

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The County Of Greenville Court Of Common Pleas
(2015-CP-23-3189)

LAUREL VAUGHN,
Appellant,
v.

SYNCHRONY BANK,
Respondent.

CASE NO.: 2015-002504

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JAN 07 2016

SC Court of Appeals

RESPONDENT'S MEMORANDUM ON THE ISSUE OF APPEALABILITY

Respondent Synchrony Bank ("Synchrony"), by counsel, respectfully states as follows regarding the issue of appealability, as requested by this Court via letter dated December 16, 2015.

Introduction

This brief is submitted to the Court in response to the request that the parties each "serve and file a memorandum addressing the issue of appealability." The Appellant, Laurel Vaughn ("Vaughn"), seeks review of an Order of the Court of Common Pleas of Greenville County, denying her Motion to Reconsider. The Motion to Reconsider sought reversal of a prior Order of the Court of Common Pleas of Greenville County remanding her case – which arises from allegations that Synchrony's failure to deliver a \$242.33 surplus check payable to her – to the Magistrate Court. As explained below, the Order is not appealable, because it does not finally determine the rights of the parties in the requisite sense, order a new trial, or strike the pleadings of any party. Rather, the decision to remand to the Magistrate Court is much like a decision on a motion to change the venue, which is not immediately appealable under well-established South

Carolina law. Both simply determine where the merits will be decided, but do not themselves determine the merits. For these reasons and others which are more fully explained below, the Court should dismiss the appeal and remand the case for trial in the Magistrate Court.

Procedural Background

On or about May 19, 2015, Vaughn filed her Complaint seeking a recovery based on Synchrony's alleged failure to deliver a \$242.33 surplus check payable to her. *See* Compl., ¶¶ 7, 14. Synchrony filed a Motion to Dismiss, which was scheduled to be heard on October 14, 2015. Prior to the hearing, Vaughn served Synchrony with Interrogatories, Requests to Produce, and Requests for Admission (collectively, "Discovery Requests"). Synchrony timely filed a Motion for a Protective Order on the grounds that Vaughn's Discovery Requests were premature and imposed an undue burden and expense given the pendency of Synchrony's Motion to Dismiss. The Motion for a Protective Order was set for hearing on October 14, 2015, the same date on which Synchrony's Motion to Dismiss would be heard. Vaughn filed a Motion for Summary Judgment and Motion to Compel based on Synchrony's position in its Motion for a Protective Order that it should not yet be required to respond to the Discovery Requests, both of which were also set for the hearing on October 14, 2015.

During the October 14, 2015 hearing, Judge Barber, upon learning that the case arose from an allegation that Synchrony had failed to deliver a \$242.33 surplus check payable to Vaughn (Compl., ¶¶ 7, 14), ordered that the case be sent to Magistrate Court. An Order sending the case to Magistrate Court was signed by Judge Barber on October 15, 2015 and entered on October 26, 2015. The Order stated that it "does not end the case." A true and accurate copy of the October 26, 2015 Order is attached hereto as **Exhibit A**.

On October 30, 2015, Vaughn filed a Motion to Reconsider. On November 20, 2015, Judge Barber signed an Order denying Vaughn's Motion to Reconsider, stating:

At a hearing on a motion to compel held in Greenville County on October 14, 2015, counsel for the plaintiff informed the court that the plaintiff's original claim for damages was approximately \$250.00 but that the claim had reached approximately \$5,100.00 because of potential treble damages and attorney's fees. Because of the amount of damages claimed by the plaintiff, the Court sent the case to Magistrate Court. The Court has now received a Motion to Reconsider claiming plaintiff's damages exceed the Magistrate Court jurisdiction. The Court was informed by Plaintiff's attorney during a telephone conference with Defendant's counsel that plaintiff incurred additional costs for her to attend the Motion to Compel hearing as well as additional attorney's fees.

The Motion to Reconsider is denied. Plaintiff's attorney cannot submit additional claims/damages after the hearing. The Court further believes the additional damages for the plaintiff to attend the hearing are not proper under the Unfair Trade Practices Act.

The Order was entered on December 1, 2015 (the "12/1/15 Order"). On December 4, 2015, Vaughn filed a Notice of Appeal, appealing the 12/1/15 Order, which denied her Motion to Reconsider.

Standard of Review

S.C. Code § 14-8-200 provides that the South Carolina Court of Appeals "has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court ... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case." *Id.* This Court has stated:

"The right of appeal arises from and is controlled by statutory law." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Id.* (citing S.C. Code Ann. § 14-3-330(1) (1977); Rule 72, SCRCPP; Rule 201(a), SCACR). "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code (1977 & Supp. 2013)]." *Id.* "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* "An order 'involves the merits,' as that term is used in [s]ection 14-3-330(1) [,] and is immediately appealable

when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Id.* at 7, 630 S.E.2d at 467 (footnote omitted). “The phrase ‘involving the merits’ is narrowly construed.... An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Id.* at 7, 630 S.E.2d at 467-68.

Watson v. Underwood, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (emphasis added) (holding that the circuit court’s decision to deny Watson’s petition to terminate the trust was not appealable at this time because a final judgment had not occurred).

This Court, as well as the Supreme Court of South Carolina, have narrowly construed the provisions in S.C. Code § 14-3-300. In *Watson*, this Court further articulated the appealability standard as follows:

“The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000).

“An order affects a substantial right and is immediately appealable when it ‘(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.’” *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709 (brackets omitted) (quoting § 14-3-330(2)). Usually, an order that does not finally end a case or prevent a final judgment from which a party could appeal is not immediately appealable. *Id.* A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment. *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942). Additionally, a decree or judgment that leaves in doubt whether the plaintiff will prevail is not final. *Donaldson v. Bank*, 4 S.C. 106, 115 (1873). An order is not immediately appealable when appellants “have not ‘arrived at the end of the road’ and [would] be able to appeal the decision after the trial [wa]s finished.” *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

Id. at 459, 756 S.E.2d at 163.

