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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

RECEIVED
MAR 11 2019
SC Court of Appeals

Case No. 2016-CP-40-07109

Richard A. Finan,Appellant,

v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia,Respondent.

PETITION FOR REHEARING

On November 16, 2018, Richard A. Finan (“Mr. Finan”) timely filed and served his Notice of Appeal regarding the circuit court orders dated September 7, 2018, and October 17, 2018 denying Mr. Finan’s motion to add defendants to this case. [Exhibit H, bearing bates number Appellants Memo pp. 0430 – 0452, filed December 31, 2018]. These Orders denied Plaintiff’s Motion to Amend the Complaint and prevented Plaintiff from removing settled Defendants from the caption and adding additional defendants, referred to herein as the “Aetius Companies,” who Plaintiff contends, based on the testimony of the Respondent’s own witnesses: (1) were directly involved in the management and operation of the restaurant, including employing, training, supervising, and adopting policies for it; and (2) were directly negligent in the operation of the restaurant during a concert event, which resulted in the Plaintiff being strangled and beaten for several minutes.

On December 20, 2018 the Clerk of this court issued a letter requesting that the parties all

submit a memorandum addressing the issue of appealability within ten (10) days of the date of the letter. The appeal has been stayed during the pendency of the court's consideration. The parties timely submitted memoranda in response to the Clerk's inquiry. On February 28, 2019, and without a hearing, this court entered an Order dismissing this appeal holding that the circuit court orders preventing him from amending the Complaint to add Defendants to this case is not immediately appealable (the "Order"). Mr. Finan received the Order on March 4, 2019.

The Order has the effect of finally deciding Mr. Finan's appeal. Therefore, pursuant to Rule 240(i), SCACR, Mr. Finan now respectfully files this petition asking the court to reconsider its Order dismissing his appeal. For the sake of brevity and to avoid re-filing voluminous, duplicative materials into the court's record, Mr. Finan incorporates herein by reference Appellant's Memorandum on the Issue of Appealability dated and filed December 31, 2018, together with its supporting Exhibits A through I, which bear bates number "Appellants Memo 001" through "Appellants Memo 0459."

ANALYSIS

- A. The Order dismissing Mr. Finan's appeal is premised upon a misapplication of two prior decisions of this court; and it ignores controlling authority holding that denying the plaintiff's rights to control his Complaint and choose his defendants for trial are immediately appealable under S.C. Code Ann. § 14-3-330(2).**

The Order errs in dismissing Mr. Finan's appeal, as it is premised upon a misapplication of previous decisions of this court and ignores controlling authority by the South Carolina Supreme Court. Specifically, the caselaw cited in support of the Order is Tatnall v. Gardner, 350 S.C. 135, 563 S.E.2d 377 (Ct. App. 2002) ("Tatnall") and Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017) ("Tillman"). Neither Tatnall nor Tillman is controlling in Mr. Finan's appeal, and each is materially distinguishable from Mr. Finan's appeal.

1. **The Order dismissing Mr. Finan's appeal is premised upon a misapplication of Tatnall and Tillman, neither of which held a plaintiff's motion to amend his complaint to add defendants was not immediately appealable.**

In Tatnall, the order on appeal denied a defendant's motion to amend an answer to assert third party claims; Tatnall was not considering an appeal related to a motion filed by a plaintiff to add defendants who are alleged to either be jointly or solely liable for the plaintiff's causes of action stated in the original pleading. This court's holding in Tatnall highlights the material difference distinguishing that appeal from Mr. Finan's appeal:

Because all third party claims are permissive, the trial court's order denying Logan's motions to reconsider and amend neither determines a substantial matter "forming the whole or part of some cause of action," nor prevents "a judgment from being rendered in the action" from which Logan could appeal. Therefore, this Court lacks subject matter jurisdiction to hear the appeal and it is dismissed without prejudice.

