

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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.

MEMORANDUM OF RESPONDENT IN SUPPORT OF ITS
MOTION FOR ORDER GRANTING PARTIAL RELIEF; and
MOTION TO DISMISS APPELLANT'S REMAINING ISSUE ON APPEAL

M. Stokely Holder, Esquire
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent

Other Counsel of Record:

Brian A. Martin, Esquire
Brian A. Martin, LLC
212 Trade Street
Greer, SC 29651
(864) 879-7779
Attorney for Appellant

RECEIVED

APR 14 2014

SC Court of Appeals

H. Stewart James, Esq.
Babb & Brown, P.C.
505 West Butler Road
Greenville, SC 29607
Co-Counsel for Appellant

Thomas A. Shook, Esq.
Finkel Law Firm, LLC
PO Box 71727
North Charleston, SC 29415
Attorney for Defendant Wells Fargo, N.A.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

FACTS 1

ARGUMENT 2

 MOTION FOR ORDER GRANTING PARTIAL RELIEF AS TO
 APPELLANT’S ISSUES I AND II..... 2

 MOTION TO DISMISS APPELLANT’S ISSUE III..... 3

CONCLUSION..... 6

TABLE OF AUTHORITIES

CASES

Knowles v. Standard Savings & Loan Assn., 274 S.C. 58, 261 S.E.2d 49 (1979).....4

Mid-State Distributors, 310 S.C. at 334, 426 S.E.2d at 7804, 5

Peterkin v. Brigman, 319 S.C. 367, 461 S.E.2d 809 (1995).....4

STATUTES

S.C. Code Ann. § 14-3-330 (1).....5

OTHER AUTHORITIES

Rule 11, SCRCP.....2

Rule 201, SCACR.....4

COMES NOW, Respondent, Richard M. Buckley (“Buckley”), by and through his undersigned attorney, and files this Memorandum in Support of its Motion for Order Granting Partial Relief as Requested in Appellant’s Issues on Appeal Numbered I and II; and in Support of its Motion to Dismiss Appellant’s Issue Number III.

I. FACTS

As made abundantly clear in the Appellant’s Notice of Appeal and Initial Brief, the only orders that have been appealed by Appellant are the Orders of the lower court dated July 15, 2013 and July 23, 2013 – these are, in fact, the only Orders issued by the lower court on the issues raised in this Court by Appellant (A copy of said Orders are attached hereto and incorporated herein by reference as **Exhibit A**).

As is also evident in the Appellant’s filings with this Court together with counsel for Appellant’s correspondence with Respondent’s counsel (a copy of said correspondence is attached hereto and incorporated herein by reference as **Exhibit B**), the relief requested by Appellant is tri-fold:

- (1) First, the Appellant seeks an order from this Court declaring 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”.
- (2) Second, the Appellant seeks an order from this Court declaring “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 15,

2013”.

(3) Third, the Appellant seeks an order from this Court declaring “[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.”

As evidenced by the correspondence exchanged by Respondent’s counsel to counsel for Appellant in accordance with Rule 11, SCRCP, Respondent offered its consent to the partial relief requested by Appellant identified as 1 and 2 above. In response, *Appellant* repeatedly refused to accept *Respondent’s consent* to the relief *as requested by Appellant in its own Appeal*.

In regards to the relief requested by Appellant as described in 3 above, no final judgment or appealable order has been issued by the lower court.

II. ARGUMENT

A. Motion for Order Granting Partial Relief as to Appellant’s Issues I and II

Respondent has offered its consent to the relief requested by Appellant in two of the three main issues raised by Appellant on this Appeal. However, Appellant has incredibly refused to accept this consent.

Based on the correspondence exchanged by counsel for Appellant to Respondent’s counsel, Appellant contends it is requesting the relief identified in 3 above

on all three of its separate Issues on Appeal and that this portion of relief sought is not mutually exclusive from the other 2 requests for relief identified above. Upon this line of ‘reasoning’, the Appellant has refused to consent to the partial relief offered by Respondent. Not only does Respondent consider this position of Appellant unreasonable, but it is shocking to the conscience. As remains obvious, the purpose of this untenable position is to have this Court rule on the third issue noted above- which, as outlined herein, is an issue that is clearly not properly before this Court.

Regardless of the semantics being employed by Appellant in a clear effort to avoid its exposure to an issue for which Appellant has no authority in support of its position (see Motion to Dismiss herein below), the *manner* for which the requested relief has been presented to the Court via Plaintiff’s Initial Appellate Brief is largely irrelevant to this Motion. Based on the fundamental principles of judicial economy, the Court has the inherent power to grant relief – whether partial or full – upon the consent of the Respondent. To suggest otherwise is contrary to one of the primary goals of this State’s Judiciary in promoting judicial economy by efficiently managing litigation in order to avoid the unnecessary expenditure of time, effort and expense by litigants and the Court.

