

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2016-CP-18-1001
Appellate Case No.2019-000671

RECEIVED

MAY 23 2019

SC Court of Appeals

Tammy C. Richardson, Respondent

v.

Halcyon Real Estate Services, LLP and McCabe, Trotter &
Beverly, P.C.,

Of Whom McCabe, Trotter & Beverly, P.C., is Appellant.

MEMORANDUM AS TO APPEALABILITY

The Respondent, Tammy Richardson, submits this memorandum in response to the Court of Appeals' request dated May 13, 2019 for "a memorandum addressing the issue of the immediate appealability of the order on appeal..."

THE ORDER AND COMPLIANCE

On April 4, 2019, the Honorable Maite Murphy issued an Order granting Respondent's requested relief for sanctions for conduct that occurred during the course of several depositions. The Order, in summary, directed that the depositions of Haylen Gatling and Sherri Self be

reconvened and continued at the expense of Appellant, McCabe Trotter & Beverly, P.C. (“MTB”) The Order further directed that the deposition of Stephanie Trotter be completed unimpeded and at the expense of MTB.

The depositions of all three of the witnesses at issue have now been completed as directed by the discovery Order.

THE DISCOVERY ORDER APPEALED FROM IS AN INTERLOCUTORY ORDER.

The right of appeal arises from and is controlled by statutory law. *Hagood v. Sommerville*, 362 S. C. 191, 607 S. E.2d 707 (2005); *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006); S.C. Code Ann. § 14-3-330 (2017) "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Hagood*, at. 194; S.C. Code Ann. §14-3-330 (1976); Rule 72, SCRCF; Rule 201(a), SCACR. "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." *Ex parte Capital*, at 6.

“It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.” *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E. 2d 533, 537 (2005) Courts in South Carolina have generally held that orders directing a party to participate in discovery are interlocutory and not directly appealable under S.C. Code §14-3-330. *See, e.g., Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 433, 205 S.E.2d 184, 185-86 (1974) (recognizing that generally an order denying pretrial discovery is not directly appealable because it is an intermediate or interlocutory decision); *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003)("an order compelling discovery does not ordinarily involve the merits of the case"); *Hamm v. South Carolina Public*

Service Com'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (“An order compelling a party to submit to discovery in interlocutory and not directly appealable.”); *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205, 208 (2005) (“This discovery order is not a final order because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined.”); *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112, 122 (2008) (dismissing appeal of order in which circuit court limited dissemination of information obtained in discovery and declined to impose sanctions; “discovery orders, 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”).

The discovery Order appealed is interlocutory. The completion of the depositions that were obstructed by counsel’s interruption to hold private conferences and instruction to the witnesses not to respond to questions regarding the substance of the private meetings during the depositions are not determinative of the action. No final determination of the merits of the case has been made. The discovery Order is interlocutory, because the rights of the parties must still be determined.

APPELLANT HAS WAIVED ANY RIGHT TO APPEAL.

A party waives the right to challenge a discovery order on appeal if it complies with the order. *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003) In order to preserve the right to appeal a discovery order a party must refuse to comply with the order, be cited for contempt, and then appeal. *Id.* at 577

Here MTB has complied with the discovery Order and the depositions that were obstructed have been reconvened and completed. Thus, MTB has waived any right to appeal.

CONCLUSION

The discovery Order is interlocutory and unappealable. Further the right to appeal has been waived. The appeal should be dismissed.

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PROOF OF SERVICE

I certify that I have served Respondent's Memorandum as to Appelability by depositing a copy of it in the United States Mail, postage prepaid, on May 21, 2019, addressed to the following counsel of record:

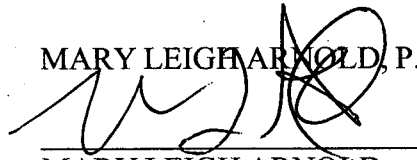
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May 21, 2019

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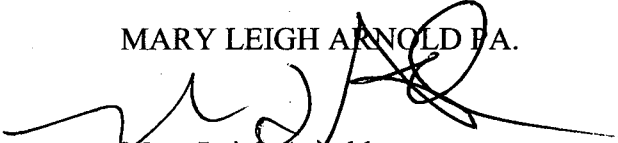
RE: Richardson vs. Halcyon and McCabe Trotter & Beverly, P.C.
Civil Action No. 2016-CP-18-1001
Appellate Case No. 2019-000671

Dear Madam Clerk:

Enclosed for filing please find Respondent's Memorandum as to Appealability as requested in the Court's correspondence dated May 13, 2019.

Should you have any further questions, please do not hesitate to contact me.

MARY LEIGH ARNOLD P.A.


Mary Leigh Arnold

Cc: Robert P. Wood, Esq.
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