

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2018-000142

RECEIVED
FEB 13 2018
SC Court of Appeals

Ronald J. Ferguson

Appellant,

v.

Mill Creek, LP, John D. Hatcher, Rachel Shaluly,
James F. Gilbert, Molly A. Miller, and Michael
Stehney, individually and as members of the
Architectural Committee of Mill Creek Estates,

Respondent.

RESPONSE TO MOTION TO DISMISS

Ronald J. Ferguson
103 Mill Creek Rd
Piedmont, SC 29673
(864) 509-0169
Appellant pro-se

The appellant, Ronald J. Ferguson, properly appealed the Order of Judge Edward J. Miller in the action at bar which vacated the Default Judgment issued by Honorable Letitica Verdin against Defendants Mill Creek, LP, (See Attached Form 4 Order) in General Sessions, dismissing the case and gave Appellant thirty (30) days to file and serve a new complaint against parties in 2013-CP-23-01810, pending before the Master-in-Equity.

The Order states, in part, *“After carefully reviewing the arguments of counsel, the file, and Complaint in the other case involving these defendants and this Plaintiff being 2013-CP-23-01810, the Court concludes that that it would be appropriate pursuant to Rule 12(b)(8) to dismiss this action.”* It continues, *“The Plaintiff herein can raise any and all claims, counterclaims against these parties and any other parties which he deems necessary in that case.”* **“ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that this action being 2013-CP-23-05102 is dismissed and that Ronald J. Ferguson, the Plaintiff in this case who is the Defendant in case number 2013-CP-23-01810 is granted thirty (30) days to amend his counterclaim in that case.”**

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C.Code Ann. § 14-3-330 (1976 & Supp.2003). An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable. *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004); *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds, *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Mid-State Distributors*, 310 S.C. at 333 n. 3, 426 S.E.2d at 780 n. 3. 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[.]”* Section 14-3-330(2).

In a well-established exception to the general rule, we repeatedly have held that the denial of a

party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2). See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.") (listing cases); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (order referring case to master in equity affects the mode of trial, a substantial right, and party waived his objection to the reference and his right to jury trial by failing to immediately appeal the order); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct.App.2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost.)

The order in 5102 clearly shows that 2013-CP-23-05102 in the General Sessions Court has been dismissed as well as the Order of Default against Mill Creek, LP issued by Honorable Leticia Verdin on December 16, 2015, and Appellant given thirty (30) days to file and serve a new complaint in 1810, pending before the Master-in-Equity. Accordingly, the lower court's decision to vacate the Judge Verdin's Order as well as dismiss the case from general sessions court and direct Appellant to file and serve a new complaint as part of a case pending before the Master-in-Equity encompasses all the three points.

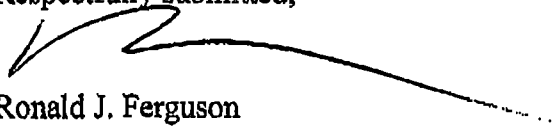
Filing and serving a new complaint against parties in 1810, per the order of Judge Miller, obviously affects any current or future motions as well as the rights of any other parties who are named and served. Moreover, the choice of venue before a master-in-equity is something all parties must agree to, as well as any named party's right to jury trial.

WHEREFORE, premises considered, the order dismissing the complaint and order of default in 5102 from general sessions court and giving Appellant thirty (30) days to file and serve a new complaint in 1810, before the master-in-equity, clearly affects all named and potential parties, the

proceedings in both 1810 and 5102, and pursuant to South Carolina Supreme Court precedent is required to be reviewed before moving forward.

Piedmont, SC
February 12, 2018

Respectfully submitted,



Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
(864) 509-0169

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305102

Ronald J Ferguson

FILED: CLERK OF COURT
GREENVILLE CO., S.C.
PAUL T. WICKENS, CLERK

2014 DEC 30 PM 2 43

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 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; 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:

This matter came before the Court on December 16, 2014 for a hearing on Plaintiff's Motion for Summary Judgment. During the hearing, Plaintiff moved for an entry of default against Defendant pursuant to Rule 55, SCRPC.

Defendant has been properly served in this matter. Furthermore, Defendant has failed to appear or otherwise respond to the Complaint, and the time for doing so has elapsed. Therefore, this Court orders that the Clerk of Court enter default against Defendant Mill Creek, LP pursuant to Rule 55(a), SCRPC.

ORDER INFORMATION

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.

[Signature]
Circuit Court Judge

2162
Judge Code

12/16/14
Date

For Clerk of Court Office Use Only

This judgment was entered on 12/30/14, and a copy mailed first class or placed in the appropriate attorney's box on 12/30/14, to attorneys of record or to parties (when appearing pro se) as follows:

Ronald J Ferguson 103 Mill Creek Rd Piedmont, SC 29673

ATTORNEY(S) FOR THE PLAINTIFF(S)

Rodney M Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Court Reporter

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.

[Signature]

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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Respondent.

CERTIFICATE OF SERVICE

I certify, that on this date, I served a copy of the Notice of Appeal, dated February 12, 2018 on
Plaintiff's Attorney of record by

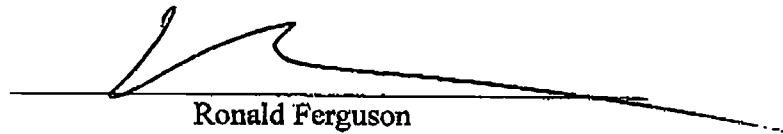
_____ delivering it to him/her personally; or,

_____ mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an
envelope with sufficient postage affixed, addressed as follows; or,

X mailing it to the address indicted by their counsel of record in the Summons as follows:

Rodney M. Brown
210 S Main St
Fountain Inn, SC 29644

This the 12th day of February, 2018.


Ronald Ferguson

Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
(864) 509-0169

February 13, 2018

South Carolina Court of Appeals
Clerk of Court
120 Senate Street
Columbia, SC 29201
(803) 734-1890

RECEIVED
FEB 13 2018
SC Court of Appeals

RE: Ferguson v. Mill Creek, LP, 2018-000142
Lower cases 2013CP2301810 and 2013CP2305102

Dear Ms. Kitchings:

Please find a copy of the Response to Motion to Dismiss filed by respondents in the above referenced action. A signed original and seven copies have been mailed to your office via United States Postal Service.

I am in receipt of notice from the master-in-equity's office regarding some confusion of the appeal. General Sessions Judge Edward Miller entered an order in 5102 directing the plaintiff name additional parties, file and serve a new complaint in an existing case before the master-in-equity, 1810. I do believe that was reflected in the Notice of Appeal and order accompanying same.

South Carolina precedent dictates that when all, or part, or a complaint is stricken or the method of trial is affected then an appeal must take place immediately or the issue be waived. Specific case law is enclosed in this response to the Respondent's requesting that 1810 be allowed to proceed without resolving the underlying issues.

The master-in-equity has indicated he intends to proceed with 1810 regardless of the superior order to file and serve a new complaint with additional parties or conflicts as a result of the appeal of Judge Miller's order. We can expect a Rule 241(d) filing to accompany shortly specific to 1810.

Thank you,


Ronald J. Ferguson

Enclosure(s)