For these reasons, the Respondent respectfully requests an Order from this Court granting the relief requested by Appellant on the issues numbered 1 and 2 herein above.

B. Motion to Dismiss Appellant’s Issue III

In an effort to merely provide clarity regarding the scope of this remaining issue, this Motion to Dismiss may be properly characterized as a Motion to Dismiss the

“Remaining Issue” on Appeal (numbered 3 above) should the Court grant the Respondent’s above referenced Motion for consent relief. This Motion to Dismiss the “Remaining Issue” centers upon this Court’s jurisdiction, or lack thereof, over an issue that has yet to be ruled on by the lower court.¹ The Remaining Issue concerns the status of the lower court’s ruling on the seminal issue of whether Respondent’s counsel should be disqualified.

The record is abundantly clear that the lower court has not issued any order on this issue, much less any finding that: (1) “the matters involved in the prior representation and current representation were ‘substantially related’”; (2) that ‘the Kenison Firm be disqualified’; or that (3) ‘the filings and actions taken by the Kenison Firm in this matter be vacated’. *See Orders of lower court attached; see also Appellant’s Initial Brief.* **Likewise, the record is abundantly clear that the lower court has not issued an order finding the converse, or that: (1) the matters are not substantially related; (2) that the Kenison Firm not be disqualified; or that (3) the filings and actions taken by the Kenison Firm in this matter not be vacated.**

The most fundamental aspect of South Carolina Appellate Law is that an appeal may only be taken from a final judgment or appealable order. Rule 201, SCACR; *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).

¹ The Respondent readily acknowledges this Court’s denial of Respondent’s Motion to Dismiss on Appellant’s Issue pertaining to injunctive relief (A copy of said Order is attached hereto and incorporated herein by reference as **Exhibit C**). Based upon the herein described consent of Respondent to the Appellant’s requested relief on that injunction issue, it is Respondent’s position that this Motion to Dismiss is properly before the Court with respect to the Remaining Issue.

It being obvious that the lower court has yet to render judgment on the issue of disqualification, the Appellant has made creative attempts to disguise that seminal issue by mischaracterizing the lower court's ruling as a failure to find the two matters in question 'substantially similar'; although, the lower court hasn't even offered a ruling on that narrow issue (either). The Appellant further contends that the lower court has failed to apply certain case law to the issue of disqualification. However, this is also inaccurate because, again, the lower court has not issued a ruling on the matter whereby the lower court's application of *any law* on this issue can even be properly identified at this point.

It is absolutely undisputed that the lower court has not ruled on this issue of disqualification.² No final determination on the issue was ever rendered by the lower court. As such there is no order to be appealed that "involves the merits,"³ as that term is used in Section 14-3-330(1). Therefore, in conformance with this most fundamental premise of appellate review, this Remaining Issue is not only not immediately appealable, there is nothing yet to appeal on this "Issue". *Id.* **There is not a dispositive order from the lower court on this issue at all-** so, unlike the Respondent's position on the injunction issue that has been ruled upon, this cannot even be described as an interlocutory order; there is no order. The dearth of authority in this State, and in this Country, to support a contrary determination is glaring, the reasons being just as obvious.

² One needs to look no further than the above referenced issues 1 and 2 for evidence that the lower court has yet to rule on the issue of disqualification.

³ The phrase "involving the merits" is narrowly construed in modern precedent. An *order* usually will be deemed not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. *Mid-State Distributors*, 310 S.C. at 334-335, 426 S.E.2d at 780 (*order* denying motion to dismiss case based on lack of personal jurisdiction was not immediately appealable, as the litigant had "not arrived at the end of the road"). The "further act" required here is the actual issuance of an order on the issue.

Dismissal of this Remaining Issue is appropriate because, as is clear from the entire record to include, *inter alia*, the lower court's orders to date and the Appellant's Notice of Appeal together with Appellant's Initial Brief, the lower court has not issued any judgment on this Remaining Issue for which this Court could even review or consider.

III. CONCLUSION

Based on the arguments heretofore made together with the precedential authority in South Carolina relevant to the issues addressed herein and the overriding fundamental principles of judicial economy, the Respondent respectfully requests an Order from this Court granting the following partial relief requested by Appellant:

- (1) declaring 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
- (2) declaring "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".