Tatnall, 350 S.C. at 137, 564 S.E.2d at 378. In contrast to an appeal over a defendant's third-party claim, Mr. Finan's appeal is over the denial of a plaintiff's motion to add as defendants the very companies that discovery demonstrated were directly liable for plaintiff's First and Fourth Causes of Action in the Complaint, namely, negligence, negligent hiring, negligent training, negligent retention, and negligent supervision. As discovered in the deposition of Brian Neal on March 13, 2018, immediately before Mr. Finan moved to amend his Complaint to add the Aetius Companies as Defendants, the Aetius Companies:

- 1) employed the managers at the Wild Wing Café in the Vista [**Appellants Memo 0245, p. 13, l. 23 – p. 15, l. 12**];
- 2) trained the managers at the Wild Wing Café in the Vista [**Appellants Memo 0253 p. 46, l. 13– p. 47, l. 23; Appellants Memo 0271, p. 119, ll. 6-20; Appellants Memo 0272, p. 122, l. 16 – p. 123, l. 10**];
- 3) propagated the training manuals for the Wild Wing Café in the Vista [**Id. p. 199, ll. 6-11**];

- 4) assigned the employees and managers the restaurants to work in [**Appellants Memo 0260, p. 74, l. 9 – p. 76, l. 12**];
- 5) Maintains the employment records of the managers at the Wild Wing Café in the Vista [**Appellants Memo 0271, p. 119, l. 6-20**];
- 6) the “corporate” human resource department is often involved in decisions to terminate Vista Wings, LLC’s employees [**Appellants Memo 0270, p. 113, l. 2 - p. 115, l. 20**];
- 7) paid for expenses of the concert events at the Wild Wing Café in the Vista, such as the band on duty for the concert event that is the issue of this lawsuit [**Appellants Memo 0275, p. 134, l. 21 – p. 135, l. 13**];
- 8) instructed the Wild Wing Café in the Vista’s managers and employees when to spend their internal meetings, called “ally rallies,” discussing and hyping concert events like the one at issue in this lawsuit [**Appellants Memo 0276, p. 139, ll. 7-17**];
- 9) owned and possessed the software used to track the operations of the Wild Wing Café in the Vista [**Appellants Memo 0257, p. 64, l. 6 – Appellants Memo 0258, p. 65, l. 11**];
- 10) maintained the financial records for the Wild Wing Café in the Vista, and is the only one knowledgeable about Vista Wings, LLC’s financial performance [**Id. p. 128, l. 13 – p. 129, l. 1; p. 149, ll. 10-16**].

Therefore, unlike the amendment in Tatnall, the amendment at issue in this case is sought by the plaintiff and relates directly to two (2) of the causes of action that form the basis of the original Complaint.

Additionally, unlike in Tatnall, the ruling denying Mr. Finan’s motion to amend to add the Aetius Companies may prevent a judgment from being rendered for Mr. Finan in the instant action or in a future action against the Aetius Companies. As explained to the trial court at the hearing and as

stated in Appellant's Memorandum on the Issue of Appealability, the evidence discovered shows that the Aetius Companies appear directly and vicariously liable for many of Mr. Finan's allegations of negligence. This fact, together with the absence of the Aetius Companies at trial, could preclude Mr. Finan's ability to obtain a judgment at trial; it would allow Vista Wings, LLC, to pass responsibility for the negligence of certain managers and employees off on the Aetius Companies, precluding in part the judgment sought by Mr. Finan in his original Complaint. **[Exhibit A, Transcript of Hearing dated September 6, 2018, p. 6, l. 1 – p. 9, l. 12].**

Moreover, the denial of Mr. Finan's Motion and the dismissal of this appeal may serve to forever bar Mr. Finan's claims against the Aetius Companies due to the Defendant's repeated assertion that the statute of limitations ran during the many months that Mr. Finan's Motion to Amend the Complaint to add the Aetius Companies as Defendants. While Mr. Finan vehemently disagrees with this conclusion, if the Aetius Companies could prevail in establishing that the statute of limitations ran against the Aetius Companies in June 2018 (while Mr. Finan's Motion to Amend to add the Aetius Companies languished on the docket), then the effect of the Order is to deprive Mr. Finan of the use of the relation-back doctrine under Rule 15, SCRCP, and thereby prevent Mr. Finan from obtaining a judgment for some of the relief sought in the original Complaint. **[Exhibit A, Transcript of Hearing dated September 6, 2018, p. 14, l. 23 – p. 18, l. 2; Appellant's Memo 0012].** No such concern existed in Tatnall; therefore, the Order's reliance on this court's decision in Tatnall to dismiss this appeal is misplaced.

