

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit
Case No. 2018CP0200675

Appellate Case No. 2019-000288

RECEIVED
MAR 20 2019
SC Court of Appeals

Ex parte: Daniel Geitner,

Appellant,

In re: Kelly Sims,

Respondent,

v.

Sharon Enteen-Prusso a/k/a
Sharon Enteen, and
Falcon Ridge, Inc.,

Defendants.

MEMORANDUM OF LAW ON APPEALABILITY OF ORDER ON APPEAL

Karl S. Bowers, Jr.
South Carolina Bar No. 16141
Bowers Law Office, LLC
Post Office Box 50549
Columbia, South Carolina 29250
(803)753-1099

Attorney for Appellant

COMES NOW Daniel Geitner, non-party witness below and Appellant herein (“Mr. Geitner”), and files this his *Memorandum of Law on Appealability of Order on Appeal* in compliance with the correspondence from the Honorable V. Claire Allen, Deputy Clerk, South Carolina Court of Appeals, dated March 12, 2019, requesting that the parties on appeal in the above-styled matter submit a memorandum addressing the immediate appealability of that certain order entered on January 16, 2019¹ (“Trial Court Order”), in the Court of Common Pleas of Aiken County, Civil Action File Number 2018CP0200675 (“Trial Court”), showing the Court as follows:

PROCEEDINGS BELOW²

On March 22, 2018, the Trial Court issued a foreign subpoena to Mr. Geitner (“Subpoena”) at the request of Kelly Sims, Appellee herein (“Appellee”). The underlying action is pending in the Cherokee County Superior Court, State of Georgia, *Sims v. Falcon Ridge, Inc., et al.*, Civil Action File No. 18cve0059 (“Georgia Litigation”). Pursuant to the Subpoena, Mr. Geitner appeared for his deposition on May 22, 2018, and answered all questions posed to him with the exception of certain questions concerning a settlement agreement with another non-party that contained a confidentiality provision. The deposition concluded in the ordinary course without suspension. Over a month later, on June 28, 2018, Appellee filed a *Motion to Compel* (“Motion”) responses to the questions posed concerning the settlement agreement. Docket Entry dated 06/28/2018. On November 5, 2018, the Trial Court held a hearing on the Motion. On December

¹ A true and correct copy of the Trial Court Order was filed with the Court on February 21, 2019, along with Mr. Geitner’s *Notice of Appeal*.

² Rather than burden the Court with the individual documents filed with the Court of Common Pleas of Aiken County in Civil Action File Number 2018CP0200675, Mr. Geitner requests that the Court take judicial notice of the docket of said case, a copy of which is attached hereto as Exhibit “A.” References to the same will be “Docket Entry dated _____.”

5, 2018, the Trial Court entered an order granting the Motion³. Docket Entry dated 12/05/2018. The issue of attorneys' fees was reserved by the Trial Court who ruled on the same based written submission of counsel for Appellee⁴. Docket Entries dated 12/14/2018. Mr. Geitner opposed the attorneys' fees award by filing a *Brief in Opposition* and an *Affidavit*. Docket Entries dated December 19, 2018. The Trial Court Order awarding attorneys' fees was entered on January 16, 2019. Docket Entries dated January 16, 2019.

ARGUMENT AND CITATION OF AUTHORITY

“Any party aggrieved may appeal in the cases prescribed in this title.” S.C. Code Ann. § 18-1-30. The Supreme Court of South Carolina in *Bivens v. Knight*, 254 S.C. 10, 173 S.E.2d 150 (1970) defined an aggrieved party as being “one who is injured in a legal sense: one who has suffered an injury to person or property. A good definition of an aggrieved party is contained in the case of *Bowles v. Dannin*, 62 R.I. 36, 2 A.2d 892. It is there stated that an aggrieved party within statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” *Bivens*, 254 at 13. Here, Mr. Geitner is clearly an aggrieved party as

³ Mr. Geitner did not appeal the order granting the Motion. He appeared again for deposition on January 7, 2019 (a date agreed upon by counsel for all parties), and answered all questions posed to him by counsel for Appellee.