In addition, the Respondent respectfully requests an Order from this Court dismissing the Appellant's remaining request for relief regarding what the Appellant incorrectly characterizes as an appealable ruling from the lower court on disqualification.

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

D&C Builders Inc vs. Richard M Buckley

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 JUL 16 A 9:02

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC: Rule 41(a).
 - SCRPC (Vol. Nonsuit): Rule 43(k), SCRPC (Settled): Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC: Bankruptcy:
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award:
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed: Reversed: Remanded:
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 15th day of July, 2013, and a copy mailed first class this 15th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Harold Stewart James Babb And Brown, P.C. 505
West Butler Road Greenville, SC 29607
Brian A. Martin 212 Trade St. Greer, SC 29651

Thomas A. Shook Finkel Law Firm LLC P.O. Box
71727 N. Charleston, SC 29415
M. Stokely Holder Kenison, Dudley & Crawford,
LLC 704 East Mebee Avenue Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

D&C Builders, Inc.,)
)
Plaintiff,)

C.A. No.: 2013-CP-23-1833

vs.)

Richard M. Buckley and)
Wells Fargo National Association,)
)
Defendants;)

Richard M. Buckley,)
)
Third-Party Plaintiff,)

ORDER

vs.)
)
Scott Dodenhoff,)
)
Third-Party Defendant.)

2013 JUL 16 A 9:02

FILED IN THE COURT OF COMMON PLEAS GREENVILLE COUNTY SOUTH CAROLINA PAUL B. WICKENS/MPM

Date of Hearing: July 8, 2013
Judge: Honorable Edward W. Miller
Attorney for D&C Builders, Inc.: Brian A. Martin, Esq.
Attorney for Richard M. Buckley: M. Stokely Holder, Esq.

The instant matter came before me on the 8th day of July, 2013 pursuant to the Motion filed by Plaintiff D&C Builders, Inc. ("Plaintiff") to disqualify M. Stokely Holder, Esquire, and the law firm of Kenison, Dudley & Crawford, LLC (collectively, "KDC") from representing Defendant Richard M. Buckley.

Attorneys Townes B. Johnson, III, and John T. Crawford, Jr. of KDC represented Plaintiff D&C Builders, Inc. in a prior lawsuit that was filed in September, 2011 and dismissed with prejudice in July, 2012 (hereinafter, the "2011 Action"). Plaintiff D&C Builders, Inc., through separate counsel, initiated the underlying action against Defendant Buckley in February, 2013 (hereinafter, the "2013 Action"). Through a referral from another law firm, Defendant Buckley hired KDC in March 2013 to represent his interests in this 2013 Action.

It is the Plaintiff's contention that the present representation by KDC of Defendant Buckley in the current 2013 Action conflicts with KDC's prior representation of Plaintiff D&C Builders, Inc. in the 2011 Action. In particular, the Plaintiff claims that KDC's current employ is inconsistent with their duty to Plaintiff pursuant to their prior representation of Plaintiff in the 2011 Action. More specifically, the Plaintiff contends that KDC's representation of Defendant Buckley, in forwarding his interest in this 2013 Action, will injuriously affect the Plaintiff because KDC will be called on in this 2013 Action to use against the Plaintiff knowledge and information acquired by KDC in KDC's former representation of Plaintiff in the 2011 Action.

For the reasons that follow, the Plaintiff's Motion shall be held in abeyance.

The Plaintiff shall have until 5:00p.m. on July ²⁵~~19~~, 2013 to submit to this Court a privilege log containing the specific information and knowledge it contends that KDC acquired through its prior representation of Plaintiff which will injuriously affect Plaintiff in this 2013 Action. This information shall include, without limitation, copies of any and all documents evidencing same, together with dates, times, witnesses and

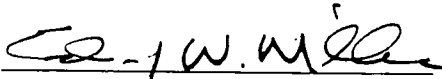
names of all parties alleged to be a part thereof. The Plaintiff shall provide a copy of its submission to counsel for Defendant Buckley.

Within ten (10) days from the receipt by the Court and KDC of Plaintiff's full submission, KDC shall be given ten (10) days from the date thereof to submit any response to the Court with copy to Plaintiff's counsel.

The submission by Plaintiff and any response provided by KDC shall be subject to this order of protection of the Court: The information submitted shall only be accessed by the office of Defendant's counsel, Plaintiff, and the office of Plaintiff's counsel. None of the information submitted shall be disseminated in any form or fashion at any time to anyone outside of the above named without the prior written consent of the Court.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Disqualify is hereby held in abeyance subject to the terms herein, and the information produced by the parties in accordance with the terms herein shall be subject to the order of protection outlined above.