This court's decision in Tillman is even more plainly distinguishable, and the analysis in Tillman highlights the Order's error. In Tillman, the order on appeal was not a denial of a motion to amend; it was an order that granted a Rule 12(b)(6) dismissal a defendant's counterclaims but allowed the defendant to make a formal motion under Rule 15 to amend the dismissed

counterclaims. This court held that that order granting the motion to dismiss did not affect a substantial right and was not immediately appealable *precisely because the defendant had a right to seek formal amendment of the answer*. Tillman v. Tillman, 420 S.C. 246, 250, 801 S.E.2d 757, 760 (Ct. App. 2017) (noting that “[m]any federal circuits have held that orders dismissing a party’s pleadings pursuant to Rule 12, but with leave to amend, are not appealable final judgments within the meaning of 28 U.S.C. § 1291.”]

In reaching its conclusion in Tillman that a substantial right was not affected, this court relied upon the availability of amendment and the liberal rules that strongly favor amendment, such as the amendment sought by Mr. Finan. This court noted: “If anything has changed since [Cureton v. Hutchinson, 3 S.C. 606 (1872)], it is the ease with which pleadings may now be amended; after all, the rules require that leave be “freely given.” Rule 15(a), SCRPC. Tillman, 420 S.C. at 250, 801 S.E.2d at 760. The court’s holding in Tillman is inapposite to the Order dismissing the Plaintiff’s appeal.

Indeed, this court recognized in Tillman that its analysis of appealability must focus upon “the nature and effect of the order, not merely its label.” Id. The Order does just the opposite by dismissing the appeal on the grounds that it relates to two orders denying a motion to amend the complaint and ignoring the nature and effect of those orders, which is to deprive Mr. Finan of his substantial right to be the architect of his own complaint and proceed to trial against the defendants of his choosing.

2. **The Order ignores the controlling authority of Neeltec and Morrow, which held that a plaintiff’s rights to control his Complaint and choose his defendants for trial are substantial rights, the denial of which is immediately appealable.**

The Order further errs by ignoring controlling authority from the South Carolina Supreme Court recognizing Mr. Finan’s substantial right in being the architect of his own complaint and

proceeding to trial against the defendants of his choosing. The Court has previously reversed this court for erring to recognize this same substantial right, giving rise to an immediate appeal under S.C. Code Ann. 14-3-330(2) (2017). *See, e.g., Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012) (holding that an interlocutory order that prevents a plaintiff from choosing the Defendants to a lawsuit is immediately appealable) (“Neeltec”). Analyzing S.C. Code § 14-3-330(2), the Supreme Court in Neeltec explicitly held: “**The right of the plaintiff to choose her defendant is a substantial right within the meaning of this subsection.**” 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (emphasis added).

Similarly, the Order fails to consider or distinguish the controlling authority found in Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015) (“Morrow”). In Morrow, the Court concluded that this court erred by holding the trial court's order of bifurcation was not immediately appealable because the order, by depriving the plaintiff of a trial against the defendant of the plaintiff's choosing, affects a substantial right. In holding that the order was immediately appealable, the Court stated:

The effect of this order is to **prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.** ... To prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.

Morrow, 412 S.C. at 539, 773 S.E.2d 146-47 (citing Neeltec, *supra*). Preventing Mr. Finan from amending his Complaint to combine and take to trial his claims against alleged joint-tortfeasors has the exact same effect as the bifurcation order in Morrow.

To summarily determine that Mr. Finan's appeal should be dismissed merely because it, like Tatnall, relates to a Rule 15 motion to amend elevates form over substance and fails to adhere to this court's own admonition in Tillman to assure it is “eyeing the nature and effect of the order, not

merely its label.” 420 S.C. at 250, 801 S.E.2d at 760. The Order is likewise heedless of this court’s prior recognition that Neeltec and Morrow are controlling authorities that hold “an order depriving a plaintiff of his or her ability to determine the defendant against whom he or she brings a cause of action can affect a substantial right, making the order immediately appealable.” Dorn v. Cohen, 418 S.C. 126, 137, 791 S.E.2d 313, 319 (Ct. App. 2016), aff’d as modified, 421 S.C. 517, 809 S.E.2d 53 (2017) (wherein the South Carolina Supreme Court held that this court erred in applying S.C. Code Ann. § 14-3-330 (2017) to determine that the probate court order was not immediately appealable).

