

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 15 2014

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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.


**APPELLANT’S VOLUNTARY STIPULATION OF
DISMISSAL OF ALL ENTITIES EXCEPT A GEORGIA
CORPORATION KNOWN AS PST SERVICES, INC.**

Appellant respectfully files the following stipulation with this Honorable Court. This stipulation is identical to a stipulation filed simultaneously with the Richland County Court of Common Pleas with two exceptions: the stipulation filed with the lower court bears the appropriate caption for the lower court, and the stipulation filed with the lower court uses the term “Plaintiff” rather than “Plaintiff-Appellant” or “Appellant.”

October 15, 2014

Other Counsel of Record:

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**APPELLANT'S VOLUNTARY STIPULATION OF
DISMISSAL OF ALL ENTITIES EXCEPT A GEORGIA
CORPORATION KNOWN AS PST SERVICES, INC.**

Plaintiff-Appellant simultaneously files this stipulation of dismissal of all entities in the above actions except a Georgia corporation known as PST Services, Inc. with the South Carolina Court of Appeals and the Richland County Court of Common Pleas. A notice of appeal was filed with both courts and served on Respondent¹ on October 14, 2014.

Plaintiff-Appellant previously served a stipulation of dismissal specifically as to Respondent on October 8, 2014 and filed that stipulation at 2:29 p.m. on October 9, 2014 with the Richland County Clerk of Court, prior to the trial court holding a hearing at 2:30 p.m. on October 9, 2014 on Respondent's pending motions in these cases.

Unlike the stipulation served on October 8, 2014 and filed on October 9, 2014, this stipulation is *not* limited to dismissing the Respondent from these cases. This stipulation of dismissal extends to *all* entities other than a Georgia corporation known as PST Services, Inc. The purpose of this stipulation is to conclusively establish that absolutely no entity other than a Georgia corporation known as PST Services, Inc. has any right of participation in these actions (aside from Plaintiff-Appellant, obviously).

No answer or motion for summary judgment has been served by any entity in either Civil Action No. 2013-CP-40-6571 ("Griffith I")² or Civil Action No. 2014-CP-40-

¹ Plaintiff-Appellant uses the term "Respondent" to refer to the entity that appeared in these cases on August 12, 2014. Plaintiff-Appellant takes the position that Respondent and Defendant are different entities. That issue is the sole subject of Plaintiff-Appellant's appeal filed on October 14, 2014.

² An answer was served to the original complaint in Griffith I by the original defendant, an entity that is no longer involved in the action due to Plaintiff-Appellant's filing of an

4165 (“Griffith II”)³. Under these circumstances, Rule 41(a)(1)(A) gives a plaintiff the right to stipulate to the dismissal of the entire case or to stipulate to the dismissal of any particular defendant from the action.⁴

Accordingly, Plaintiff-Appellant hereby stipulates to the dismissal of every entity of any kind whatsoever from defendant status in Griffith I except for a Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” Likewise, Plaintiff-Appellant hereby stipulates to the dismissal of every entity of any kind whatsoever from defendant status in Griffith II except for a Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.”

The effect of this stipulation is as follows. If the Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” was a proper defendant in Griffith I prior to this stipulation, then Plaintiff-Appellant and the Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” are now the only two parties to Griffith I. If the Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” was *not* a proper defendant in Griffith I prior to this stipulation, this stipulation fully dismisses the Griffith I case. This is also true with regard to Griffith II.

By way of further clarification, Plaintiff-Appellant takes the position that the Georgia corporation registered with the Georgia Secretary of State as “PST Services,

amended complaint on April 8, 2014. No answer or motion for summary judgment has been served with regard to the amended complaint in Griffith I.

³ A proposed answer was filed and served in Griffith II on August 12, 2014 by a non-judicial entity in conjunction with a Rule 55(c) motion. A proposed answer is not an “answer” as that term is used in Rule 41(a)(1).

⁴ This is part and parcel of the common law right held by a tort plaintiff to choose her defendant. Chester v. Department of Public Safety, 388 S.C. 343, 698 S.E.2d 559 (2010).

Inc.” is the same entity as the judgment debtor identified in the Griffith I judgment as follows:

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 debtor is also identified in the Griffith I judgment by the equivalent designation “Pathology Service Associates, LLC n/k/a [now known as] PST Service Associates, LLC.” The Griffith I judgment debtor is defined as the defendant in Griffith II by the Griffith II pleadings.

If the Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” is *not* the same entity as the Griffith I judgment debtor, this stipulation fully dismisses the Griffith I case. Likewise, if the Georgia corporation registered with the Georgia Secretary of State as “PST Services, Inc.” is *not* the same entity as the Griffith II defendant, this stipulation fully dismisses the Griffith II case.

No South Carolina authority establishes that a plaintiff cannot file a Rule 40(a)(1)(A) stipulation of dismissal that is otherwise proper during the pendency of an appeal. Johnson v. Brandon Corp., 221 S.C. 160, 69 S.E.2d 594 (1952) and Matter of Morrison, 321 S.C. 370, 468 S.E.2d 651 (1996) both strongly suggest that a plaintiff is permitted to file a Rule 40(a)(1)(A) stipulation of dismissal during the pendency of an appeal but neither directly confront the issue. Additionally, authority from at least one other jurisdiction directly supports the proposition. See Alexander v. Alexander, 560 N.E.2d 1337 (Ohio Ct. App. 1989).

Respectfully submitted,



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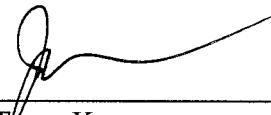
with

Pathology Service Associates, LLC as the Respondent.

CERTIFICATE OF 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 Appellant's Voluntary Stipulation of Dismissal of All Entities Except a Georgia Corporation Known as PST Services, Inc. together with this Certificate of Service by first class mail by and through Respondent's counsel of record with a courtesy copy by email as follows:

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October 15, 2014