IT IS SO ORDERED!


Edward W. Miller
Judge, 13th Judicial Circuit

July 15, 2013
Greenville, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP231833

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
C. J. B. WICKENS/MS

D&C Builders, Inc.

Richard M. Buckley And
Wells Fargo N.A.

2013 JUL 25 A 11:10

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

Motion to reconsider, clarify and amend order to issue injunction has been denied. Plaintiff is ordered to produce the privilege log by 5:00p.m. on July 26, 2013 as required by the previously issued formal order.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Signature]

 Circuit Court Judge

2130

 Judge Code

7/23/13

 Date

For Clerk of Court Office Use Only

This judgment was entered on July 25, 2013, and a copy mailed first class or placed in the appropriate attorney's box on July 25, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Brian A. Martin 212 Trade Street Greer, SC 29651

M. Stokely Holder 704 E. McBee Avenue Greenville, SC 29601

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter

From: Brian A. Martin [mailto:brian@martinlawsc.com]
Sent: Tuesday, April 08, 2014 6:15 PM
To: Stokely Holder; 'Brian A. Martin'
Subject: RE: D&C v. Buckley

Stokely,

It seems your understanding of the Appellant's filings does not coincide with the actual Appellant filings. I would again refer you to the specific and complete requests for relief in **Appellant's Brief on Page 30, lines 1-4 and Page 36, Lines 8-23**, to be even more specific.

My e-mail below clearly explains and points to exactly where in the **Appellant's Initial Brief (Page 30, lines 1-4 and Page 36, lines 8-23)** where each relief requested is fully stated. Each request for relief specifically includes a request that the Kenison firm be disqualified and all actions vacated. Your request for consent and your understanding of the requested relief as you stated below in your email is simply not accurate. You are not suggesting consent to all of the relief requested but rather consent to only a part of relief requested. I think it has been made very clear that unless you are willing to consent to the disqualification sought as relief from the Court of Appeals **on Page 30, lines 1-4 and Page 36, lines 8-23 of Appellant's Initial Brief** then we have nothing further to discuss. I believe the Court of Appeals has the authority to order the disqualification of the Kenison firm or at least instruct the Circuit Court to disqualify the Kenison firm. You may disagree that the Court has this authority but unless you are willing to consent to the disqualification, Appellant intends to continue asking the Court to grant that relief. Disqualification is clearly part of the relief requested in Appellant's brief and will be part of the relief requested if the matter is scheduled for oral argument regardless of whether or not you recognize that as a relief requested.

Appellant is not willing to consent to the partial relief you suggest. Either consent to all of the relief requested in Appellant's Brief specifically including disqualification or submit your Initial Brief and Designation of Matter as ordered by the Court so that we can move forward with the appeal.

Also, please be aware that I do not consider these meaningful settlement discussions since you indicated in your initial telephone call after the Motion to Dismiss was denied, that you did not intend to withdraw from representing Buckley and did not believe there was any basis for disqualification. Since you've had Appellant's Initial Brief since November, you've known all along that disqualification was a relief requested by Appellant in that Brief. If you never intended to withdraw as indicated in the phone call and now with your unwillingness to recognize disqualification as a requested relief in your e-mail below despite it being clearly stated in the Brief, I'm not exactly sure why you even suggested such consent unless it was simply to make Appellant look like it was refusing a reasonable request to consent to the relief requested. But you've said you won't consent to disqualification and no matter how you want to spin Appellant's denial of your request to consent, the Brief speaks for itself when it comes to what relief Appellant requested.

Anyway, be aware that I do intend to oppose the Motion for the Extension of Time.

Brian

Brian A. Martin, LLC
Attorney at Law

212 Trade Street
Greer, SC 29651

EXHIBIT B

(864) 879-7779
(864) 879-7171 Fax
brian@martinlawsc.com

The information contained in this email message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, email or facsimile.

From: Stokely Holder [<mailto:holder@conlaw.com>]
Sent: Tuesday, April 08, 2014 5:08 PM
To: Brian A. Martin; 'Brian A. Martin'
Subject: RE: D&C v. Buckley

Brian,

Thank you for the email.

As I understand from your Appellate filings, you have the following 3 issues with the lower court's orders whereby you are making the following 3 requests for relief:

- As for your first issue, you are requesting the appellate court to issue an order vacating the Order of the Circuit Court requiring Appellant to provide specific confidential information pursuant to a privilege log to support disqualification of the Kenison Firm and its attorneys.
- On your second issue, you are requesting the Order of the Circuit Court 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.
- On your third issue, you are requesting the Appellate Court to determine that the lower court erred in failing to find the matters involved were substantially related, and to further disqualify Respondent's Counsel and vacate all filings and actions taken by the Kenison Firm on Buckley's behalf.

