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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

S.C. Supreme Court

J.C. Nicholson, Jr. Circuit Court Judge

Case No.: 2011-CP-10-5774
Appellate Case No.: 2013-002796

Pavilion Development Corp. & Larry McNair,
Appellants,

v.

Nexsen Pruet, LLC, Defendant

v.

DC & Sons, LLC, Counterclaim Defendant,
Of Whom Nexsen Pruet, LLC is the Respondent.

**MOTION FOR ORDER ALLOWING PAVILION DEVELOPMENT AND LARRY MCNAIR
A REASONABLE TIME TO AMEND THEIR COMPLAINT AFTER REMAND**

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46a State Street, Charleston, SC 29401
Phone: (843) 377-1871; Fax: (843) 377-1310

George J. Kefalos, Esquire
Oana D. Johnson, Esquire
GEORGE J. KEFALOS, PA
46A State Street, Charleston, SC 29401
Phone: (843) 722-6612; Fax: (843) 377-1310

ATTORNEYS FOR APPELLANTS

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA

On August 12, 2015, this Court affirmed the lower court's holding that the assignment of a legal malpractice claim between adversaries in litigation in which the alleged malpractice arose is prohibited, but modified the dismissal to be without prejudice. Implicit in this Court's ruling is that Plaintiffs would have a reasonable time to amend their complaint after the dismissal without prejudice.¹ However, in light of the Court's holding in *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006) and the fact that the Respondent will likely argue that the statute of limitations has run, Appellants Pavilion Development Corporation ("Pavilion") and Larry McNair move this Honorable Court, pursuant to SCRAP 240, for an Order allowing Pavilion and McNair to amend their complaint in the lower court to assert their legal malpractice claim independent of the assignment to DC & Sons, LLC. The deadline for filing a petition for rehearing expired yesterday, and as no petition has been filed, the issue of amendment of the complaint after remand is ripe for this Court's review.


Independent of the assignment, Pavilion and McNair's legal malpractice claims, taken as true in a well-pleaded complaint, state a claim upon which relief may be granted. Thus, the amendment should be allowed. *See Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 882 (2006)(internal citations omitted). This case, above many others, is an example of the wisdom and

¹*See, e.g., Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 374 S.E.2d 907 (Ct. App. 1988) (citing Rule 15(a), SCRPC, that plaintiff generally is allowed to amend a complaint to correct deficiencies which resulted in dismissal without prejudice); *Davis v. Lunceford*, 279 S.C. 503, 507, 309 S.E.2d 791, 793 (Ct. App. 1983) (trial court properly dismissed action in which plaintiff served summons but failed to timely serve complaint, but dismissal with prejudice was improper because such a dismissal is in nature of discontinuance of action and is not an adjudication on the merits; action should have been dismissed without prejudice).

fairness of allowing the amendment of a complaint to correct deficiencies which resulted in a dismissal without prejudice. For example, this case turned on a novel issue of South Carolina law decided less than two months ago in the case of *Skipper v. ACE Prop. & Cas. Ins. Co.*, Op. No. 27547. Further, the settlement and assignment at issue took place after a summary judgment order was entered in favor of Pavilion and McNair by the Honorable Roger M. Young, Sr., and the settlement was approved on the record by Judge Young as a "fair resolution of the dispute." (R. p. 64). Allowing the statute of limitations to run under these circumstances abrogates Pavilion and McNair's right to bring their valid legal malpractice claim against Respondents and would constitute manifest injustice.

Accordingly, Appellants respectfully request that they be given a reasonable amount of time after remand to amend their complaint to assert their legal malpractice claim against Respondent, independent of the assignment.

Respectfully Submitted By:



Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46a State Street, Charleston, SC 29401
Phone: (843) 377-1871; Fax: (843) 377-1310

George J. Kefalos, Esquire
Oana D. Johnson, Esquire
GEORGE J. KEFALOS, PA
46A State Street, Charleston, SC 29401
Phone: (843) 722-6612; Fax: (843) 377-1310

ATTORNEYS FOR APPELLANTS

On this 28th day of August, 2015
Charleston, SC

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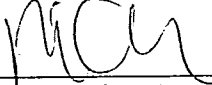
DC & Sons, LLC, Counterclaim Defendant,

Of Whom Nexsen Pruet, LLC is the Respondent.

PROOF OF SERVICE

I certify that I have served the Appellants' Motion for An Order Allowing Pavilion Development and Larry McNair a Reasonable Time to Amend their Complaint after Remand on Respondents by depositing a copy in the United States Mail, Postage prepaid, on August ~~28~~, 2015, addressed to Respondent's attorneys of record as follows:

Elizabeth Van Doren Gray, Esquire
Tina M. Cundari, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

By 
Andrew K. Epting, Jr.
Michelle N. Endemann
Attorneys for Appellants