⁴ No hearing was held on the issue of attorneys' fees and the criteria to be considered for reasonableness of the same pursuant to *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). The Trial Court ruled exclusively on the affidavits submitted by Counsel for Appellee. Notwithstanding the Trial Court Order's reference to oral argument in its first paragraph, no hearing was held on the amount or reasonableness of the attorneys' fees requested by Appellee. As a result of there being no hearing on the issue, no transcript was available to be requested or filed.

an award of attorneys' fees has been entered against him along with a judgment for the same. Docket Entries dated January 16, 2019. Consequently, Mr. Geitner has a statutory right to appeal.

“The determination of whether a trial court's order is immediately appealable is governed by statute.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). “By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Id.* at 538. S.C. Code Ann § 14-3-330 provides for immediate appeal of the following:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

...

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment;

....

The Trial Court Order is immediately appealable as the same is a final judgment and affects a substantial right made in a special proceeding. “A final judgment is an order that “dispose[s] of the cause, ... reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.” *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942) (quoting 2 Am. Jur. 860 § 22).” *Kriti Ripley, LLC, et al. v. Emerald Investments, LLC, et al.*, 404 S.C. 367, 378, 746 S.E.2d 26, 32 (2013). In the instant case, a foreign subpoena was issued pursuant to S.C. Code

Ann § 15-47-120. The same was governed by the statutes and rules related to enforcement of the same. *See* S.C. Code Ann. § 15-47-150. A motion to compel was filed, the Trial Court granted the same, and subsequently, considered the issue of attorneys' fees on the brief and affidavits issuing the Trial Court Order on appeal. The Trial Court Order, therefore, is a final judgment that is immediately appealable. *See* S.C. Code Ann. § 14-3-330(1).

Similarly, the Trial Court Order is a final order affecting Mr. Geitner's substantial rights in a special proceeding. *See* S.C. Code Ann. § 14-3-330(3). While typical orders compelling discovery are not generally immediately appealable, the instant case is distinguishable from those typical cases. The entire matter before the Trial Court was the issuance of a foreign subpoena for the Georgia Litigation and the enforcement of the same. While having no precedential value, this Court's decision regarding immediate appealability in *Wilson v. Integrated Capital Strategies, LLC*, Op. No. 2018-UP-289 (S.C. Ct. App. Filed June 27, 2018) at footnote 5 is instructive wherein this Court determined that, "[b]ecause the Order Requiring Compliance ended the circuit court case, it is distinguishable from typical orders compelling discovery. *See* S.C. Code Ann. § 14-3-330(3) (1976) (stating "[a] final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment" is immediately appealable); *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 873 n.21 (D.C. Cir. 1977) (holding "it is settled that an order of a . . . court granting or denying an agency's petition for enforcement of a subpoena is final and appealable")." Here, the Trial Court issued the foreign subpoena, determined the enforceability of the foreign subpoena and assessed attorneys' fees as a result. It is the Trial Court Order that addresses attorneys' fees that is at issue here. The matter in the Trial Court is concluded; consequently, the Trial Court Order is immediately appealable.

“Statutes and rules of court should be construed liberally in favor of the right of appeal.”
Stroup v. Duke Power Co., 216 S.C. 79, 84, 56 S.E.2d 745, 747 (1949); *Haughton v. Order of United Commercial Travelers of Am.*, 108 S.C. 73, 74-75, 93 S.E. 393, 394 (1917); *O'Rourke v. Atl. Paint Co.*, 91 S.C. 399, 403, 74 S.E. 930, 931 (1912).

CONCLUSION

For all of the foregoing reasons, the Trial Court Order should be determined to be immediately appealable.

Respectfully submitted, this the 20th day of March, 2019.



Karl Smith Bowers, Jr.
South Carolina Bar No. 16141
Bowers Law Office LLC
1419 Pendleton Street
Columbia, South Carolina 29201
(803)753-1099
(803)250-3985 Fax
butch@butchbowers.com

EXHIBIT A

Aiken County Second Judicial Circuit Public Index

Aiken County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Kelly Sims VS Sharon Enteen Prusso , defendant, et al