Argument

The 12/1/15 Order is interlocutory in nature and, therefore, it is not immediately appealable. The decision by Judge Barber to deny Vaughn's Motion to Consider and to uphold his decision to remand the case to Magistrate Court is neither a final judgment nor an order that involves the merits of the case. The 12/1/15 Order does not affect a substantial right under any of the three reasons articulated in *Watson*. The 12/1/15 Order neither determines the action nor prevents a judgment from which an appeal might be taken. Instead, it simply determines the Court in which the appeal should be heard, much like an order deciding a motion to change venue, which is not appealable. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000) (citing *Godley v. Uniroyal, Inc.*, 278 S.C. 571, 300 S.E.2d 78 (1983)).

The trial has yet to occur in the Magistrate Court, and once the Magistrate Court reaches a decision on the merits, Rule 18 of the South Carolina Rules of Magistrate Court provides that "[a]ll appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered." So, there will still be a trial on the merits and an opportunity to appeal. Further, it is clear on the face of the 12/1/15 Order that it does not grant or refuse a new trial. The 12/1/15 Order also does not strike out any of Synchrony's answer and does not strike any pleading in the action. It merely confines Vaughn to what she originally pled as the basis of the dispute in her Complaint – the \$242.33 surplus check. *See Compl.*, ¶¶ 7, 14. Because Vaughn has "not arrived at the end of the road and [would] be able to appeal the decision after the trial [wa]s finished," it is evident that the 12/1/15 Order is not immediately appealable under S.C. Code § 14-3-330. *See Watson*, 407 S.C. 459, 756 S.E.2d at 163 (citations omitted).

Contrary to Vaughn's assertion, this case is unlike *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006), which concerned whether an order unsealing a court record was immediately appealable. The Supreme Court of South Carolina held that the order was immediately appealable, because no further action was required in the family court to determine the parties' rights. *Id.* at 8, 630 S.E.2d at 468. Here, unlike in *Ex parte Capital*, the 12/1/15 Order does not concern the unsealing of a court record, and further action is required in the Magistrate Court to determine the parties' rights as noted above. And despite Vaughn's contention in her Memorandum on the Issue of Appealability, the 12/1/15 Order and her Notice of Appeal did not concern or mention anything regarding Vaughn's ability to conduct discovery. Therefore, this issue is not properly before this Court, and even if it was, any such order would be interlocutory and not immediately appealable. *See, e.g., Hagins v. Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. 14-3-330.")

WHEREFORE, for the foregoing reasons, Respondent Synchrony Bank respectfully requests that the Notice of Appeal be in all things dismissed, that the case be remanded for trial in the Magistrate Court, and for such other and further relief as to which it may be justly entitled.

DEVLIN & PARKINSON, P.A.



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Dated: January 5, 2016
Greenville, South Carolina

Attorney for Defendant Synchrony Bank

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED - CLERK OF COURT
PAUL B. ...

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2303189

Laurel Vaughn

Synchrony Bank

2016 OCT 26 PM 2 47

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

The case is being sent to Magistrate Court.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

John F. Beall

2110

10/15/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on ^{10/26/15} and a copy mailed first class or placed in the appropriate attorney's box on ^{10/26/15}, to attorneys of record or to parties (when appearing pro se) as follows:

Joshua Thomas Hawkins The J.T. Hawkins Law Firm, LLC
1224 S. Church Street Greenville, SC 29605

John Robert Devlin Jr. Devlin & Parkinson, P.A. P.O. Box
10387 Greenville, SC 29603-0387

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Magistrate Leila Foster

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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(2015-CP-23-3189)

LAUREL VAUGHN,
Appellant,

v.

SYNCHRONY BANK,
Respondent.

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JAN 07 2016

SC Court of Appeals

CASE NO.: 2015-002504

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2016, I served the following with a copy of **Respondent's Memorandum on the Issue of Appealability** by depositing the same in the United States Mail, postage prepaid and properly addressed as follows:

Joshua T. Hawkins, Esq.
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
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Attorney for Plaintiff



Laura Kirwan

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January 5, 2015

*ALSO ADMITTED IN GEORGIA

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

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JAN 07 2015

SC Court of Appeals

RE: Laurel Vaughn vs. Synchrony Bank
Appellate Case No.: 2015-002504
File No.: 2015.0030A


Dear Ms. Kitchings:

Please find enclosed Respondent Synchrony Bank's Memorandum on the Issue of Appealability which has been prepared for the Court's consideration and which we would appreciate you filing in connection with above matter. I would also appreciate it if you would return a clocked-in copy of the same to our office in the enclosed self-addressed stamped envelope.

By copy of this letter, I am providing opposing counsel with a copy of the Memorandum.

Should you have any questions, please do not hesitate to give me a call.

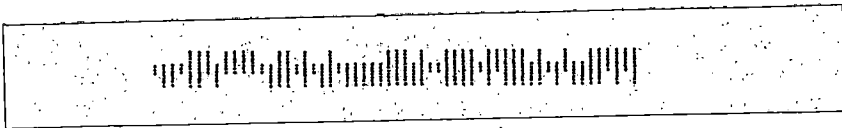
Sincerely,


John R. Devlin, Jr.

JRDJr/llk

Enclosures

cc: Joshua T. Hawkins, Esq.



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DEVLIN & PARKINSON, P.A.
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TO:

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The South Carolina Court of Appeals
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