

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE MAITE MURPHY, CIRCUIT COURT JUDGE

Case No. 2014-CP-10-07597

**RECEIVED**  
FEB 26 2018  
SC Court of Appeals

APPELLATE CASE NO. 2018-000143

CPM Federal Credit Union, ..... Appellant,

v.

George W. Lockwood and Sarah P. Thackston, ..... Respondents,

RESPONDENT GEORGE W. LOCKWOOD'S MEMORANDUM  
ADDRESSING THE ISSUE OF APPEALABILITY

Respondent George W. Lockwood ("Lockwood"), by and through his undersigned counsel, hereby responds to the February 6, 2018 request of V. Claire Allen, Deputy Clerk of the South Carolina Court of Appeals to submit a memorandum addressing the issue of appealability of the Honorable Maite Murphy's Order Denying Plaintiff's Rule 59(e) Motion, Granting in Part and Denying in Part Defendants' Motion for Summary Judgment and Granting Defendants' Motion for Sanctions (the "Appealed Order").

Respondent George Lockwood states that the Appealed Order is not appealable and the appeal should be dismissed for the reasons stated herein.

**I. BACKGROUND AND PROCEDURAL HISTORY**

The Appealed Order addresses multiple motions including, relevant to this appeal, the Respondents' Motions for Sanctions. Respondents' Motions for Sanctions sought, and the Appealed Order granted, monetary sanctions against Appellant for discovery rules violations. The Appealed Order was executed on December 18, 2017 and filed on December 29, 2017. Appellant filed this appeal on January 29, 2018. The only portion of the Appealed Order appealed here is that portion which pertains to the imposition of sanctions.

**II. THE APPEALED ORDER IS NOT APPEALABLE AND THEREFORE THIS APPEAL SHOULD BE DISMISSED**

This appeal should be dismissed because (1) the Appealed Order constitutes a discovery order and is therefore not appealable, and (2) Appellant failed to file a motion to alter or amend pursuant to Rule 59(e), SCRPC denying the Court the opportunity to rule on the specific issue being appealed.

An order of the court is appealable only if it represents a final order of the court or it affects a substantial right made in an action which in effect determines the action and prevents judgment from which an appeal might be taken or discontinues the action. S.C. Code Ann. § 14-3-330(2). Discovery orders, including orders imposing discovery sanctions, are interlocutory and are not immediately appealable. *Grossheusch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 121-22 (2008). In *Grossheusch*, the South Carolina Supreme Court addressed the appeal of a protective order over discovery and an order denying the appellant's second request for contempt and sanctions. *Id.* The court held that both orders, including the order regarding sanctions, were discovery orders which "in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right." *Id.* (citing, *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238,

241, 439 S.E.2d 852, 853 (1994); *Wallace v. Interamaerican Trust Co.*, 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965)). This appeal represents the attempt to appeal an interlocutory, discovery order prior to resolution of the matter. As such, and on this basis alone, this appeal should be dismissed.

Further, the Appellant is seeking this appeal without having filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. Rule 59(e) of the South Carolina Rules of Civil Procedure provides that a motion to alter or amend a judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. Appellant failed to file any such motion. “[A] contemporaneous objection to a disputed ruling is required to preserve an issue for appellate review.” *Gurganious v. City of Beaufort*, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct. App. 1995). Appellant notes in its Notice of Appeal that it received the Appealed Order on January 2, 2018. The requisite time to file any such motion to alter or amend has passed. Therefore, this appeal should also be dismissed because Appellant failed to preserve the issues for appeal.

### III. CONCLUSION

For these reasons, the Order is not appealable. The appeal should be dismissed.

**GALLIVAN, WHITE & BOYD, P.A.**

By: 

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Columbia, South Carolina  
February 26, 2018

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**PROOF OF SERVICE**

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. Mail, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

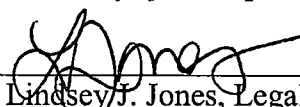
1. RESPONDENT GEORGE W. LOCKWOOD'S MEMORANDUM ADDRESSING THE ISSUE OF APPEALABILITY

*Parties of Record*

**Sent by Email Only**  
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February 26, 2018

  
Lindsey J. Jones, Legal Assistant

February 26, 2018

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SC Court of Appeals

***SENT BY HAND DELIVERY***

The Honorable V. Claire Allen  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: CPM Federal v. George Lockwood and Sara Thackston  
Appellate Case No. 2018-000143

Dear Ms. Allen:

Enclosed please find Respondent George W. Lockwood's Memorandum Addressing the Issue of Appealability in the above-referenced matter.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

  
Jordan M. Crapps

JMC/ljj

cc: Richard S. Dukes, Jr., Esquire  
W. Duvall Spruill, Esquire  
Thomas F. Drazan, Esquire  
Jonathan J. Anderson, Esquire  
R. Hawthorne Barrett, Esquire

**GWB**

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The Honorable V. Claire Alford  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201