Case Number:	2018CP0200675	Court Agency:	Common Pleas	Filed Date:	03/22/2018
Case Type:	Common Pleas	Case Sub Type:	Out of State Deposit	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Other / Circuit Civil	Disposition Date:	03/22/2018	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2018CP0200675	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Doc
Geitner, Daniel	Appeal/Notice of Appeal to Court of Appeals	Action		02/22/2019-15:25		
Geitner, Daniel	NEF(02-21-2019 03:25:42 PM) Appeal/Notice of Appeal to C...	Filing		02/21/2019-16:01		
Sims, Kelly	NEF(01-16-2019 09:34:16 AM) Order/Costs	Filing		01/16/2019-09:34		
Sims, Kelly	Order/Costs	Order		01/16/2019-09:34		
Sims, Kelly	Judgment/Taxation of Costs	Judgment				

Geitner, Daniel	Judgment/Taxation of Costs	Judgment			
Sims, Kelly	NEF(12-21-2018 07:21:28 PM) Reply/Other	Filing		12/26/2018-08:38	
Sims, Kelly	Reply/Other	Filing		12/21/2018-19:21	
Geitner, Daniel	NEF(12-19-2018 05:20:02 PM) Memo/Memo in Opposition	Filing		12/19/2018-17:26	
Geitner, Daniel	Memo/Memo in Opposition	Filing		12/19/2018-17:20	
Geitner, Daniel	Affidavit/Attorney	Filing		12/19/2018-17:20	
Geitner, Daniel	Service/Certificate Of Service	Filing		12/19/2018-17:20	
Geitner, Daniel	NEF(12-19-2018 04:58:12 PM) Add Party to Case	Filing		12/19/2018-17:04	
Geitner, Daniel	Add Party to Case	Filing		12/19/2018-16:58	
Geitner, Daniel	Service/Certificate Of Service	Filing		12/19/2018-16:58	
Sims, Kelly	NEF(12-14-2018 03:23:10 PM) Affidavit/Attorney Fees	Filing		12/14/2018-15:36	
Sims, Kelly	Affidavit/Attorney Fees	Filing		12/14/2018-15:23	
Sims, Kelly	Affidavit/Attorney Fees	Filing		12/14/2018-15:23	
Sims, Kelly	NEF(12-05-2018 11:50:52 AM) Order/Compel	Filing		12/05/2018-11:51	
Sims, Kelly	Order/Compel	Order		12/05/2018-11:50	
Bowers, Karl Smith Jr.	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/25/2018-10:44	
Ichter, Cary	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/25/2018-10:44	
Stanton, M. Baron	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/25/2018-10:44	
Bowers, Karl Smith Jr.	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/05/2018-09:52	

Stanton, M. Baron	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/05/2018-09:52		
Ichter, Cary	11/5/2018 MOTION Roster/Notice of Motions Roster Publication	Action		10/05/2018-09:52		
Prusso, Sharon Enteen	NEF(09-21-2018 04:12:49 PM) Order/Continuance	Filing		09/21/2018-16:13		
Prusso, Sharon Enteen	Order/Continuance	Order		09/21/2018-16:12		
Prusso, Sharon Enteen	NEF(09-21-2018 02:44:09 PM) Motion/Continuance	Filing		09/21/2018-14:49		
Prusso, Sharon Enteen	Motion/Continuance	Motion		09/21/2018-14:44	09/21/2018-14:44	
Ichter, Cary	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:30		
Stanton, M. Baron	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:30		
Bowers, Karl Smith Jr.	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:30		
Bowers, Karl Smith Jr.	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:28		
Stanton, M. Baron	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:28		
Ichter, Cary	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/21/2018-09:28		
Prusso, Sharon Enteen	NEF(09-20-2018 05:36:25 PM) Notice/Notice of Appearance	Filing		09/20/2018-17:36		
Prusso, Sharon Enteen	Notice/Notice of Appearance	Filing		09/20/2018-17:36		
Ichter, Cary	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/05/2018-11:04		
Stanton, M. Baron	9/24/2018 MOTION Roster/Notice of Motions Roster Publication	Action		09/05/2018-11:04		
Sims, Kelly	NEF(08-22-2018 07:58:53 AM) Order/Pro Hac Vice	Filing		08/22/2018-07:58		

