



The Supreme Court of South Carolina

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December 3, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Quentin S. Broom, Jr. v. Ten State Street (H. Hugh Andrews)
Lower Court Case No. 2008-CP-42-03397
Appellate Case No. 2015-000583

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK



cc: John S. Nichols, Esquire
Blake Alexander Hewitt, Esquire
Patrick E. Knie, Esquire
James R. Gilreath, Esquire
Susan Foxworth Campbell, Esquire
Whitney Boykin Harrison, Esquire
Rodney F. Pillsbury, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Quentin S. Broom, Jr., Petitioner,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Respondent,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2015-000583

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

Opinion No. 2015-MO-057
Submitted September 22, 2015 – Filed September 30, 2015

REVERSED

James R. Gilreath, of The Gilreath Law Firm, PA, of Greenville; Patrick E. Knie of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell, of McGowan Hood & Felder, LLC, of Georgetown; and Whitney Boykin Harrison of Columbia for Petitioner.

John S. Nichols and Blake Alexander Hewitt, of Bluestein Nichols Thompson & Delgado, LLC, of Columbia; and Rodney F. Pillsbury, of Pillsbury Law Firm, LLC, of Greenville, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *Broom v. Ten State Street LLP*, Op. No. 2015-UP-030 (S.C. Ct. App. filed January 14, 2015). We grant the petition, dispense with further briefing, and reverse the Court of Appeals' decision.

Petitioner filed his original suit against defendants alleging various causes of action related to a joint business venture between petitioner and respondent. Respondent answered and raised counterclaims against petitioner. On petitioner's Rule 12(b)(6), SCRCF, motion, the trial judge dismissed respondent's counterclaims, finding they did not comply with the pleading requirements in Rule 23(b)(1), SCRCF, for derivative actions by shareholders. Thereafter, respondent filed a motion to reconsider pursuant to Rules 52 and 60, SCRCF, and a motion to amend the pleadings pursuant to Rule 15, SCRCF. Following a hearing on the motions, the trial judge denied respondent's motion to reconsider, but did not rule on respondent's motion to amend the pleadings.

Respondent filed a notice of appeal from the order denying his motion for reconsideration. On appeal, respondent raised two issues: (1) whether the trial judge erred in dismissing respondent's counterclaims for failure to comply with the pleading requirements of Rule 23(b)(1); and (2) whether the trial judge erred in dismissing respondent's counterclaims without allowing him to amend his pleadings. Petitioner argued the latter was not preserved for review because the trial judge did not rule on respondent's motion to amend. The Court of Appeals did not address these issues and, instead, remanded the case to the circuit court so the trial judge could rule on respondent's Rule 15, SCRCF, motion to amend the pleadings.

We find Court of Appeals erred in remanding the case for a ruling on respondent's Rule 15, SCRCP, motion because the issue on appeal—whether the trial judge erred in dismissing respondent's counterclaims without allowing respondent to amend his pleadings—was not preserved for review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting that in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court). Because respondent did not seek a ruling on the motion to amend, the Court of Appeals should not have addressed the motion, even if only for the sole purpose of remanding for a ruling. *See Noisette v. Ismail*, 304 S.C. 56, 58, 304 S.E.2d 122, 124 (finding the issue was not properly before the Court of Appeals and should not have been addressed where the record reflected the circuit court did not explicitly rule on the argument and the petitioner failed to show it made a Rule 59(e), SCRCP, motion to amend or alter the judgment on that ground).

Accordingly, the decision of the Court of Appeals is hereby

REVERSED.

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.
HEARN, J., not participating.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Quentin S. Broom, Jr., Respondent,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Appellant,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2013-000514

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2015-UP-030
Heard September 11, 2014 – Filed January 14, 2015

REMANDED

John S. Nichols and Blake Alexander Hewitt, both of
Bluestein Nichols Thompson & Delgado, LLC, of
Columbia, and Rodney F. Pillsbury, of Pillsbury & Read,
PA, of Greenville, for Appellant.

James R. Gilreath, of the Gilreath Law Firm, PA, of Greenville; Patrick E. Knie, of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell and Whitney Boykin Harrison, both of McGowan Hood & Felder, LLC, of Georgetown and Columbia, respectively; all for Respondent.

PER CURIAM: This is an appeal from the trial court order dismissing H. Hugh Andrews's amended complaint pursuant to Rule 12(b)(6), SCRCP. The trial court found Andrews's claims were derivative in nature; therefore, it ruled his failure to comply with the requirements of Rule 23(b)(1), SCRCP, was grounds for dismissal. On appeal, Andrews argues the trial court erred in finding that all his claims were derivative. He maintains that he appropriately maintained certain claims in his individual capacity, and, therefore, Rule 23(b)(1), SCRCP, did not apply to them. Andrews also contends that even if all his claims are derivative, he should not be required to follow the procedures set forth in Rule 23(b)(1), SCRCP. Finally, Andrews contends the trial court erred in failing to grant his motion to amend his pleadings to comply with Rule 23(b)(1), SCRCP. We remand.

After the trial court dismissed Andrews's claims, Andrews filed two motions: a motion for reconsideration and a motion to amend his answer and counterclaims. The court heard arguments on these motions in the same hearing. During the hearing, Andrews requested the trial court allow him to amend his pleadings because he wanted to

bring the factual allegations of the complaint current to information that was learned from discovery so that in the event that there would be an appeal, the appellate court would be looking at the information that was known to the parties because it's a 12(B)(6) motion and it's not a summary judgment motion.

Broom argued that because the trial court dismissed the counterclaims, Andrews was "asking to be permitted to amend something that does not exist." Following the hearing, the trial court denied the motion to reconsider but did not rule on the motion to amend.

Because the record indicates the trial court never ruled on the motion to amend, we remand to the trial court for a ruling on this motion. On remand, the trial court is instructed to consider whether justice requires the amendment and whether Broom will be prejudiced by the amendment. *See* Rule 15(a), SCRCP (stating leave to amend shall be freely given when justice requires and does not prejudice any other party); *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (recognizing "the party opposing the motion has the burden of establishing prejudice").¹

REMANDED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

¹ In light of our decision, we decline to reach the remaining issues.