CONCLUSION

Therefore, because the Orders affect a substantial right under S.C. Code Ann. § 14-3-330(2), the Orders are immediately appealable pursuant to controlling case law. Mr. Finan respectfully requests that this Court grant this petition for rehearing, lift the abeyance of the appeal and allow it to be ruled upon based on the merits of it.

March 11, 2019

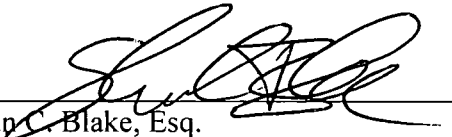

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EXHIBIT A

TRANSCRIPT OF HEARING DATED SEPTEMBER 6, 2018

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2016-GS-40-7109

Richard A. Finan,)
Plaintiff,)
vs.)
Vista Wings, LLC, et al,)
Defendants.)
_____)

September 6, 2018
Columbia, South Carolina

B e f o r e:

The Honorable Paul M. Burch, Judge

A p p e a r a n c e s:

Shawn Blake, Esquire,
Attorney for the Plaintiff

Ryan William Holt, Esquire
William G. Yarborough III, Esquire
Attorneys for the Defendants

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Motion/Mr. Blake	4
Response/Mr. Holt	10
Reply/Mr. Blank	14
Decision by the Court	18
Certificate Page	20

E X H I B I T S

-- NO EXHIBITS ENTERED --

1 (On the record at 2:19 p.m.)

2 MR. HOLT: Good morning, Your Honor. Ryan Holt for
3 the Defendants in this case.

4 MR. YARBOROUGH: William Yarborough, also for the
5 Defendants, Your Honor.

6 MR. BLANK: And Shaun Blake, for the Plaintiff,
7 Richard Finan.

8 THE COURT: All right. What can I help you with?

9 MR. BLANK: Good morning, Your Honor. May it please
10 the Court? We are here today on a motion for an amended
11 complaint in this matter. It's the first time the
12 Plaintiff has moved to -- hasn't -- amended as a matter of
13 right and -- it's the first attempt to amend the complaint.

14 The case was filed in late 2016, and the case has had
15 some difficulty going forward due to discovery issues.
16 There's been a lot of motions to compel filed in this
17 action.

18 At -- the crux of this case, the -- the -- I guess the
19 factual framework, briefly, Your Honor, is that Mr. Finan
20 was visiting at the Vista Wings location of the Wild Wing
21 Café down there in the vista, downtown Columbia. He was
22 there on June 5, 2015.

23 Mr. Finan -- June 5, 2015, Mr. Finan was there that
24 evening with some family. An altercation broke out at the
25 bar, Mr. Finan was placed in a chokehold for several

1 minutes, and was -- witnesses described him being punched
2 repeatedly in the face while he was in that chokehold.

3 He then brought this action later that same year, Your
4 Honor, seeking to hold Vista Wings, the entity that we
5 understand to be the operator of the location in the Vista,
6 liable for negligence arising out of that assault. And
7 essentially, the elements are -- of the negligence are:
8 Failure to staff, failure to train, letting people get
9 intoxicated in violation of the South Carolina law on
10 premises, all of which resulted in this attack. That --
11 that's the gist of Mr. Finan's allegations.

12 The case has gone forward with discovery, and on March
13 2 of this year, Judge Benjamin heard one -- one of the --
14 several -- several of the additional motions to compel that
15 were pending in the case. She issued a Form 4 back on
16 March 5, 2018. The parties are actually still awaiting the
17 signed order on that motion to compel.

18 But I am happy to report to the Court that Vista Wings
19 counsel has been most cooperative since that hearing in
20 providing us some additional discovery responses which will
21 allow me to amend this motion, or at least remove some of
22 the requests from the motion today to sort of shorten the
23 time and to limit the issues for the Court on this motion
24 to amend because it's clarified some of the roles of the
25 parties.

1 But back to my time line, Judge. We had this argument
2 in front of Judge Benjamin on March 2. After -- after the
3 hearing on the motion to compel, understanding what was
4 forthcoming, we went ahead and scheduled some depositions.
5 Some of those had to be cancelled due to the unavailability
6 of parties last -- last witness, but we were able to depose
7 a gentlemen named "Bryan Neal."

