

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-002459

South Carolina Human Affairs Commission,

Appellant,

v.

Zeyi Chen & Zhirong Yang,

Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL AND INCORPORATED
MEMORANDUM IN SUPPORT

Come now the Respondents, Zeyi Chen & Zhirong Yang, pursuant to Rules 201 and 260, SCACR, and move this Honorable Court for an Order dismissing the appeal filed by the Appellant. As grounds for this Motion, Respondents would show that the Circuit Court's Order that is being appealed is not a final judgment or order, and is consequently not appealable under Rule 201(a), SCACR.

STATEMENT OF THE CASE¹

The Appellant is purportedly attempting to appeal the Circuit Court's ruling that, as a matter of

¹ The Statement of the Case has been limited to only the facts relevant to this motion. Respondents are requesting a stay of the filing deadline for Respondents' Initial Brief until this Motion is decided. If this Motion is denied, Respondents will provide a more comprehensive Statement of the Case.

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SC Court of Appeals

law, the document in question was not an enforceable settlement agreement on grounds that the document failed to strictly comply with Rule 43(k), SCRPC. (Appellant's Initial Brief, p. 3). The document in question was an agreement to prepare a Consent Order that would settle the dispute and would be entered into the record. (Order, p. 1). However, the document in question was not signed by all of the parties' attorneys, and shortly after mediation Respondents informed their counsel that they were withdrawing their assent to the agreement. (Order, p. 2).

On April 15, 2016, Appellant filed a Motion to Enforce Settlement Agreement. A hearing was held on Appellant's motion on July 14, 2016. After hearing arguments, the Circuit Court denied Appellant's motion. In his Order denying Appellant's motion, Judge Culbertson did not rule on the merits of the case. This appeal followed.

ARGUMENT

This appeal should be dismissed because there is no final decision or appealable interlocutory/intermediate Order. "As a general rule, only final judgments are appealable." *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); *Bolding v. Bolding*, 283 S.C. 501, 323 S.E.2d 535 (Ct. App. 1984). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005). 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 (1976). *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004).

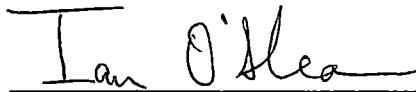
The Supreme Court of South Carolina has ruled specifically on the exact issue of whether an order finding an alleged settlement agreement unenforceable is immediately appealable, and

has held that this type of order "is not directly appealable." *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 809-810 (1995). In the current matter, Appellant filed a Motion to Enforce Settlement Agreement. This Motion was denied by the Circuit Court, and Appellant filed the current Appeal. However, "(t)he refusal to approve (an) alleged settlement agreement (did) not determine anything about any cause of action or defense in (that) case." Therefore, as was the case in *Peterkin*, the Order at issue here is not immediately appealable as "involving the merits." *Id.* Based on this South Carolina Supreme Court precedent, the Circuit Court's Order in this matter is not immediately appealable.

CONCLUSION

Based on the foregoing, the Respondents respectfully move this Honorable Court for an Order dismissing this Appeal; for an award of costs and fees against Appellant in accordance with Rule 222, SCAR; and for all such further relief as this Court deems just and proper. Respondents further respectfully move for an Order staying all filing deadlines for Respondents' Initial Brief until thirty (30) days after the Court issues a ruling on the current Motion.

Respectfully submitted,



Ian R. O'Shea
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Attorney for Respondents

Charleston, South Carolina
May 2, 2017

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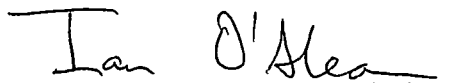
Zeyi Chen & Zhirong Yang,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2017, in Charleston, South Carolina, I served a copy of the foregoing Respondents' Motion to Dismiss Appeal and Incorporated Memorandum in Support upon Counsel for Appellant by depositing the same in the United States Mail, postage prepaid, and addressed as follows:

R. Alexander Pate, II
South Carolina Human Affairs Commission
Post Office Box 4490
Columbia, SC 29240



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SC Court of Appeals



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May 2, 2017

Sent via Certified Mail

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: South Carolina Human Affairs Commission v. Zeyi Chen & Zhirong Yang
Civil Action No.: 14-CP-10-7037
Appellate Case No.: 2016-002459

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of Respondents' Motion to Dismiss Appeal and Incorporated Memorandum in Support; and Certificate of Service for the action referenced above, along with the filing fee of twenty-five (\$25.00) dollars.

Thank you for your assistance with this matter. If you have any questions, comments, or concerns, please do not hesitate to contact me. With kind regards, I am,

Sincerely,

Ian Richard O'Shea
Attorney for Respondents.

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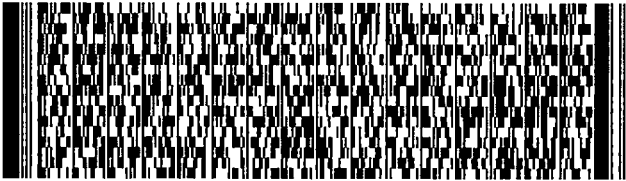
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