Sims, Kelly	Order/Pro Hac Vice Cary Ichter	Order		08/22/2018-07:58		
Sims, Kelly	NEF(08-20-2018 08:17:36 AM) Filing/Other	Filing		08/20/2018-08:17		
Sims, Kelly	Receipt for Pro Hac Vice Cary Ichter	Filing		08/20/2018-08:17		
Ichter, Cary	9/24/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2018-10:39		
Stanton, M. Baron	9/24/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2018-10:39		
Sims, Kelly	NEF(08-10-2018 04:09:35 PM) Notice/Other	Filing		08/10/2018-16:26		
Sims, Kelly	Notice/Other	Filing		08/10/2018-16:09		
Sims, Kelly	Certificate/Certificate	Filing		08/10/2018-16:09		
Sims, Kelly	NEF(08-09-2018 05:54:47 PM) Motion/Admission Pro Hac Vic...	Filing		08/10/2018-08:02		
Sims, Kelly	Motion/Admission Pro Hac Vice	Motion		08/09/2018-17:54	08/09/2018-17:54	
Sims, Kelly	Certificate/Certificate	Filing		08/09/2018-17:54		
Ichter, Cary	9/24/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/08/2018-11:38		
Stanton, M. Baron	9/24/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		08/08/2018-11:38		
Sims, Kelly	NEF(06-28-2018 04:07:54 PM) Service/Certificate Of Servi...	Filing		06/28/2018-16:09		
Sims, Kelly	Service/Certificate Of Service	Filing		06/28/2018-16:07		
Sims, Kelly	NEF(06-28-2018 03:18:12 PM) Motion/Compel	Filing		06/28/2018-15:28		
Sims, Kelly	Motion/Compel	Motion		06/28/2018-15:18	11/05/2018-15:18	
Sims, Kelly	Notice/Notice of Appearance	Filing		06/28/2018-15:08		
Sims, Kelly	Deposition/Out of State Deposition	Filing		03/22/2018-16:39	03/22/2018-16:39	

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit
Case No. 2018CP0200675

Appellate Case No. 2019-000288

RECEIVED
MAR 20 2019
SC Court of Appeals

Ex parte: Daniel Geitner,

Appellant,

In re: Kelly Sims,

Respondent,

v.

Sharon Enteen-Prusso a/k/a
Sharon Enteen, and
Falcon Ridge, Inc.,

Defendants.

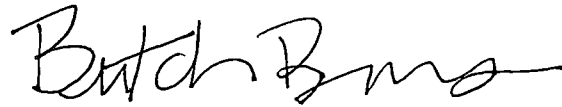
PROOF OF SERVICE

I certify that I have served the MEMORANDUM OF LAW ON APPEALABILITY OF
ORDER ON APPEAL on Kelly Sims by causing a copy of it to be deposited in the United States
mail, postage prepaid, on March 20, 2019, addressed to her attorneys of record:

M. Baron Stanton, Esq. (bstanton@stantonlaw.com)
P.O. Box 245
Columbia, South Carolina 29202

Cary Ichter, Esq. (cichter@ichterdavis.com)
William Daniel Davis, Esq. (ddavis@ichterdavis.com)
Ichter Davis LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, Georgia 30326

Dated, this the 20th day of March, 2019.

A handwritten signature in black ink that reads "Butch Bowers". The signature is written in a cursive style with a horizontal line underneath the name.

Karl S. Bowers, Jr.
South Carolina Bar No. 16141
Bowers Law Office, LLC
Post Office Box 50549
Columbia, South Carolina 29250
(803)753-1099
(803)250-3985 Fax
butch@butchbowers.com

BOWERS LAW OFFICE LLC

Post Office Box 50549
Columbia, South Carolina 29250

Phone: 803-753-1099

butch@butchbowers.com

March 20, 2019

RECEIVED

MAR 20 2019

SC Court of Appeals

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

Re: Ex parte Daniel Geitner, Appellant; Kelly Sims, Respondent, v. Sharon Enteen-Prusso a/k/a Sharon Enteen, and Falcon Ridge, Inc., Defendants,
Case No. 2018CP0200675

Dear Ms. Kitchings,

Enclosed for filing as per the Court's request is a memorandum on appealability in the above-referenced case. Also enclosed is the proof of service of the memorandum on the respondent

Sincerely,



Karl S. Bowers, Jr.
South Carolina Bar No. 16141

cc: M. Baron Stanton, Esq. (bstanton@stantonlaw.com)
P.O. Box 245
Columbia, South Carolina 29202

Cary Ichter, Esq. (cichter@ichterdavis.com)
Ichter Davis LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, Georgia 30326