8 Bryan Neal was the general manager at the time down at
9 that Vista Wings location, and Mr. Neal disclosed some --
10 made some statements in his deposition that identified that
11 his employer was in fact the corporate entity that owns the
12 Wild Wing Café. Without boring you with all the details of
13 their structure, essentially, Wild Wings has franchise
14 stores, corporate stores, and the Vista location is a
15 corporate store.

16 And as that deposition developed, Your Honor -- and I
17 have a copy of it and I can show you excerpts, as -- as may
18 be required in the motion. But as it developed,
19 essentially what Mr. Neal says is Corporate adopts our
20 policies; Corporate handles our mark -- marketing;
21 Corporate is responsible for setting up training
22 guidelines; Corporate tells us what our sales objectives
23 are, tracks our sales goal -- performance, tells us how
24 much to sell; Corporate is responsible for employing and
25 managing the managers in the location.

1 And what we've learned since Mr. Neal's deposition,
2 through the supplemental discovery, is that one of the
3 Aetius Companies that we have sought to add as a party to
4 this case is the corporate parent, the -- the company that
5 owns the membership interest in the current Defendant,
6 Vista Wings.

7 And so it -- we -- we were -- as I'm sure you know
8 this from the motion, Your Honor, initially we were seeking
9 to add all four of these Asciant -- Aetius restaurant
10 entities that have been -- sought to be added to the case,
11 and then two Axum companies which are the investment
12 companies that -- that we were told by Mr. Neal, owned
13 those Aetius companies.

14 And then two managers at the Vista Wings location who
15 are responsible for the staffing and security present that
16 night, and -- and really the reason why we wanted to name
17 the individuals, Your Honor, is that we didn't know
18 actually who employed them, and we didn't want vicarious
19 liability opportunities to come and go with the statute of
20 limitations.

21 So out of the abundance of caution, this motion was
22 filed in March, following Mr. -- the week following Mr.
23 Neal's deposition to make sure that the claims against all
24 potential Defendants had been sought to be added to this
25 complaint prior to the three year statute of limitations

1 potentially running.

2 Like I said, we now understand, Your Honor, that these
3 Aetius companies are -- are probably the only companies
4 that could have an employment relationship with the
5 managers and the general managers that were sought to be
6 added as individual defendants in this motion. So I would
7 withdraw the motion as it relates to the two additional
8 individuals: One is a "Santana Griffin, one is a "Craig
9 Heifner." Based on the discovery we received, we
10 understand now that these Aetius companies are likely the
11 only companies that could have been the employer of those
12 two persons.

13 And similarly, Your Honor, I'll withdraw the motion as
14 it relates to the capitol investment groups, the Axum
15 parties, because again, it appears that the Aetius
16 companies are the ones that would have the employment
17 relationship with the folks that could be liable for that
18 night and who were dictating the policies down to the
19 subsidiary Vista Wings.

20 So that was about as simple as I could make it, Judge.
21 At this point I'm only seeking to add these four Aetius
22 companies who had represented at court, in a brief they
23 filed last November, that they were all acting essentially
24 as the parent of this Defendant. And it's based on that
25 representation the four Aetius companies made in a brief

1 they filed in this court last November and the testimony of
2 Mr. Neal outlining in detail the role that these parent
3 companies have in setting the policies and the staffing
4 requirements and the sales target goals and the trainings
5 of Vista Wings, LLC, we seek to add them as additional
6 Defendants in this case so that they can be -- we can do
7 discovery on them at -- at -- to the extent it's necessary,
8 and the case can be tried against them as well to the
9 extent they are the ones that are vicariously liable for
10 the actors that were at fault -- the individuals acting at
11 fault that resulted in this sort of mismanaged concert
12 event down at the Wild Wings on June 5, 2015.

13 I think there's a couple of practical concerns. I'm
14 not gonna bore you with the standard under Rule 15, Judge,
15 but there's two practical concerns here why I think justice
16 requires the motion to be granted.

