

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Appeal No. 2015-001820

Case No. 2013-CP-23-01715

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SEP 16 2015

SC Court of Appeals

Michael Stehney, Jr.,.....Respondent,

v.

Ronald E. Ferguson, Susan M. Ferguson, and Ronald J. Ferguson, Defendants,

Of whom Ronald J. Ferguson is theAppellant.

Case No. 2013-CP-23-03179

Ronald E. Ferguson and Susan M. Ferguson,Plaintiffs,

v.

Christopher Todd Usher, Addison Corporation, and Addison Homes, LLC,.....Defendants.

**APPELLANT'S OPPOSITION TO
MOTION TO DISMISS APPEAL**

Appellant Ronald J. Ferguson, in proper person, and would herein express opposition to the Respondents' motion to dismiss the appeal. In support thereof the record should more accurately reflect the following facts:

Addison Corporation is listed as a party to the appeal though not a movant or represented by counsel in the Motion to Dismiss, which negates any such dismissal.

Appellant objects to Respondents' counselors Boyd and Newton assertion of representing Christopher Todd Usher and co-counsel for Addison Homes, LLC, based on the representation to the trial court that they are representing an insurance company who issued a GCL policy some six (6) months after litigation commenced and where such representation is not based on a duty to defend but a reservation of rights while a claim is investigated.

Respondents' assert Ronald J. Ferguson is not party to 3179, yet the Master-in-Equity was moved to act, in part, as a result of two motions filed by Counselor Boyd in '3179' and sought requested relief apply directly to Appellant (as reflected in the Order on appeal):

ADDISON, LLC'S MOTION TO QUASH ANY AND ALL SUBPOENAS BY PLAINTIFFS, herewith attached; and,

ADDISON HOMES, LLC'S MOTION TO COMPEL, OR FOR DISMISSAL

Quoting movant's Motion to Quash "Specifically, counsel for Addison Homes, LLC received information from counsel for Michael Stehney, Jr., in the case of *Michael Stehney, Jr., v. Ronald E. Ferguson and Susan M. Ferguson*, Civil Action No. 2013-CP-23-01715. Counsel for Stehney advised that he had received information the Fergusons issued a subpoena commanding Greer State Bank to produce names of all deposits and withdrawals for any accounts related to Addison Homes, LLC for the period of October 15, 2012 through June 28, 2013. The Fergusons failed to provide a copy of this subpoena to counsel for Addison Homes, LLC..."

Respondents clearly filed a Motion in Civil Action No. 2013-CP-23-03179, to which Appellant is not a party and not properly notified per South Carolina Civil Rules of Procedure, seeking to quash subpoenas in Civil Action No. 2013-CP-23-01715 – to which they are not party.

Ronald J. Ferguson was added as an intervenor in Civil Action No. 2013-CP-23-01715 by Order of Judge Robin B. Stilwell on December 6, 2013.

The underlying matters of 1715 involves an assertion by Stehney that he suffered damages to property as a result of construction at the Fergusons. Counsel for Stehney argues that the Fergusons are responsible for damages under the doctrine of respondeat superior.

The Fergusons have asserted they were party to contract with state licensed builder Christopher Todd Usher, Addison Homes, LLC and Addison Corporation, for construction of a residential dwelling and seek to show that Usher was responsible for hiring of parties and materials, as well as the specific parties, timelines, and materials utilized by same.

SC Code § 15-38-15(D) provides “A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party”.

Notwithstanding the United States Supreme Court has already ruled in *United States v. Miller*, 425 U.S. 435 (1976) that the respondents lacked standing to bring the Motion and Judge Simmons lacked authority to rule on such, Counsel for Christopher Todd Usher filed motions in 3179 seeking to control the information parties in 1715 could obtain against their client, which may result in his liability pursuant to SC Code §15-38-15.

Accordingly, movants actions in 3179 affect the defendants rights to pursue a defense in 1715. Interlutory orders which affect a substantial right, such as a defense, are immediately appealable. “Orders affecting a substantial right “discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.” *Id.* at 335 n.4, 426 S.E.2d at 780 n.4. .

The fact the movants lacked jurisdiction pursuant to *U.S. v. Miller* for the frivolous filing, the second example of an unlawful order by Simmons¹ and the South Carolina Supreme Court's ruling penned by Chief Justice Toal that judiciary should not prematurely interfere with discovery matters which may ferret out fraud leading to a SCRP, Rule 60, pleading or appeal of denial of such, finds that a dismissal would only result in the matter going to the South Carolina Court of Appeals pursuant to S.C. Code §14-3-330- The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

The movants clearly filed two Motions in 3179, to which appellant is not part and never received notice in accordance with SCRPC, seeking to limit the Fergusons presentation of a defense that Christopher Todd Usher is subject to liability under SC Code §15-38-15 in Civil Action No. 1715. Movants actions precipitated the appeal and they should remain part of such.

