

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

IN CASE NO. 2009-JG-10-685, THE HONORABLE MIKELL R. SCARBOROUGH

Case No. 2016-002216

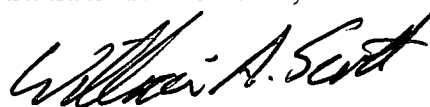
CHARLESTON HARBOR RESORT & MARINA.....Respondent,

v.

PAUL DAVIS.....Appellant.

MEMORANDUM OF RESPONDENT

PEDERSEN & SCOTT, P.C.



William A. Scott, Esq.
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Charleston, SC 29407
Tel: (843) 556-5656
Fax: (843) 556-5635

Attorney for Respondent

November 21, 2016

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The following is provided in response to the Court's Order dated November 9, 2016, which required the parties file a memorandum addressing whether the Order issued by Mikell R. Scarborough, Master-in-Equity, is immediately appealable. For the reasons set forth below, the Order is not a final order and is not appealable.

STATEMENT OF THE CASE

This matter involved supplemental proceedings to collect on a Judgment for dockage fees for a 45-foot sailboat owned by the Appellant Paul Davis (hereinafter "Davis"). In April 2007, Davis entered into a license agreement for dockage (hereinafter "Agreement") with Charleston Harbor Resort and Marina (hereinafter the "Marina") for dockage of Davis' 45-foot sailboat. Davis failed to make payments pursuant to the Agreement. In January 2009, the Marina filed a Complaint in the small claims court for unpaid dockage. Davis failed to file an answer or other responsive pleading and the small claims court entered Judgment against Davis on April 3, 2009. On May 15, 2013, the Honorable Roger Young, Circuit Court Judge, issued an Order for Supplemental Proceedings in the case. Davis, through his attorney, filed a Notice of Motion, Motion for Relief from Judgment, and a Memorandum in Support on June 14, 2013. By Order dated August 5, 2013, the Honorable R. Markley Dennis, Jr. denied the Defendant's Motion for Relief without Prejudice. Davis did not file a Motion for Reconsideration or appeal the Order. A hearing was held in front of the Honorable Michael R. Scarborough on August 19, 2013, and the motion was again denied. A written Order was issued by Judge Scarborough on April 10, 2014, denying Davis' motion. The Court found that Davis was properly served, that Davis failed to file his Motion for Relief from Judgment within a reasonable time, Davis failed to file a motion with the Small Claims Court, and Davis failed to appeal the Order issued by Judge

Dennis on August 5, 2013. Davis appealed the Order issued by Judge Scarborough, Appellate Case No. 2014-001345. The appeal was denied and a Remittitur was issued on November 16, 2016.

While the appeal was pending, the supplemental proceedings moved forward; however, Davis failed to appear for several hearings after being properly noticed. A hearing on a Rule to Show Cause was heard before Judge Scarborough on September 23, 2016. Davis failed to appear. The Court issued an Order requiring Davis to provide the information listed in the Order for Supplemental Proceedings dated May 15, 2015, to Plaintiff's counsel within thirty (30) days. The Order further provided that failure to comply with the Order would result in a bench warrant being issued for Davis' arrest. The Order also provided that Davis may purge his contempt by sitting for a deposition and providing the material and information as listed above. Davis appealed the Order, which is at issue here.

ARGUMENT

"Generally, only final judgment are appealable, unless a statute provides an exception. *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)." *Kriti Ripley, LLC v. Emerald Investments, LLC*, 404 S.C. 367, 378, 746 S.E.2d 26, 32 (2013). A contempt order is considered a final order and is immediately appealable. *Hooper v. Rockwell*, 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999). However, an order directing a party to participate in discovery is interlocutory and not directly appealable. *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986). To challenge the specific ruling of the discovery order, the normal course is to refuse to comply with the Order, suffer contempt, and appeal from the contempt order. *Davis v.*

Parkview Apartments, 409 S.C. 266, 280-81, 762 S.E.2d 535, 543 (2014), reh'g denied (Sept. 11, 2014).

In this case, while Judge Scarborough's Order is not an order of contempt, the Order itself requires Davis to provide certain information within thirty (30) days or sit for a deposition and provide the requested material. In essence, the Order is a discovery order that is interlocutory and not immediately appealable. While Davis has failed to provide the requested information within thirty (30) days pursuant to Judge Scarborough's Order, he has not been found in contempt, nor has the Court ordered a bench warrant for Davis' arrest. Likewise, Davis has not been noticed for his deposition so he has not failed to appear and provide the requested information. Again, no bench warrant has been issued for his arrest as a result of Davis' failure to comply with Judge Scarborough's Order.

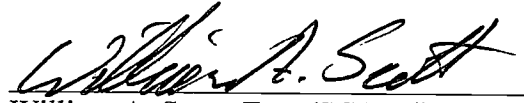
Based on Davis' prior dealings, there is no expectation that he will provide the requested information or will appear for a deposition and provide the requested information. However, until such time as he fails to comply with Judge Scarborough's Order and Judge Scarborough actually issues an order finding Davis in contempt for failure to comply with the Order, there is not final appealable order.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the appeal be dismissed, with costs and fees awarded to the Respondent.

[SIGNATURE ON NEXT PAGE]

PEDERSEN & SCOTT, P.C.



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Attorney for Respondent

Dated: November 21, 2016

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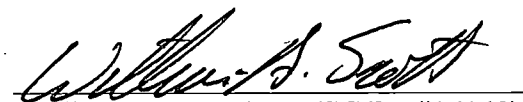
v.

PAUL DAVIS.....Appellant.

PROOF OF SERVICE

I certify that I served the Memorandum of Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on November 21, 2016, addressed to Pro Se Appellant Paul Davis, 107 Averill Lane, Irmo, SC 29063, and Pro Se Appellant Paul Davis, 14639 C.R. Koon Highway, Newberry, SC 29108.

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Dated: November 21, 2016

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November 21, 2016

V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Charleston Harbor Resort & Marina v. Paul Davis
Appellate Case No.: 2016-002216

Dear Ms. Allen:

Pursuant to your correspondence dated November 9, 2016, enclosed please find an original and seven (7) copies of the *Memorandum of Respondent* in the above-referenced matter. Please return a stamped-in copy of the memorandum in the enclosed return addressed envelope.

Please do not hesitate to contact me with any questions.

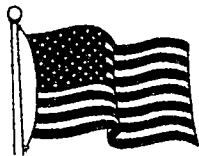
With regards,



William A. Scott

WAS/teb
Enclosures
cc: Paul Davis
Charleston Harbor Resort & Marina

William A. Scott, Esq.
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Charleston, SC 29407



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