

DOUGALL & COLLINS
ATTORNEYS AND COUNSELORS AT LAW

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CERTIFIED MEDIATOR IN SC
WILLIAM A. COLLINS, JR.
ROBERT M. PEELE, III

ADELAIDE DENNIS KLINE
COUNSEL
RECEIVED

DEC 04 2014

SC Court of Appeals

December 4, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *Coastal PI, LLC d/b/a Primarily PI and James Bigby v. C.G.I. Development, Inc., Danville Business Advisors, LLC, Marion D. Turbeville, and FRS, INC.;*
Case Number: 2011-CP-40-4111
Appellate Case Number: 2014-001799

Dear Madame Clerk:

Enclosed please find the original and six (6) copies of the Return to Respondents' Motion to Dismiss in the above-referenced matter. Please file Return in your usual course and return a clocked-in copy to me in the return envelope provided for your convenience. Thank you for your assistance in this matter.

With kind regards,

Sincerely,

DOUGALL & COLLINS



Robert M. Peele, III

RMP/mdh

Enclosures

cc: Benjamin C. Bruner, Esq.
Robert G. Rikard, Esq.
Marion D. Turbeville

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DEC 04 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2014-001799

APPEAL FROM RICHLAND COUNTY
Civil Action No. 2011-CP-40-4111
Alison Renee Lee, Circuit Court Judge

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby.....Respondents.

vs.

Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants,

Of Whom Marion D. Turbeville is.....Appellant.

APPELLANT’S RETURN TO RESPONDENTS’ MOTION TO DISMISS APPEAL

Thomas F. Dougall
Robert M. Peele, III
DOUGALL & COLLINS
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29405
803.865.8858

Attorneys for the Appellant

COMES NOW Appellant, Marion D. Turbeville (“Appellant”), who, through his undersigned counsel, and in accordance with Rule 267(b), SCACR, hereby submits this Return to the Motion to Dismiss Appeal filed by Respondents, Coastal PI, LLC d/b/a Primarily Pi and James Bigby (“Respondents”). Respondents’ argument that Appellant in essence “waived” his right to appeal is wholly inaccurate. For the reasons stated below, Respondent’s Motion should be denied.

FACTS

On May 29, 2014, the jury returned a verdict for the Respondents on all causes of action against Danville Business Advisors, LLC and Appellant. Appellant is a member of Danville Business Advisors, LLC (“Danville”). Against Danville, the jury awarded the Respondents actual damages in the amount of \$521,000.00 for breach of contract, breach of fiduciary duty and for violating the South Carolina Unfair Trade Practices Act. Against Appellant, the jury awarded the Respondents actual damages in the amount of \$39,200.00 for breach of fiduciary duty and for violating the South Carolina Unfair Trade Practices Act.

A post-trial motion for election of remedies was filed on behalf of Danville and Appellant. On June 6, 2014, the parties submitted a consent Order of Judgment in which Respondents elected that judgment be entered against on the breach of fiduciary duty claim in the amount of \$521,000.00 plus taxable costs. The parties also consented to Respondents’ election that judgment be entered against Appellant on the South Carolina Unfair Trade Practices Act claim in the amount of \$39,200.00. Pursuant to the consent order on the motion for election of remedies, the judgment against Turbeville was subject only to the Trial Court’s ruling on Respondents’ motion for attorney’s fees and treble

damages. On July 25, 2014, the Trial Court signed the consent Order of Judgment. On August 4, 2014, the Trial Court issued an Order granting the Respondents' Motion for Attorneys' Fees and Treble Damages, resulting in a total judgment against Appellant in the amount of \$202,507.85.

Appellant filed a timely Notice of Appeal addressing the following: (1) the Order issued by Judge Cooper denying Appellant's motion to dismiss; (2) the jury verdict against Appellant; and (3) the Order granting the Respondents' Motion for Attorneys' Fees and Treble Damages.

On November 24, 2012, Respondents filed a Motion to Dismiss requesting that this Court dismiss the appeal as it relates to items 1 and 2 above. In essence, Respondents argue that Appellant waived his right to appeal the Order denying his Motion to Dismiss and the jury's verdict against him merely because he consented to Respondents election of remedies. The Court should deny Respondents' Motion.

ARGUMENT

1. **Mr. Turbeville did not waive any rights related to this appeal by consenting to Respondents' election of remedies.**

Respondents' waiver argument is misplaced. The purpose of the parties' stipulation to Respondents' election of remedies was to resolve that issue without the necessity of the court's intervention. There is no reference in the Consent Order to any waiver or forbearance by Appellant of any right to appeal the jury verdict or any ruling by the Court, nor were there ever any negotiations between the parties regarding any such waiver or forbearance.

"Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of

action." Taylor v. Medenica, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996). The basic purpose of election of remedies is to prevent double recovery for a single wrong. Save Charleston Found. v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985). "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." Id. at 175, 333 S.E.2d at 64.

After Appellant moved for Respondents to elect their remedy, counsel for Respondents requested consent to elect to enforce the breach of fiduciary claim as it relates to Danville and the South Carolina Unfair Trade Practices Act as it relates to Appellant. The parties never discussed or contemplated the waiver of any rights on appeal. Respondents' Motion to Dismiss fails to point to any case in South Carolina that states that a stipulation reached by the parties as it relates to an election of remedies and an Order of Judgment waives any right on appeal with respect to the enforcement of that particular judgment, jury verdict, or Court Order. Appellant merely stipulated as to the Respondents' election of remedies and is entitled to claim that the jury's verdict and the prior Court Order are improper.

Furthermore, dismissing 2 of the 3 grounds of the Appellant's appeal is premature at this point. Appellant should be given an opportunity to present the merits of his appeal to this Court and make any arguments applicable to the appeal.

CONCLUSION

For the foregoing reasons, Respondents' Motion is without merit and should be denied.

DOUGALL & COLLINS

By: 

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Attorneys for the Appellant

December 4, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge
Alison Renee Lee, Circuit Court Judge

CIVIL ACTION NO.: 2011-CP-40-4111
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby.....Respondents.

vs.

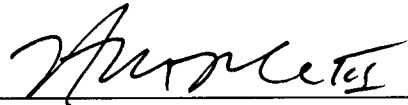
Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants,

Of Whom Marion D. Turbeville is.....Appellant.

PROOF OF SERVICE

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorneys for Appellant, Marion D. Turbeville do hereby certify that on the 4th Day of December 2014, I served the ***Return to Respondents' Motion to Dismiss*** upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Benjamin C. Bruner, Esq.
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, SC 29260-1110
Attorney for Respondents



Robert M. Peele, III
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December 3, 2014

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge
Alison Renee Lee, Circuit Court Judge

CIVIL ACTION NO.: 2011-CP-40-4111
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby.....Respondents.

vs.

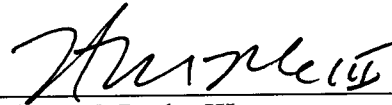
Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants,

Of Whom Marion D. Turbeville is.....Appellant.

PROOF OF SERVICE

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorneys for Appellant, Marion D. Turbeville do hereby certify that on the 4th Day of December 2014, I served the ***Return to Respondents' Motion to Dismiss*** upon counsel of record by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Robert G. Rikard, Esq.
Rikard & Protopapas, LLC
Post Office Box 5640
Columbia, SC 29250
Attorney for Respondents



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December 3, 2014

Columbia, South Carolina