Respectfully submitted,

Ronald J. Ferguson
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¹ The Master-in-Equity's order of November 6, 2014, was the culmination of hearings on September , 2014 and October , 2014. That order supposedly joined 2013-CP-23-01715, 2013-CP-23-01810 and 2013-CP-23-03179 for purposes of discovery and states within that part of the cases are before the Federal Court. 28 USC 1446(d): "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." Thus, the trial court's assertion movants are entitled to relief based on this order is without merit and we have yet to discern the parties from 1810 missing from the proceedings related to the latest Order despite a motion pending which involved such.

² Since filing the Notice of Appeal, on or about September 1, 2015 Judge Simmons issued a second order ltering the one on appeal.

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Ronald E. Ferguson and Susan M. Ferguson,Plaintiffs,

v.

Christopher Todd Usher, Addison Corporation, and Addison Homes, LLC,.....Defendants.

CERTIFICATE OF SERVICE

I certify, that on this date, I served a copy of the Appellant's Opposition to Motion to Dismiss Appeal, dated 09/14/2015 on Plaintiff's Attorney of record by

_____ delivering it to him/her personally; or,

_____ mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows; or,

X mailing it to the address indicted by their counsel of record as follows:

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Brent M. Boyd
Timothy J. Newton
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Columbia, SC 29260

This the 14 day of September, 2015.

Ronald J. Ferguson

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald E. Ferguson and Susan M. Ferguson,

Plaintiffs,

vs.

Christopher Todd Usher, Addison Corporation
and Addison Homes, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2013-CP-23-03179

**ADDISON HOMES, LLC'S MOTION TO
QUASH ANY AND ALL SUBPOENAS BY
PLAINTIFFS**

The Defendant, Addison Homes, LLC, by and through the undersigned counsel moves before the Court pursuant to Rule 45 of the South Carolina Rules of Civil Procedure to Quash any subpoenas Plaintiffs may have served without notice to counsel for this Defendant.

Specifically, counsel for Addison Homes, LLC received information from counsel for Michael Stehney, Jr. in the case of *Michael Stehney, Jr. v. Ronald E. Ferguson and Susan M. Ferguson*, Civil Action No. 2013-CP-23-01715. Counsel for Stehney advised that he had received information that the Fergusons issued a subpoena commanding Greer State Bank to produce records showing names of all deposits and withdrawals for any accounts related to Addison Homes, LLC for the period of October 15, 2012 through June 28, 2013. The Fergusons failed to provide a copy of this subpoena to counsel for Addison Homes, LLC, which means Plaintiffs also failed to give counsel for Defendant a ten (10) day notice required under Rule 45(5) of the South Carolina Rules of Civil Procedure. Additionally, Plaintiffs served a subpoena on the South Carolina Department Labor, Licensing and Regulations seeking information about Addison Homes without giving counsel prior notice as indicated in the attached Motion by Stehney's counsel as attached hereto as Exhibit A, and letter attached as Exhibit B. Plaintiffs are

attempting to circumvent notice to Addison Homes, LLC's counsel in the other case by using Mr. Stehney's case to gather information by improper use of the subpoena.

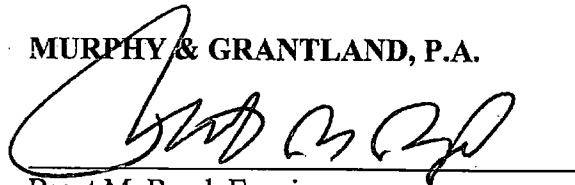
Accordingly, the Defendant respectfully request that the Court issue an Order directing any and all entities to whom subpoenas have been sent requesting information related to Addison Homes, LLC in the case of being instructed not to comply, that to the extent that any such party has already provided documents to the Fergusons that such information be immediately ordered destroyed and no information obtained through the use of such subpoenas be admitted into evidence.

Counsel for Defendant also move for reimbursement of any and attorney's fees sought in pursuing this motion.

Noting in this motion to bar Plaintiffs' through their retained counsel from improperly obtaining information from improperly issued subpoenas through their counsel.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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*Attorneys For Christopher Toss Usher and
Co-counsel for Addison Homes, LLC*

Columbia, South Carolina
June 18, 2015

Ronald Ferguson
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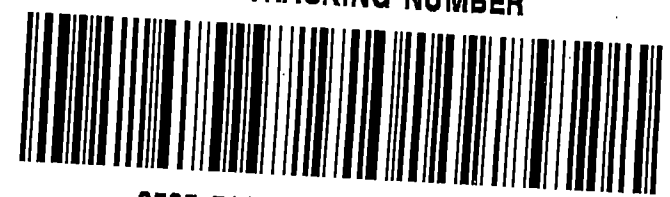
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SC Court of Appeals

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