17 One, during the pendency of this motion over the past
18 six months, there is an argument now that did not exist
19 when this motion was filed that the statute may have run.
20 And so I believe Mr. Finan would be materially prejudiced
21 if hisp motion were denied because then he would have to
22 sue these companies separately and would potentially face a
23 motion to dismiss or summary judgement on the -- on the
24 statue of limitations.

25 And secondly, Vista Wings, LLC, Your Honor, has

1 represented that it has a \$50,000 diminishing insurance
2 policy or that there's been an exclusion that has been
3 basically placed in effect. Based on the alcohol and the
4 assault that was sort of the base of the fight that
5 happened.

6 This claim arises out of assault. Their policy has an
7 exclusion based on assaults on the premises, and -- and
8 we've been told that the policy's now essentially wiped
9 out, that that \$50,000 in coverage has been eroded. And so
10 as a practical matter, I think Mr. Finan would be
11 prejudiced if he's not able to add other parties who have
12 potential additional insurance coverages for the claims
13 that he is seeking to take to trial here shortly.

14 So we ask the motion be granted.

15 THE COURT: All right. Yes, sir.

16 MR. HOLT: Thank you, Your Honor. If it please the
17 Court. Ryan Holt for the Defendant in this case.

18 As the Court knows, the inquiry for a request to amend
19 is fairly tailored, but since there were some factual
20 issues that were addressed, I do want to address the scope,
21 just in one respect. I think that's important for the
22 Court to know kinda what we're dealing with.

23 This of course happened in June of 2015, it was filed
24 in December of 2016, and the case was first up on the
25 roster February of this year; and we begged the Court to

1 allow us to proceed with trial at that time, that we had
2 done everything that we needed to to prosecute and defend
3 this type of a case.

4 'Cause, really, what this case come down to is a
5 gentlemen who went to a country music concert over at the
6 Wild Wing location, he got involved in a fight with another
7 patron, and got punched. He went to the ER and his medical
8 bills are \$1500, Judge. So this is a case that we see
9 often in the premises liability setting and that's a case
10 that we're familiar with and that we can defend and -- and
11 deal with depositions and deal with questions about whether
12 there enough security and whether too much alcohol was
13 served and that kind of thing. 'Cause that -- that kinda
14 case makes sense to everybody involved.

15 But what has happened over time is that there's been
16 these efforts delaying the trial of this case. And one of
17 those efforts began with additional discovery requests,
18 kind of needling into corporate ancestry of the company
19 here that's in the Vista. And so that's why all these
20 companies are being referenced today.

21 Judge, we have produced -- I know Your Honor
22 referenced some motions to compel on the issues that are
23 out there and those often times -- we have produced 4,000
24 pages of documents in a case, again, involving a guy who
25 went to the ER for \$1500 'cause he got punched in the face.

1 And we have produced 4,000 documents.

2 So what the Plaintiff's approach has been, despite the
3 mediation to try to resolve this case and offers that we
4 have made in multiples of that ER bill amount to try to
5 resolve this, is that they now want to make it a case about
6 these parents and grandparents and great-grandparent
7 companies which don't have anything to do with this case at
8 all.

9 There's no question that one entity, and one entity
10 only, operated the facility over there in the Vista and
11 that entity is properly named. And I've been hired here to
12 defend that entity today. And so if -- if they have
13 concerns about getting to these other entities in terms of
14 money, well, at the end of the day, they can go get a
15 judgement, as Your Honor knows, and then they can try to
16 collect that judgement against Wild Wing. And if they can,
17 then we're done. If they can't, then they can go pierce
18 the corporate veil and try to get some of these companies
19 up the chain.

20 But that's not -- we're a long way from that at this
21 point. We really first just need to try this case, which
22 we've been trying to do for months and months, and here at
23 literally the eleventh hour, we're facing a request to
24 amend.

25 So I would address the two issues from Rule 15, that

1 Your Honor knows well.

2 The first is prejudice. How are we gonna be
3 prejudiced? This is not the situation, Judge, where it's a
4 case against a trucking company on negligence, and they
5 want to add a negligent hiring claim kind of at the end.
6 We understand that -- that happens all the time and there's
7 relation back -- the rule provides for relation back of an
8 amendment. That's okay.

