint tortfeasors. Instead, he alleged that he committed no tort and sought to join the entity and individual he thought were responsible for the harms. *Id.* at 139, 39 S.E.2d at 211. The plaintiff filed an immediate, interlocutory appeal. *Id.* at 138, 39 S.E.2d at 210. This Court heard the appeal and reversed, finding "[i]t is well established in this jurisdiction that one who is injured by the wrongful act of two or more joint tortfeasors has an

election or option to sue each of such tortfeasors separately or to join them as party defendants in a single action." *Id.* at 138-39, 39 S.E.2d at 211. The court specified "[t]he election or option [of who to join] is given to the plaintiff and not the defendant." *Id.* at 139, 39 S.E.2d at 211.

The *Simon* court went on to explain that whether considering joint tortfeasors or distinct defendants, "the plaintiff has the choice of designating the party who she claims committed the tort alleged in the complaint." *Id.* A plaintiff "should not be required to sue someone against whom she makes no claim." *Id.* If a defendant were permitted to designate additional parties, it "would allow a defendant to select in part those to be sued and would force the plaintiff into uncontemplated and perhaps undesired litigation with every added defendant." *Id.* Because the trial court's decision to allow a defendant join other parties had "the effect of overriding repeatedly declared legal right and revoking well recognized procedure," the court reversed the order on an intermediate appeal "in order to expedite the final determination of this litigation."[6] *Id.* Likewise, in the present action the order impacts the Arenders' well-recognized and substantial right to elect their co-plaintiff and elect their defendants and directly impacts the merits of the action; the order must be immediately reviewed.

The *Simon* case predates the current rules of civil procedure, but its conclusion "[t]o allow a defendant, against the consent of the plaintiff, to bring in other joint tort-feasors would be an interference with the well-recognized right of the plaintiff" remains valid. *Id.; Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017) (citing *Simon* in 2017 in support of the proposition that a

[6] Coincidentally, the *Simon* court also noted that in addition to the joinder violating the "repeatedly declared legal rights" of the plaintiff "and revoking well established procedure," that one of the joined parties was improperly joined because it had "paid the award made by the [workers' compensation commission] to the dependents of the deceased [and had] been expressly relieved of any common law liability by the provisions of the [Workers'] Compensation Act." *Simon*, 209 S.C. at 140, 39 S.E.2d at 211-12; *see also, supra*, pp. 8-9.

plaintiff has the election or option to join parties in a single action, not the defendant, and concluding "the right of the plaintiff to choose her defendant has been recognized in South Carolina jurisprudence for almost two hundred years.").

Smith v. Tiffany does not address joinder pursuant to Rule 20, SCRCP, but it is similarly instructive as to the issues currently before the Court, in addition to it validating the holdings in *Simon* in the modern day. *Smith*, 419 S.C. at 584, 799 S.E.2d 479. In *Smith*, a defendant sought to join as a defendant a joint tortfeasor who settled prior to the initiation of the suit. *Smith*, 419 S.C. at 554, 799 S.E.2d at 482. The defendant did not make that motion under Rule 20, SCRCP, like the Thompson Defendants did in this case. *Id.* Instead, the defendant brought a third-party claim against the settling tortfeasor under Rule 14, SCRCP, and argued the settling tortfeasor was a necessary party, such that the defendant could compel joinder pursuant to Rule 19, SCRCP. *Id.* The Court ruled the settling tortfeasor could not be joined under either theory—a holding relevant to the substance of the present appeal—but most importantly for the present motion, the court held the appeal could proceed immediately in its interlocutory status. *Id.* at 553-55, 799 S.E.2d at 481-83. The court noted the appellants also appealed a discovery order, but declined to address that issue, as it was not sufficiently connected to the companion issues, those raised by Rules 14 and 19, SCRCP, but specified the companion issues were "proper for review." *Id.* at 552, n.1, 799 S.E.2d 479 at 481, n.1.

Correspondingly, in *Neeltec Enters. Inc. v. Long*, the supreme court held an appeal of an order in which a trial court grants a defendant's motion to have himself substituted by two different defendants is immediately appealable. *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). In that case, the court held the right of the plaintiff to choose her defendant is a substantial right within the meaning of section 14-3-330. *Id.*

In *Morrow v. Fundamental Long-Term Care Holdings, LLC*, the supreme court similarly held a circuit court order was immediately appealable when the order forced the plaintiff to prevail against one defendant as a predicate to pursing the claim against a second defendant. 412 S.C. 534, 773 S.E.2d 144 (2015). The court concluded the order was immediately appealable, because "[t]he effect of the order is to prevent the [plaintiffs] from being architects of their own complaint and deprives them of bringing their case against a defendant of their own choosing." *Id.* at 539, 773 S.E.2d at 146. Furthermore, the court affirmed a plaintiff's right to choose the parties in the action is a substantial right as contemplated in section 14-3-330. *Id.* The court rejected arguments that the appealability of the order should be controlled by what the order "appears to be" and should be evaluated in light of "what it is" and in light of its effect. *Id.* at 540, 733 S.E.2d at 146.

In addition to the substantial rights involved in *Morrow*, the court also allowed the appeal to proceed interlocutorily because the circuit court misapprehended the nature of the plaintiffs' claims. *Id*. at 538, 773 S.E.2d at 146. The circuit court in the action at bar misapprehended the applicability of Rule 20, SCRCP, and its separate and distinctness from consolidation, which as in *Morrow*, provides an additional reason for immediate review. Even if the appellate courts had identified orders granting joinder under Rule 20, SCRCP, as orders not immediately appealable, the circuit court's misapprehension of the improper procedure applied in this case necessitates immediate appeal.

