

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto Crushing Respondent,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc. Defendants,

Of whom,

Mike Gault is Appellant.

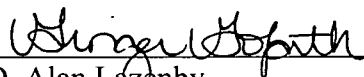
APPELLANT'S RETURN TO MOTION TO DISMISS

Respondent Christopher Drye, d/b/a Drye's Auto Crushing has moved to the Court to dismiss this appeal based on the assertion that "the trial judge's order is interlocutory and not immediately appealable." In support of this motion, Respondent points to language in the Order stating that an additional hearing would be set to address other issues relating to discovery in the case. Respondent then generally claims that the trial court's order is not a "final judgment" because it does not involve the merits or affect a substantial right of Appellant.

Respondent's general arguments ignore the more specific rule, announced repeatedly by this Court, that a "finding of contempt is immediately appealable." See Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009); see also Tucker v. Honda of South Carolina Manufacturing, Inc., 354 S.C. 574, 582 S.E.2d 405 (2003) (holding that "a contempt order is final in nature").

The trial court in its Order found as follows: "After receiving the testimony of the witnesses and hearing the arguments of counsel, this Court found the defendant, Mike Gault, in willful contempt and ordered a civil sanction of 10 days of incarceration in the local detention center."¹ (Order, p. 1). There can be no question that this ruling was a final judgment of contempt, and therefore immediately appealable. The trial court did further state that it would hold a later hearing to assess defendant's conduct "beyond the present discovery issue." (Order, p. 1). This did nothing, however, to change the finality of the ten day sentence imposed by the trial court, and from which Appellant timely and properly appealed.

Appellant therefore respectfully submits that the Court must deny Respondent's Motion to Dismiss.


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ATTORNEYS FOR APPELLANT

December 30, 2013

¹ Appellant by citing this language from the trial court's Order does not abandon or waive its argument that the contempt penalty imposed by the trial court was a criminal contempt sanction.

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v.

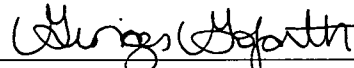
Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc. Defendants,

Of whom,

Mike Gault is Appellant.

PROOF OF SERVICE

I, the undersigned, hereby certify the Return to Respondent's Motion to Dismiss in the
above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Wade S.
Weatherford, III, by sending to PO Box 2207, Gaffney, SC 29342, on December 30, 2013.



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December 30, 2013

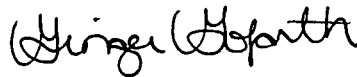
The Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk
PO Box 11629
Columbia, SC 29211

Re: *Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of Total Inc., Defendants*
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

Dear Ms. Kitchings:

Enclosed for filing is an original and seven (7) copies of a Return to Respondent's Motion to Dismiss in the above case. I also include a Proof of Service certifying service of these documents upon Wade S. Weatherford, III, Esq. Please file the original and send a clocked copy back to me in the envelope I have enclosed for your convenience. I appreciate your assistance in this regard.

Sincerely,



Ginger D. Goforth
ginger@lazenbylawfirm.com

GDG: jeh
Enclosures
cc: Wade S. Weatherford, III, Esq. (via US Mail and email)

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JAN 03 2014

SC Court of Appeals

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THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT FOR COURT OF APPEALS
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