9 This is entirely different because they're gonna bring
10 in new parties who've not been involved in this case of
11 party, and they're gonna issue new allegations against
12 them. So no longer is this gonna be a case about a guy who
13 got in a restaurant fight, but this is gonna be ballooned
14 into a case about corporations and their entities and who
15 handles payroll and -- and who hires security and those
16 type of things.

17 And so we think that we're prejudiced by the addition
18 of these new parties and by the delay in trial because as
19 Your Honor also knows, a 180 days will be added to this
20 case for the trial with the addition of every new party.

21 The second reason why we believe that under Rule 15
22 this can't be granted is futility, which the case law
23 speaks to the concept of futility. And the reason there is
24 that the statute of limitations ran in June. Again, this
25 is not a relation back case. If they were adding causes of

1 action, we understand that those relate back to the
2 original transaction or occurrence. This is new parties
3 who are involved, and those parties are now exposed to
4 things that they wouldn't -- that necessarily even known
5 about. And that's why we have a statute of limitations in
6 this state is so that people are on notice that, after a
7 certain amount of time, they're not gonna be exposed to
8 stuff.

9 So you have these other companies who aren't parties
10 to the case. All of a sudden they're gonna be brought into
11 it. And I'm -- and I may not even represent them, Judge.
12 I've been retained by one insurance carrier. They may have
13 others, they may have corporate counsel come in. But if
14 I'm them, the first thing I'm doing is filing a motion to
15 dismiss based on statute of limitations ground. It's just
16 been long past three years on this case.

17 So this is -- I -- you know, I -- I don't want the
18 Court to think that we're pushing back on a request to --
19 you know, a year after the case got filed we amend it to
20 add a cause of action 'cause that's different. We
21 understand that is freely granted. This is a little
22 different, Judge, and so we'd ask the Court to respectfully
23 deny the motion. Thank you, Your Honor.

24 MR. BLAKE: Briefly, Your Honor. In response, one, I
25 -- I -- he's mischaracterized the complaint. There's --

1 there is a cause of action for premises liability. The
2 initial complaint filed absolutely raised causes of action
3 for negligent training, negligent hiring, negligent
4 supervision which is essentially all this case has boiled
5 down to in the course of discovery. That's it. That's
6 what the case is.

7 They held what was to them one of their four or five
8 biggest signature concerts of the year, they didn't have
9 any security available for it; and my client was choked for
10 two or three minutes, thought he was gonna die, had his
11 wife and family and friends there throwing bottles at the
12 attacker. And one of the attacker's testified, "I didn't
13 -- I wasn't gonna let him go until security came and took
14 him for me." And when I asked him, "Did security ever
15 come?" "No. Eventually, a police officer came," was what
16 one of the attackers testified to.

17 That -- this whole case is about negligent hiring,
18 supervision and training. And these parties, the one --
19 the -- the Aetius companies that I'm asking to add, are
20 ones that have participated in this case, that have been
21 involved in discovery disputes since last year, who have
22 sought to quash and fight off my ability to get discovery
23 from them to add them as parties to this case sooner, I --
24 the -- it's a matter of record Your Honor, there's a motion
25 to quash filed on behalf of these four Aetius companies

1 filed back on November 20, 2017, by the Sweeny, Wingate,
2 and Barrow Firm.

3 And yes, we are later in the case, but it's because
4 I've spent a year and half fighting for discovery to get
5 basic information from the parties to establish who
6 employed who; who owned Vista Wings, LLC; and who set it's
7 policies.

8 They did produced 4,000 pages, but it's taken three to
9 four motions to compel to get it, hence the reason for the
10 delay. And I do believe that the amendment would relate
11 back, Your Honor, because the -- these parties have been on
12 notice of the claims, they have filed a brief with this
13 court saying that they're the parent organization of the
14 named Defendant, and they have participated in this
15 litigation actively prior to any potential statute running.

16 And certainly Mr. Finan didn't know who they were
17 until he was able to get in there and get discovery and
18 figure out their involvement.

19 And so -- and -- and again, Your Honor, I'm happy to
20 walk through the deposition of Bryan Neal, page by page, to
21 show you where he testifies about the corporate parents'
22 involvements in every aspect of training, marketing,
23 supervising the mangers, setting their sales goals,
24 increasing sales competitions between them, which Mr. Finan
25 alleges drove the incentive for these people to over-serve

1 clients that resulted in an environment where he was able
2 to be attacked.

