

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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FEB 25 2019

SC Court of Appeals

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2016-CP-39-00103

Riverstone Development Group, Inc.,.....Appellant,

v.

Scott E. Arbet,.....Respondent.

**MOTION TO DISMISS**

To the Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals:

Pursuant to Rule 240, SCACR, the Respondent, Scott E. Arbet (“Arbet”), respectfully requests the issuance of a motion to dismiss the Appellant, Riverstone Development Group, Inc. (“Riverstone”)’s appeal of the Court’s Order Granting Arbet’s Amended Motion for Partial Summary Judgment based on the Order being interlocutory.

**Background**

The Amended Complaint filed by Arbet in this matter brought causes of actions against Riverstone for: 1) Declaratory Judgment; 2) Breach of Contract; 3) Breach of Express and Implied Warranties; 4) Negligence; 5) Negligent Misrepresentation; 6) Fraud; 7) Constructive Fraud; 8) Breach of Fiduciary Duty; 9) Violation of the South Carolina Unfair Trade Practices Act; 10) Violation of South Carolina Code Ann. § 29-5-20, *et seq.*;

11) Slander of Title; and 12) Equitable Indemnification. Thereafter, Riverstone brought counterclaims against Arbet for Breach of Contract and Quantum Meruit.

On November 28, 2017, Arbet filed a Motion for Partial Summary Judgment on its Declaratory Judgment cause of action regarding whether the construction contract between the parties and Riverstone's mechanics' lien were void for Riverstone's violation of South Carolina Code Ann. § 40-11-5, *et seq.* On December 2, 2018, amended its motion to seek summary judgment on Riverstone's counterclaims of Quantum Meruit and Breach of Contract on the same basis. On January 7, 2019, Arbet's amended motion for Summary Judgment was granted and the Honorable Perry H. Gravely entered an Order barring Riverstone in law and equity from enforcing the provisions of the contract; dismissing Riverstone's counterclaims and dissolving Riverstone's mechanics' lien. The Honorable Perry H. Gravely, thereafter, denied Riverstone's Motion to Amend.

Arbet's causes of action for Declaratory Judgment as to Riverstone's supplier's mechanics lien; Breach of Contract; Breach of Express and Implied Warranties; Negligence; Negligent Misrepresentation; Fraud; Constructive Fraud; Breach of Fiduciary Duty; Violation of the South Carolina Unfair Trade Practices Act; Violation of South Carolina Code Ann. § 29-5-20, *et seq.*; Slander of Title; and Equitable Indemnification are all still pending and have not been decided by the Court.

### **Discussion**

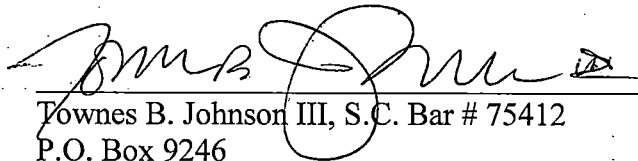
As Arbet's causes of action for Declaratory Judgment as to Riverstone's supplier's mechanics lien; Breach of Contract; Breach of Express and Implied Warranties; Negligence; Negligent Misrepresentation; Fraud; Constructive Fraud; Breach of Fiduciary Duty; Violation of the South Carolina Unfair Trade Practices Act; Violation of South

Carolina Code Ann. § 29-5-20, *et seq.*; Slander of Title; and Equitable Indemnification have not been determined, a final decision has not been made by the Court. *See e.g. Lewis v. State*, 368 S.C. 630, 631, 630 S.E.2d 464, 464 (2006). ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.") (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1884)). This appeal, therefore, being based on an unappealable interlocutory order, should be dismissed.

### CONCLUSION

For the foregoing reasons, Respondent respectfully requests that Appellant's appeal be dismissed.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson III, S.C. Bar # 75412

P.O. Box 9246

Greenville, S.C. 29604

(864)-757-4899

[tjohnson@sc.legal](mailto:tjohnson@sc.legal)

*Attorneys for the Respondent*

February 21, 2019  
Greenville, South Carolina

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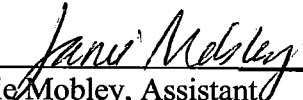
Scott E. Arbet,.....Respondent.

**CERTIFICATE OF MAILING**

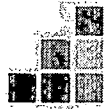
This is to certify that I have served a true copy of the foregoing **Motion to Dismiss Appellant's Appeal** on this 21<sup>st</sup> day of February, 2019 by depositing a copy of same in the United States mail, proper postage affixed, addressed as follows:

Pickens County Clerk of Court  
PO Box 215  
Pickens, SC 29671

R. Mills Ariail, Jr., Esq.  
11 North Irvine Street, Suite 11  
Greenville, SC 29601

  
\_\_\_\_\_  
Janie Mobley, Assistant  
TOWNES B. JOHNSON III, LLC

Greenville, South Carolina



TOWNES B. JOHNSON III, LLC

ATTORNEY AT LAW

February 21, 2019

Townes B. Johnson III  
(864) 757-4899  
tjohnson@sc.legal

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

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SC Court of Appeals

**Re: Scott E. Arbet vs. Riverstone Development Group, Inc.  
Case No. 2016-CP-39-00103**

Dear Ms. Kitchings:

Enclosed please find for filing the original and six (6) copies of Respondent Scott E. Arbet's Motion to Dismiss Appellant's Appeal in the above-referenced matter:

- (1) Motion to Dismiss;
- (2) Certificate of Mailing of the Motion to Dismiss;

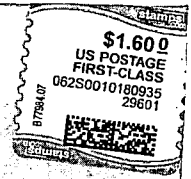
Please send me a filed copy in the enclosed prepaid envelope.

Sincerely,

Janie Mobley,  
Paralegal to Townes B. Johnson, III

Cc: R. Mills Ariail, Jr.

Townes B. Johnson III  
P.O. Box 9246  
Greenville, SC 29604



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