

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 14 2014

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Robert E. Hood, Circuit Court Judge

73839

Case Nos. 2013-CP-40-6571 & 2014-CP-40-4165

Ashely S. Griffith..... Appellant,

v.

Pathology Service Associates, LLC n/k/a
PST Services, Inc..... Defendant,

with

Pathology Service Associates, LLC as the Respondent.

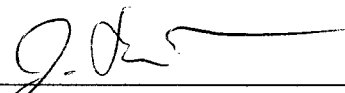
NOTICE OF APPEAL

Plaintiff-Appellant appeals the unwritten October 9, 2014 rulings of the Richland County Circuit Court permitting Respondent to participate as Defendant in the cases listed above. These rulings are immediately appealable per Neeltec Enterprises, Inc. v. Long, 397 S.C. 563, 725 S.E.2d 926 (2012), and an immediate appeal is required to avoid waiver. Id. Plaintiff-Appellant also requests that any collateral matters related to the correct identity of Defendant and to Respondent's role in this litigation also be considered on appeal to the extent possible under Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998).

October 14, 2014

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NOTICE OF APPEAL

On June 20, 2014, a default judgment was entered in Case No. 2013-CP-40-6571.

The judgment identifies the parties as:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)
Ashely S. Griffith	PST Services, Inc. f/k/a Pathology Service Associates, LLC

The judgment also refers to the Defendant using the equivalent form “Pathology Service Associates, LLC n/k/a [now known as] PST Services, Inc.” Obviously, the judgment is against an entity now known as PST Services, Inc. that was previously known as Pathology Service Associates, LLC.

On August 12, 2014, Respondent—claiming to be the judgment debtor—filed a Rule 60(b) motion to set aside the judgment. In later filings, Respondent admitted that it was **not** PST Services, Inc. Respondent’s later filings indicate that Respondent is a terminated LLC once known as “Pathology Service Associates, LLC” and, therefore, a non-juridical entity. Respondent has never used the name PST Services, Inc.

Respondent is obviously not a party to the judgment. The judgment is against “PST Services, Inc. f/k/a Pathology Service Associates, LLC”, an entity that has never appeared. The judgment is **not** against Respondent, a non-juridical, terminated LLC that used the name “Pathology Service Associates, LLC” when it existed but never used the name “PST Services, Inc.”

Once Respondent made clear that it was a different entity from the judgment debtor, Plaintiff-Appellant objected to Respondent’s participation in the case and, in

particular, to Respondent being heard on a Rule 60(b) motion to set aside a judgment that Respondent was not a party to nor in any way aggrieved by.

Plaintiff-Appellant timely objected to Respondent's participation in the case, stipulated that Respondent was not Defendant and was never in default, and requested that the trial court refuse to hear Respondent's Rule 60(b) motion. The trial court ruled against Plaintiff-Appellant's objection, heard Respondent's Rule 60(b) motion, and permitted Respondent to participate in the case as the Defendant/Judgment Debtor even though Respondent is obviously *not* the Defendant/Judgment Debtor.

Plaintiff-Appellant appeals these rulings of the trial court per Neeltec Enterprises, Inc. v. Long, 397 S.C. 563, 725 S.E.2d 926 (2012). The trial court's rulings permitted the insolvent Respondent to substitute itself for the solvent Defendant/Judgment Debtor over Plaintiff's timely objection. Substitutions of this nature are immediately appealable per Neeltec Enterprises and must be immediately appealed per Watts v. Copeland, 170 S.C. 449, 170 S.E. 780 (1933) (cited in Neeltec Enterprises). This particular substitution in is dispositive—and therefore an independent basis for appeal—because any complaint or judgment against Respondent will be a nullity given Respondent's status as a non-juridical entity.¹

The trial court's rulings permitting Respondent to proceed as Defendant are unwritten, though they will be reflected by the transcript of a hearing held on October 9, 2014. Plaintiff-Appellant has ordered the transcript. The trial court's rulings are also reflected by the fact that the October 9, 2014 hearing on Respondent's motions went

¹ McCullar v. Estate of Campbell, 381 S.C. 205, 672 S.E.2d 784 (2009) (holding that filings made against and on behalf of non-juridical entities are nullities).

forward despite Plaintiff-Appellant's timely objection to the trial court's consideration of anything presented by Respondent.

The same ruling applies to a second case between the same parties which was also part of the October 9, 2014 hearing. Given the similarity in issues, the trial court consolidated Respondent's Rule 60(b) motion in Case No. 2013-CP-40-6571 with Respondent's Rule 55(c) motion in a second case, Case No. 2014-CP-40-4165. Because the cases were consolidated for hearing on this issue and because the issue is common to both cases, Plaintiff-Appellant respectfully submits this notice of appeal as to both cases.

Plaintiff-Appellant has not filed a motion for reconsideration because the issue has been raised to and ruled upon by the trial court, albeit in an unwritten form. When a party objects to the court holding a hearing, and the court proceeds to hold the hearing, that is a ruling against the objection. Here, Plaintiff-Appellant objected to the trial court hearing Respondent's motions, yet the trial court heard the motions anyway. That is a ruling against Plaintiff-Appellant's objection.

Respectfully submitted,



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Pathology Service Associates, LLC as the Respondent.

CERTIFICATE OF FILING AND SERVICE

I, the undersigned employee of The Kincannon Firm, certify that I have on the date below indicated served Respondent in this matter with the foregoing Notice of Appeal together with this Certificate of Filing and Service by first class mail by and through Respondent's counsel of record with a courtesy copy by email as follows:

BILL WOOD, TIM MCKISSOCK, JAMES BURNS,
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I further certify that I have on the date below hand-delivered the foregoing to the Richland County Clerk of Court and hand-delivered it to the Clerk of the South Carolina Court of Appeals together with the appropriate filing fee of \$100.

October 14, 2014



J. TODD KINCANNON