While no mandatory authority addresses the appealability of an order granting a defendants' motion to join multiple actions and multiple parties in a new venue—because the order is premised upon improper procedure—the foregoing cases are instructive when the effect of the order is considered, as contemplated in *Morrow*. *Id.* Although the order frames itself as a simple discretionary grant of a Rule 20, SCRCP, motion to join additional parties and consolidate multiple

actions in a new venue, its effect is much greater. Consideration of the effect necessarily must begin with an acknowledgment that Rule 20, SCRCP, does not permit a defendant to join additional defendants and plaintiffs when it is not itself a plaintiff by virtue of a crossclaim or counterclaim. The Thompson Defendants asserted no such claims in the Cozby action and, therefore, cannot join parties unilaterally under Rule 20, SCRCP. With that predicate framework established, this appeal is not one involving a simple grant or denial of a plaintiff's motion to join additional parties, but rather is akin to *Simon*, *Smith*, *Neeltec*, and *Morrow*.

Those cases establish that the Arenders have a "repeatedly declared legal right" to join with Plaintiffs of their choosing and pursue their causes of action against the Defendants of their choosing. *Simon*, 209 S.C. at 139, 39 S.E.2d 211. That legal right "has been recognized in South Carolina jurisprudence for almost two hundred years" and the supreme court "unanimously reaffirmed—[in 2010]—the well-established right of the Plaintiff to choose which co-tortfeasor(s) she will sue." *Smith*, 419 S.C. at 563-64, 799 S.E.2d at 487-88. Moreover, the Arenders' legal right to elect co-plaintiffs and defendants "is a substantial right within the meaning of [section 14-3-330(2)]." *Neeltec*, 397 S.C. at 566, 725 S.E.2d at 928; *cf. Chester v. South Carolina Dep't of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010) (recognizing that an order requiring a plaintiff join parties as defendants when the requirements of Rule 19, SCRCP, are not met violates the plaintiff's common law right to choose her defendant). Finally, the "effect of this order is to prevent the [Arenders] from being architects of their own complaint," the effect "deprives them of bringing their case against the defendant of their own chooses," the effect forces them to pursue claims in violation of the workers' compensation act's exclusivity provision, and the effect deprives the Arenders of a "substantial right within the meaning of section 14-3-330(a)." *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. To prevent the Arenders from appealing the order immediately

would limit their appellate remedies and would thwart South Carolina's strong public policy favoring the settlement of disputes. *E.g.*, *Poston v. Barnes*, 294 S.C. 261, 363 S.E.2d 888 (1987). "Just because part of the prejudice stemming from the order may be cured at a later date does not remove it from the purview of section 14-3-330 (2)." *Morrow*, 412 S.C. at 539 n.2, 773 S.E.2d at 147 n.2.

In *Morrow*, the supreme court allowed the appeal to proceed, in part, because the circuit court misapprehended the nature of the plaintiffs' claims. *Id.* at 538, 773 S.E.2d at 146. The circuit court in the action at bar misapprehended the applicability of Rule 20, SCRCP, and its separate and distinctness from consolidation. Even if the appellate courts had identified orders granting joinder under Rule 20, SCRCP, as orders not immediately appealable, the circuit court's misapprehension of the improper procedure applied in this case necessitates immediate appeal.

Furthermore, the court of appeals erred in finding the effect of the order is akin to adding parties to litigation or granting a motion to change venue. While the addition of parties and a change in venue are certainly effects of the circuit court's decision, that decision is not akin to orders that simply add parties or transfer venue. When a *Plaintiff* properly joins parties pursuant to Rule 20(a), SCRCP, the parties and pleadings are merged, and "all persons [are] joined in one action." Here, however, the circuit court did not simply join parties as plaintiffs and join parties as defendants, as evidenced by the case caption on the circuit court's order denying the Petitioners' Rule 59(e), SCRCP, motions, and discussed, *supra*. (R. p. 15).

The essence of the Petitioners' argument is that the errors of the circuit court are so extreme, and the procedure used to grant the motion are so far removed from the rules, that the errors must be immediately corrected. While judicial economy generally disfavors interlocutory appeals, immediate correction of the errors present in this action is most efficient. If this action,

in its pseudo joined/consolidated state must proceed to trial and judgment before these errors are corrected, judicial resources will be wasted. Settlement prior to trial will be difficult and unlikely leading to trial, as reversal on the grounds upon which reversal is currently sought is probable. Moreover, acknowledging the present order as one that is immediately appealable is not likely to lead to numerous appeals. As the court of appeals noted, no reported opinion has ever addressed the immediate appealability of the issues raised herein. The undersigned remains unable to find any order, appealed or unappealed, or a motion, granted or denied, of like kind and premised upon Rule 20, SCRCP. With a clear answer from this Court that a defendant may not drive joinder pursuant to Rule 20, SCRCP, questions like those present in this action are unlikely to arise.

The circuit court violated the Arenders' well established and substantive right to choose their own defendants and to choose with whom to join as plaintiffs. Because these errors affect the mode of the trial and affects substantial rights of the Arenders, the order is immediately appealable. Moreover, the order reflects the circuit court's misapprehension of the improperness of the procedure requested in the Thompson Defendants' motion, and that misapprehension necessitates immediate appeal. *Id.* at 538, 773 S.E.2d at 146.

Conclusion

For these reasons and those expanded upon within their briefs to the court of appeals, the Arenders respectfully request the Court grant this Petition for a Writ of Certiorari and reverse the opinion of the court of appeals that found this matter is not immediately appealable. Furthermore, they respectfully request the Court correct the errors of the circuit court at this interlocutory stage so the errors raised in the appeal may be promptly and efficiently corrected.

[Signature Page to Follow]

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