

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2015-001948

**RECEIVED**  
OCT 07 2015  
SC Court of Appeals

Melinda Cook,

Respondent,

v.

Blitz U.S.A., Inc., Fred's Inc., Tiger  
Express Varnville, LLC & James Nix,

Defendants,

OF WHOM:  
Fred's Inc. is the

Appellant.

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**MEMORANDUM IN SUPPORT OF IMMEDIATE APPEAL**

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Appellant, Fred's Inc., by and through its undersigned counsel, respectfully seeks a finding from this Honorable Court that the Order and pertinent issue submitted for appeal be deemed immediately appealable.

**PROCEDURAL POSTURE**

On or about September 5, 2014 Appellant filed a Motion for Permanent Injunction seeking a ruling that Plaintiff be permanently enjoined from pursuing her claim against Appellant. The trial judge denied Appellant's Motion for Permanent Injunction leading to the submission by Appellant of a Motion for Reconsideration pursuant to Rule 59(e), South Carolina Rules of Civil Procedure. The trial judge denied Appellant's Motion for Reconsideration thereby

standing by the original denial of the Motion for Permanent Injunction.

### **LAW/ANALYSIS**

The underlying issue presented on appeal centers on the initial denial, by the trial court, of Appellant Fred's Motion for a Permanent Injunction thus for the purposes of this memorandum such issue is evaluated as to whether or not it may be immediately appealable. "Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within S.C. Code Ann. § 14-3-330." *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529 (2006) (*See also Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004)).

S.C. Code Ann. § 14-3-330 clearly delineates four categories of orders or decrees which are deemed immediately appealable, which are as follow:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions brought there by original process or removed there from any inferior court or jurisdiction and any final judgments in such actions provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (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;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing in an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

As established above through S.C. Code Ann § 14-3-330(4) an injunction, as in the instant proceeding presented for appeal is immediately appealable. Alternatively, it has been

noted that an order involving the merits of a case is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Id.* (quoting *Mid-State Distribs. V. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993).

#### ARGUMENT

Appellant Fred’s has submitted, for immediate appeal, an Order whereby the trial court denied a Motion for Reconsideration, which may otherwise be deemed interlocutory and thus not making such an order immediately appealable. However, in the instant proceedings the original Order that had been presented to the trial court, and which forms the primary issue of this appeal, was the denial of Appellant’s Motion for a Permanent Injunction. Appellant contends that under S.C. Code Ann § 14-3-330(4) an injunction, as was the clear nature of the Order being reconsidered and eventually denied thus necessitating the instant appeal, is one, which has been contemplated by and determined to be our Court as being immediately appealable. Appellant submits further that the rulings made by the trial court may alternatively be immediately appealable under the contention that it affects a substantial right of the appellant in that impedes argument by Appellant for indemnification by Defendant Blitz U.S.A., Inc.

#### CONCLUSION

In light of the facts set forth herein relative to the nature of the appeal and the prevailing statutory and case law it is readily apparent that the trial court order being appeal is subject to immediate appeal.

*(SIGNATURE PAGE FOLLOWS)*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. C. LaFave', written over a horizontal line.

Matthew C. LaFave  
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ATTORNEY FOR THE DEFENDANT

This 1st day of October 2015  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
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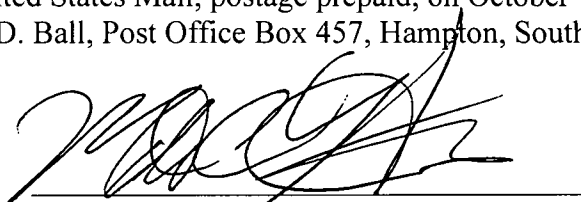
OF WHOM:  
Fred's Inc. is the

Appellant.

PROOF OF SERVICE

I certify that I have served the Memorandum in Support of Immediate Appeal on Melinda Cook, by depositing a copy of it in the United States Mail, postage prepaid, on October 1, 2015, addressed to her attorney of record, Mark D. Ball, Post Office Box 457, Hampton, South Carolina 29924.

October 1, 2015



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SC Court of Appeals

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September 17, 2015

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OCT 07 2015

SC Court of Appeals

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

RE: Melinda Cook v. Blitz, U.S.A., Inc., Fred's, Inc., Tiger Express Varnville, LLC, and James Nix  
Case No. 2015-001948  
Claim No. B460900206-0001-01

Dear Ms. Kitchings:

Pursuant to the letter dated September 25, 2015, please find enclosed the Memorandum in Support of Immediate Appeal and Proof of Service in the above-captioned matter. Once filing is complete, please return the clocked copy to me in the enclosed self-addressed, stamped envelope.

Should you have any questions or concerns, please do not hesitate to contact me. I can be reached at (803) 724-5727.

With kind regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to read "M. LaFave", written over a circular scribble.

Matthew C. LaFave  
Crowe LaFave, LLC

MCL/dmb  
Enclosures

cc: Mark D. Ball, Esquire  
Karl Brehmer, Esquire  
Mark Dely, Fred's, Inc. (via email only)  
Shonda Sanders, Fred's, Inc. (via email only)  
Sherrie Johnson, Fred's, Inc. (via email only)