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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

JUN 18 2015

Stephanie P. McDonald, Circuit Court Judge

SC Court of Appeals

Case No: 2015-001179

Kimberlee Tavino, Individually
and as Personal Representative of
the Estate of Betty Jane Jackson,
and Catherine Springfield, Appellants,

v.

Christine Scheriff and Frank Scheriff, Respondents.

MOTION TO DISMISS PLAINTIFFS' APPEAL

Antonia T. Lucia, Esquire
SC Bar No. 71696
VAUX MARSCHER BERGLIND, P.A.
16 William Pope Drive, St. 202
Bluffton, SC 29909
(843) 705-2888 (o)
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Attorney for Respondents

Other Counsel of Record:

Robert M.P. Masella, Esquire
SC Bar No. 8655
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917 Calhoun Street
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Attorney for Appellants

John S. Nichols, Esquire
SC Bar No. 4210
Bluestein, Nichols, Thompson & Delgado, LLC
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Columbia, SC 29902
(803) 799-7599
Attorney for Appellants

The Defendants, Christine Scheriff and Frank Scheriff, hereby move before this Court for an Order dismissing the Plaintiffs' Appeal from the Order of the Honorable Stephanie P. McDonald granting partial summary judgment in favor of the Defendants and entered on October 21, 2014, and the Order denying reconsideration and dated April 30, 2015, upon the following grounds:

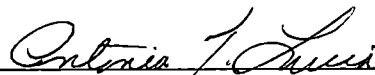
1. Neither of the Orders at issue were certified pursuant to SCRCF Rule 54(b);
2. South Carolina Code of Laws §14-3-330(1) and 2(c) are narrowly construed;
3. The Orders at issue do not "involve the merits" as that term is used in §14-3-330(1) since Judge McDonald specifically noted that the tortious conduct and the damages sought were identical to those pled in the original surviving Complaint, and that there are further acts which must be done by the trial court prior to a determination of the parties' rights;
4. The causes of action for breach of contract and breach of contract accompanied by a fraudulent act are merely attempts to enforce the mediation agreement which can be enforced in Probate Court;
5. The Orders at issue do not finally end the case or prevent final judgment from which the Plaintiffs can appeal;
6. The causes of action and damages which form the basis of the Plaintiffs' appeal are inextricably intertwined with the issues yet to be determined by Probate Court.;
7. Allowing this appeal to proceed would foster piecemeal appeals. Plaintiffs can be adequately heard in Probate Court, and if they deem it necessary, appeal the granting of partial summary judgment at the time of the final judgment in this action; and

8. The Orders at issue did not deny the Plaintiffs a mode of trial since the Plaintiffs made no demand for and therefore waived their right to trial by jury.

This Motion is supported by the pleadings and proceedings heretofore had herein and by the Memorandum of Law submitted simultaneously herewith.

WHEREFORE, it is respectfully requested that the Court dismiss the Plaintiffs' Appeal in its entirety, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



Antonia T. Lucia, Esquire
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Bluffton, SC
June 17, 2015

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and Catherine Springfield, Appellants,

v.

Christine Scheriff and Frank Scheriff, Respondents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2015, I mailed a true and accurate copy of the *Motion to Dismiss Plaintiffs' Appeal* and the *Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Appeal* with all attachments in the above-captioned matter to:

Robert M.P. Masella, Esquire
Masella Law Firm, P.A.
917 Calhoun Street
Columbia, SC 29201

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado,
LLC
1614 Taylor Street
Columbia, SC 29902

SAID DOCUMENTS were mailed via federal express, with postage prepaid to the above named parties.

VAUX MARSCHER BERGLIND, P.A.
16 William Pope Ave, Suite 202
Bluffton, SC 29909
(843) 705-2888

Debra A. Criddle
Debra A. Criddle
Legal Assistant to Antonia T. Lucia, Esquire
Attorney for the Respondents

SWORN TO BEFORE ME
this 17 day of June, 2015

Myra S. Daniell
Notary Public for South Carolina
My Commission Expires: 2/25/23

VAUX MARSCHER BERGLIND

A SOUTH CAROLINA PROFESSIONAL ASSOCIATION

ROBERTS VAUX
WILLIAM F. MARSCHER, III
MARK S. BERGLIND

ANTONIA LUCIA, SC & NY
ROBERTS "TABOR" VAUX, JR.

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OF COUNSEL:
JAMES P. SCHEIDER, JR.
JUSTIN JOHN PRICE
MAC DUNAWAY, DC ONLY

antonia.lucia@vmbllawfirm.com

June 17, 2015

Via Federal Express

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

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SC Court of Appeals

Re: Kimberlee Tavino, Individually and as Personal Representative of the
Estate of Betty Jane Jackson, and Catherine Springfield v. Christine
Scheriff and Frank Scheriff
Case No: 2015-001179

Dear Ms. Kitchings:

Enclosed for filing, please find an original and seven copies of the following documents:

1. Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Appeal
2. Motion to Dismiss Plaintiffs' Appeal

Also enclosed is a Certificate of Service and a check for the filing fee in the amount of \$25.00

Kindly file the originals and six copies and return a clocked-in copy in the enclosed self-addressed, stamped envelope.

Please advise if anything additional is required.

Very truly yours,

VAUX MARSCHER BERGLIND, P.A.



Antonia T. Lucia

ATL:dac

OTHER OFFICE:
POST OFFICE BOX 769 (MAILING)
1251 MAY RIVER ROAD (PHYSICAL)
BLUFFTON, SOUTH CAROLINA 29910

The Honorable Jenny Kitchings

June 17, 2015

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Enclosures

cc: Robert M.P. Masella, Esquire w/enclosure via Federal Express
John S. Nichols, Esquire w/enclosure via Federal Express

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