So, in accordance with that understanding, we would consent to the relief requested under issues I and II.

Thank you,

Stokely

From: Brian A. Martin [<mailto:brian@martinlawsc.com>]
Sent: Tuesday, April 08, 2014 4:22 PM
To: Stokely Holder; 'Brian A. Martin'
Subject: RE: D&C v. Buckley

Stokely,

I'm sorry, but I'm not exactly sure of what you are asking now. Appellant's Statement of Issues on Appeal do not specify any relief requested, but simply pose the question of whether the Circuit Court

erred in its decisions in those regards. The relief requested by Appellant under issue I is stated on page 30 of Appellant's Initial Brief as "The Order of the Circuit Court of July 15, 2013 should be vacated, the Kenison Firm and all attorneys should be immediately disqualified from further involvement in this matter, and all actions and filings of the Kenison Firm in this matter should be vacated." The relief requested by Appellant under issue II is stated on page 36 of Appellant's Initial Brief that the Appellate Court should "reverse the Circuit Court's Order denying the injunction and remand the matter to the Circuit Court" with instructions that the "Circuit Court immediately disqualify the Kenison Firm from representing Buckley in this matter and vacate all filings and actions taken by the Kenison Firm on behalf of Buckley."

Through our telephone conversation, I specifically inquired if you and the Kenison Firm were willing to withdraw from representing Buckley and you said no. Therefore, the consent you were seeking appeared to me to be only that the Circuit Court committed error and the case should be remanded back without any instructions on how to address the existing conflict with the Rules of Professional Conduct. If I misunderstood you, I am sorry, but it seemed clear you were not willing to agree to the relief Appellant requested of the Court of Appeals. If I am mistaken and you are willing to consent to the full relief requested in Appellant's brief as stated above to include withdrawing from representation of Buckley in this matter, then by all means, let me know of the error and we can discuss resolving this situation by consent further.

However, if your request for Appellant's consent to the relief requested is interpreted as only seeking declaration that the Circuit Court committed error and the case should be remanded without instruction or disqualification of the Kenison firm, then my client is not willing to consent to that request.

Hopefully, this clears up any misunderstanding of your request to consent. Thanks, Brian

Brian A. Martin, LLC

Attorney at Law

212 Trade Street
Greer, SC 29651
(864) 879-7779
(864) 879-7171 Fax
brian@martinlawsc.com

The information contained in this email message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, email or facsimile.

From: Stokely Holder [<mailto:holder@conlaw.com>]

Sent: Tuesday, April 08, 2014 3:24 PM

To: Brian A. Martin

Subject: RE: D&C v. Buckley

Brian,

Just to be clear, my understanding is that your client is not willing to consent to the relief it is requesting on its issues numbered 1 and 2, as outlined in your Statement of Issues on Appeal I and II. If I am mistaken, please let me know.

Thank you,

Stokely

From: Brian A. Martin [<mailto:brian@martinanddavis.com>]

Sent: Tuesday, April 08, 2014 11:39 AM

To: Stokely Holder

Subject: RE: D&C v. Buckley

Stokely,

My client is not willing to consent to the appeal being remanded back to the circuit court as you suggested unless your firm withdraws from the representation of Mr. Buckley. Since you indicated that you were not going to do that, I look forward to receiving your initial brief and designation of matter when due.

Brian

Brian A. Martin, LLC

Attorney at Law

212 Trade Street

Greer, SC 29651

(864) 879-7779

(864) 879-7171 Fax

brian@martinlawsc.com

The information contained in this email message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, email or facsimile.

The South Carolina Court of Appeals

D&C Builders, Inc., Appellant,

v.

Richard M. Buckley and Wells Fargo National
Association, Defendants,

Richard M. Buckley, Third-Party Plaintiff,

v.

Scott Dodenhoff, Third-Party Defendant,

Of whom Richard M. Buckley is the Respondent.

Appellate Case No. 2013-001645

ORDER

Respondent has filed a motion to dismiss this appeal, arguing the underlying order is not immediately appealable. After careful consideration, Respondent's motion is denied. *See* S.C. Code Ann. § 14-3-330 (Supp. 2013) (noting this court has appellate jurisdiction "for correction of errors of law in law cases, and shall review upon appeal: . . . (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction").


FOR THE COURT

EXHIBIT C

Columbia, South Carolina

FILED
3/10/14