

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

M1872

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Presiding Judge

Case No. 2013-CP-23-1833

D & C Builders, Inc.Appellant,

v.

Richard M. Buckley and Wells Fargo National Association, Defendants,
And Richard M. Buckley, Third-Party Plaintiff,

v.
Scott Dodenhoff, Third-Party Defendant

Of whom Richard M. Buckley is theRespondent.

MOTION FOR ORDER GRANTING PARTIAL RELIEF; and
MOTION TO DISMISS APPELLANT’S REMAINING ISSUE ON APPEAL

Respondent, Richard M. Buckley, by and through his undersigned attorney and pursuant to Rule 240, SCACR, hereby moves for an Order Granting Partial Relief Requested on Appellant’s Issues numbered 1 and 2; and for an Order to Dismiss Appellant’s remaining issue, including Issue numbered 3 in Appellant’s Issues on Appeal, in accordance with the complete and overwhelming authority found in South Carolina law in support thereof.

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Issues I and II

Respondent has offered Appellant the Respondent's consent to the partial relief requested by Appellant under Appellant's Issues I and II, as outlined in Appellant's Statement of Issues on Appeal (and under its Notice of Appeal). Specifically, the Respondent has offered its consent to the Appellant's request under Issues I and II (respectively) that "the Order of the Circuit Court requiring Appellant to provide specific information pursuant to a privilege log to support disqualification of the Kenison Firm and its attorneys should be vacated"; and "the Order of the Circuit Court should be vacated and the matter remanded with instructions for the Circuit Court to modify its order to issue an injunction on the information provided by D&C Builders pursuant to the Order of July 16, 2013".

However, *despite these offers and requests upon Appellant by Respondent, Appellant has refused to consent to the partial relief that Appellant is requesting under its own Issues on Appeal I and II.*

Issue III

In accordance with the Appellant's Issue III, as outlined in Appellant's Statement of Issues on Appeal, it is Respondent's understanding that Appellant is seeking an order from this Court to determine that "[t]he Circuit Court erred in failing to find that the matters involved in the prior representation and current representation were 'substantially related' and disqualify Respondent's Counsel ... with instructions for the Circuit Court to immediately disqualify the Kenison Firm and its attorneys from representing Buckley in this matter and to vacate all filings and actions taken by the Kenison Firm on Buckley's

behalf.”¹ However, **it is absolutely undisputed that the lower court has not ruled on this issue of disqualification (the omission of this issue in the Appellant’s Notice of Appeal is glaring). No final determination on the issue was ever rendered by the lower court.** *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995); *Mid-State Distributors*, 310 S.C. at 334, 426 S.E.2d at 780; *Knowles v. Standard Savings & Loan Assn.*, 274 S.C. 58, 261 S.E.2d 49 (1979). The partial relief requested in Appellant’s Issues I and II (as addressed above) highlights the obvious nature of this undisputed fact that the lower court has not ruled on the issue of disqualification. As such, there is no order to be appealed that “involves the merits,” as that term is used in Section 14-3-330(1), such that Appellant’s aforementioned requested relief is not properly before this Court. *Id.* **The dearth of authority in this State, and in this Country, to support a contrary determination is compelling.**

This Motion is further based upon the submissions of Respondent, the applicable South Carolina Appellate Court Rules and their related authority, and upon such supporting memorandum and affidavits as are submitted in connection herewith.

It is further requested, pursuant to Rule 240(b), that all time be held in abeyance during the pendency of this motion.

¹ To the extent the Appellant is requesting this same relief under all three of its Issues on Appeal, then this Motion shall apply to all such requests for relief.

Respectfully Requested,



April 10th, 2014

M. Stokely Holder (SC Bar # 73892)
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Ph. (864) 242-4899
Fax (864) 242-4844

Attorney for Respondent