3 It -- it -- it's -- it's the crux of the case, and
4 what we don't want to happen, Your Honor, is we go to court
5 and then Mr. Finan realizes, "Oh, this manager, this person
6 that adopted the policy, this person that did the training,
7 and this person that did -- that was responsible for
8 supervising that night, well, they weren't employed by
9 Vista Wings, LLC, they were employed by one of these four
10 companies that have held themselves out as one of the
11 parents of Vista Wings, LLC. And so we just seek to add
12 them for that reason.

13 I -- I don't know what -- I don't know why it would
14 require an additional six months. I think the parties
15 could agree to a transfer at any point in time they were
16 finished with discovery. We have a few depositions to do
17 that we've been discussing for a good period of time, but I
18 don't believe this will result in a six month delay, Your
19 Honor.

20 But I -- I -- I think it would be materially
21 prejudicial to the Plaintiff if he's not able to add these
22 parties at this point, given the fact that this motion's
23 been pending for five to six months, and now the Defendants
24 are arguing that his claims against these Defendants are
25 barred by the statute of limitations. That -- that -- that

1 just creates an impossible situation for him.

2 THE COURT: Anything else?

3 MR. HOLT: No, Your Honor. Thank you.

4 THE COURT: For what y'all are relaying to me from
5 both sides, I'm gonna deny this motion. Get this case
6 settled. You got the parties in there to get this thing to
7 trial for the jury to decide without complicating all this,
8 and all this time goes by. No. I'm not gonna do that.
9 Get it settled.

10 Prepare me an order and get this thing settled, or
11 either try it on what you got. Sounds like you got
12 everything there ready to go, go with it. And then if
13 something else comes up, go after those other corporations
14 like you said, pierce the corporate veil. It's not like
15 you're being totally barred out on it.

16 All right. Good luck.

17 MR. HOLT: Thank you, Judge.

18 MR. BLAKE: Thank you, Your Honor.

19 (Brief pause.)

20 MR. HOLT: Thank you, Your Honor.

21 The Court: Probably have to e-file that ---

22 MR. HOLT: Okay.

23 THE COURT: --- order.

24 MR. HOLT: We'll do that.

25 MR. BLAKE: Thank you, Your Honor.

The Court: Good luck. Y'all get it settled.

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 6th day of September, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

e/Bonnie H. Kelly

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

January 19, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2016-CP-40-07109

RECEIVED
MAR 11 2019
SC Court of Appeals

Richard A. Finan,Appellant,

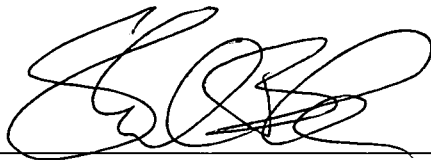
v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia,Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on Defendant Vista Wings, LLC, d/b/a Wild Wing Café – Columbia by causing a copy of the same to be hand delivered to the office of his attorneys of record: Mark S. Barrow, Ryan C. Holt, and William H. Yarborough, Jr. at 1515 Lady Street, Columbia, SC 29201.

March 11, 2019


Shaun C. Blake, Esq.
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March 11, 2019

Via Hand Delivery

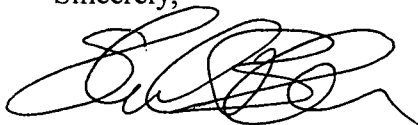
Ms. Jenny Abbott Kitchings
Clerk of Court – South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Finan v. Vista Wings, LLC d/b/a Wilding Wing Café – Columbia, et al.
Appellate Case No. 2018-002054

Dear Madam Clerk:

Enclosed for filing please find an original and six (6) copies of Appellant Richard A. Finan's Petition for Rehearing, with Exhibit A, together with the \$50.00 filing fee and the original Proof of Service. I have included an extra copy so that it can be stamped and returned to my assistant, Donna Croft, for our office's records. Please contact my office if you need any additional information.

Sincerely,



Shaun C. Blake

cc: w/ copy of enclosures

Via Hand Delivery

Mark S. Barrow, Esq.
Ryan Holt, Esq.
William Yarborough, Esq.
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Columbia, SC 29201

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SC Court of Appeals