

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

RECEIVED
OCT 13 2015
SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000058
Trial Court Case No. 2013-CP-18-00735

William McFarland and Jennifer McFarland,

Appellants/Respondents,

v.

Mansour Rashtchian and Amy Rashtchian,

Respondents/Appellants.

MOTION TO DISMISS CROSS-APPEAL

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
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P.O. Box 993 (29402)
(843) 720-5488
Attorneys for Appellants/Respondents

COME NOW Appellants/Respondents William McFarland and Jennifer McFarland (the “McFarlands”), by and through their undersigned counsel, and move this Honorable Court to dismiss the cross-appeal taken in this case by Respondents/Appellants Mansour Rashtchian and Amy Rashtchian (the “Rashtchians”).

BACKGROUND

The Rashtchians obtained a defense verdict in the trial of the defamation case brought against them by the McFarlands. When the McFarlands’ appealed, the Rashtchians “conditionally [cross-]appealed to address evidentiary issues and jury charges in an abundance of caution should the case be remanded for a new trial,”¹ i.e., should the McFarlands’ appeal, which is, of course, pending, be successful.

¹ The quoted language is from the statement of the case in the Rashtchians’ initial appellants’ brief already on file with the Court. (Rashtchian Appellants’ Brief at p. 10.) By order filed September 11, 2015, the Court extended the McFarlands’ time for serving and filing their initial respondents’ brief and designation of matter until today, October 8, 2015. Counsel considered raising the argument set forth below via brief, but concluded it was properly—and, hopefully, most efficiently—raised by motion, before further initial briefing and preparation of the record on appeal and final briefs; however, while it is counsel’s understanding that this motion “automatically stays the time limits for perfecting the appeal until the motion is decided,” *see* Rule 240(b), SCACR, if the Court would prefer that the McFarlands proceed with serving and filing their initial respondents’ brief and designation of matter they will, of course, promptly do so.

ARGUMENT

The Rashtchians’ cross-appeal should be dismissed, because they are not aggrieved parties and have no right to appeal.

“Rule 201(b) limits the ability to appeal to ‘[o]nly a party aggrieved by an order, judgment . . . or decision.’” Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 447, 665 S.E.2d 237, 243 (Ct. App. 2008) (citing Rule 201(b), SCACR). Under Rule 201(b), “[t]he word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” Id. (citing Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001)). “A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.” Id.; *see also id.*, 665 S.E.2d at 242 (“There is no material distinction in general standing principles juxtaposed to the ability of an ‘aggrieved party’ to appeal pursuant to Rule 201(b) of the South Carolina Appellate Court Rules.”).

In the context of trial-court rulings on evidentiary issues and jury charges, prejudice is determined in reference to the outcome of trial; specifically, the prejudice determination turns on whether “there is a reasonable probability the jury’s verdict was influenced” by the trial court’s ruling. Fields v. Reg’l Med. Ctr. of Orangeburg, 363 S.C. 19, 25, 609

S.E.2d 506, 509 (2005) (“To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury’s verdict was influenced by the challenged evidence or the lack thereof.”); *see also* Cole v. Raut, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008) (“An erroneous jury instruction . . . is not grounds for reversal unless the appellant can show prejudice from the erroneous instruction.”); *cf.* McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (“Appellate courts recognize . . . an overriding rule of civil procedure which says: whatever doesn’t make any difference, doesn’t matter.”).

Because the Rashtchians prevailed at trial, they were not prejudiced by any trial-court rulings; thus, they were not aggrieved by any of the rulings they have challenged in their brief and have no right to appeal them. Having no right, and therefore no opportunity, to appeal these rulings, they do not become the law of the case if not appealed;² accordingly, they do not affect the rights or interests of the Rashtchians or otherwise impose a burden or obligation upon them in the event of a new trial.

The soundness of this conclusion is bolstered by considering the

² *See* Miranda C. v. Nissan Motor Co., Ltd., 402 S.C. 577, 592, 741 S.E.2d 34, 42 (Ct. App. 2013) (explaining that the law of the case doctrine applies when a party does not challenge an issue on appeal “where there has been an opportunity to do so”).

absurdity of its converse. Were the Rashtchians to have the right, and therefore the opportunity, to appeal these rulings, they would, of course, be obliged to appeal or else the rulings would become unfavorable law-of-the-case in the event of a new trial; but, having prevailed at trial, the Rashtchians could never prevail on the merits of any such appeal, because they could never make the showing of prejudice required to overcome the standard of review, since, of course, they prevailed at trial.

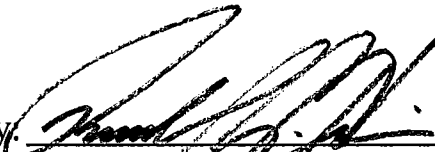
WHEREFORE, the McFarlands ask the Court to dismiss the Rashtchians' cross-appeal, without prejudice, or otherwise on such terms that, on any retrial of this case, the parties, i.e., all parties,³ are free to argue the merits of, and the trial court is free to decide, *de novo*, any evidentiary or other legal issues, subject to any limitations arising out of the determination of the McFarlands' appeal.

<SIGNED ON THE FOLLOWING PAGE>

³ To be clear, nothing in this motion is intended to express the McFarlands' agreement with the merits of the Rashtchians' challenge to the trial-court's rulings or waiver of their rights to advance or oppose the merits of evidentiary or other legal issues in any new trial.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By  _____

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Attorneys for Appellants/Respondents

Charleston, South Carolina

Dated: 10/8/15

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PROOF OF SERVICE

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Attorneys for Appellants/Respondents

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Appellants/Respondents above named, do hereby certify that I have served the foregoing **MOTION TO DISMISS CROSS-APPEAL** on the above-named Respondents/Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on October 8, 2015, addressed as follows to their counsel of record:

David C. Cleveland, Esquire
Michael L. Leech, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595

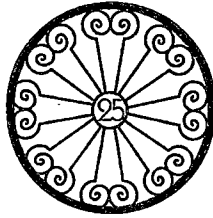
YOUNG CLEMENT RIVERS, LLP

By 

Russell G. Hines

Charleston, South Carolina

Dated: 10/8/15



YCR LAW

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October 8, 2015

VIA US MAIL AND FACSIMILE

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: William McFarland and Jennifer McFarland v. Mansour Rashtchian and Amy Rashtchian
Appellate Case No.: 2015-000058
Circuit Court Case No.: 2013-CP-18-0735
YCR File: 15508-20150131

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the original and seven (7) copies of a Motion to Dismiss Cross-Appeal and one (1) copy of a Proof of Service regarding the same. Also enclosed is a firm check in the amount of \$25.00 to cover the costs associated with this request.

Kindly file the originals and return one court-stamped copy to me using the pre-stamped envelope provided. With best wishes and kindest regards, I am

Sincerely,

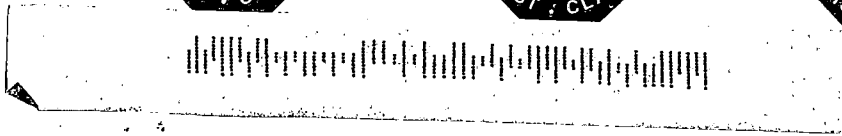
YOUNG CLEMENT RIVERS, LLP

Aimee M. Justman
Legal Assistant

/amj

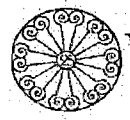
Enclosures

cc: Michael L. Leech, Esquire, Clawson & Staubes, LLC
David C. Cleveland, Esquire, Clawson & Staubes, LLC



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